

## SECTION 5. THE AGE OF PROPERTY: THE AFTERMATH OF HENRY II

### A. MAGNA CARTA AND THE TREATY OF WINCHESTER

#### MAGNA CARTA (1215)<sup>1</sup>

in F. Stephenson & F. Marcham, *Sources of English Constitutional History*  
(rev. ed., New York, 1972) I:115–126 (No. 44)

*John, by the grace of God king of England lord of Ireland duke of Normandy and of Aquitaine and count of Anjou to his archbishops, bishops, abbots, earls, barons, iusticiars, foresters, sheriffs, reeves, ministers, and all his bailiffs and faithful men, greeting. Know that, through the inspiration of God, for the health of our soul and [the souls] of all our ancestors and heirs, for the honour of God and the exaltation of Holy Church, and for the betterment of our realm, by the counsel of our venerable fathers<sup>2</sup> . . . , of our nobles<sup>3</sup> . . . , and of our other faithful men—*

1. We have in the first place granted to God and by this our present charter have confirmed, for us and our heirs forever, that the English Church shall be free and shall have its rights entire and its liberties inviolate. *And how we wish [that freedom] to be observed appears from this, that of our own pure and free will, before the conflict that arose between us and our barons, we granted and by our charter confirmed the liberty of election that is considered of prime importance and necessity for the English Church,<sup>4</sup> and we obtained confirmation of it from the lord pope Innocent III—which [charter] we will observe ourself and we wish to be observed in good faith by our heirs forever.* We have also granted to all freemen of our kingdom for us and our heirs forever, all the liberties hereinunder written, to be had and held by them and their heirs of us and our heirs.

2. If any one of our earls or barons or other men holding of us in chief dies, and if when he dies his heir is of full age and owes relief [that heir] shall have his inheritance for the ancient relief: namely the heir or heirs of an earl £100 for the whole barony of an earl the heir or heirs of a baron £100 for a whole barony, the heir or heirs of a knight 100s. at most for a whole knight's fee.<sup>5</sup> And let whoever owes less give less, according to the ancient custom of fiefs.

3. If, however, the heir of any such person is under age<sup>6</sup> and is in wardship, he shall, when he comes of age, have his inheritance without relief and without fine.<sup>7</sup>

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<sup>1</sup> John's charter was reissued under Henry III in 1216 and again in 1217, at both times with considerable revision. The second reissue was confirmed with minor changes by Henry III in 1225 after he had been declared of age and this remained the official Magna Carta of subsequent reigns. Parts of the original charter omitted after 1215 are here printed in italics. It has not been thought necessary to show how the introductory and final clauses were modified in each reissue but noteworthy alterations of the numbered articles are given in the footnotes. The latter also include explanations of the more obscure words and phrases. For more detailed comment see McKechnie, *Magna Carta*; and for all points connected with the reissues see Faith Thompson, *The First Century of Magna Carta*. [A more recent account, which adds much but does not replace the earlier ones, is J. Holt, *Magna Carta*. CD]

<sup>2</sup> Here in the text follow the names of eleven ecclesiastics.

<sup>3</sup> Here in the text follow the names of sixteen lay nobles.

<sup>4</sup> [S&M] no. 43 [Charter to the Church of 1214].

<sup>5</sup> On the interpretation of this article, see J. H. Round in *Magna Carta Commemorative Essays*, pp. 46 f.

<sup>6</sup> In the reissues this article ends as follows: "his lord shall not have wardship over him or over his land before receiving his homage. And when such heir being under wardship comes of age—that is to say [attains] his twenty-first year—he shall have his inheritance without relief and without fine; so that although he may become a knight while he is yet under age, his land shall nevertheless remain under the wardship of his lords until the term aforesaid."

4. The guardian of the land of such an heir who is under age shall not take from the land of the heir more than reasonable issues and reasonable customs and reasonable services, and this without destruction and waste of men or things. And if we entrust the wardship of any such land to a sheriff or to any one else who is to answer to us for its issues, and if he causes destruction or waste of [what is under] wardship, we will exact compensation from him; and the land shall be entrusted to two discreet and lawful men of that fief, who shall answer for the issues to us or the man to whom we may assign them. And if we give or sell the wardship of any such land to any one, and if he causes destruction or waste of it, he shall forfeit that wardship and it shall be given to two discreet and lawful men of that fief, who likewise shall answer to us as aforesaid.

5. Moreover, the guardian, so long as he has wardship of the land shall from the issues of that same land keep up the houses, parks, preserves, fishponds, mills, and other things belonging to that land. And to the heir, when he comes of full age, [the guardian] shall give all his land, stocked with ploughs<sup>8</sup> and produce,<sup>9</sup> according to what crops may be seasonable and to what the issues of the land can reasonably permit.

6. Heirs shall be married without disparagement; yet so that before the marriage is contracted it shall be announced to the blood relatives of the said heir.

7. A widow shall have her marriage portion and inheritance immediately after the death of her husband and without difficulty; nor shall she give anything for her dowry or for her marriage portion or for her inheritance—which inheritance she and her husband were holding on the day of that husband's death. And after his death she shall remain in the house<sup>10</sup> of her husband for forty days, within which her dow[er] shall be assigned to her.<sup>11</sup>

8. No widow shall be forced to marry so long as she wishes to live without a husband; yet so that she shall give security against marrying without our consent if she holds of us, or without the consent of her lord if she holds of another.

9. Neither we nor our bailiffs will seize any land or revenue for any debt, so long as the chattels of the debtor are sufficient to repay the debt;<sup>12</sup> nor shall the sureties of that debtor be distrained so long as the chief debtor is himself able to pay the debt. And if the chief debtor, having nothing with which to pay,<sup>13</sup> defaults in payment of the debt, the sureties shall be responsible for the debt; and, if they wish, they shall have the lands and revenues of the debtor until satisfaction is made to them for the debt which they previously paid on his behalf, unless the chief debtor proves that he is quit of such responsibility toward the said sureties.

10. *If any one as taken anything, whether much or little, by way of loan from Jews, and if he dies before that debt is paid, the debt shall not carry usury so long as the heir is under age, from whomsoever he may hold. And if that debt falls into our hands, we will take only the principal contained in the note.*

11. *And if any one dies owing a debt to Jews, his wife shall have her dowry and shall pay nothing on that debt. And if the said deceased is survived by children who are under age, necessities shall be provided for them in proportion to the tenement that belonged to the deceased; and the debt shall be paid from the*

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<sup>7</sup> A term often used for an offering or a composition.

<sup>8</sup> In the reissues this article ends as follows: "and with all other things as, at least, he received it. All these [provisions] are to be observed with regard to custody over archbishoprics, bishoprics, abbeys, priories, churches and vacant prelacies that belong to us except that rights of this sort ought not to be sold."

<sup>9</sup> *Wainnagium*, by which the context forces us to understand chiefly harvested crops necessary for seed and the upkeep of the estate.

<sup>10</sup> Changed in the second reissue to "principal dwelling."

<sup>11</sup> See [S&M], p. 47, n. 3. The second reissue adds: "unless it has been assigned to her earlier, or unless that house is a castle. And if she leaves the castle, she shall at once be provided with a suitable house in which she may honourably dwell until her dow[er] is assigned to her as aforesaid. And in the meantime she shall have her reasonable estovers of common. Moreover, she shall be assigned as dow[er] one-third of all the land held by her husband during his lifetime, unless she was endowed with less at the church door." Estovers of common were a share of the produce.

<sup>12</sup> The reissues here insert the clause "and the debtor is himself ready to satisfy [the debt] from them."

<sup>13</sup> The reissues here insert the clause "or being unwilling to pay when he can."

*remainder, saving the service of the lords. In the same way let action be taken with regard to debts owed to others besides Jews.*

12. *Scutage or aid shall be levied in our kingdom only by the common counsel of our kingdom, except for ransoming our body, for knighting our eldest son, and for once marrying our eldest daughter; and for these [purposes] only a reasonable aid shall be taken. The same provision shall hold with regard to the aids of the city of London.*<sup>14</sup>

13. And the city of London shall have all its ancient liberties and free customs *both by land and by water*. Besides we will and grant that all the other cities, boroughs, towns,<sup>15</sup> and ports shall have all their liberties and free customs.

14. *And in order to have the common counsel of the kingdom for assessing aid other than in the three cases aforesaid, or for assessing scutage, we will cause the archbishops, bishops, abbots, earls, and greater barons to be summoned by our letters individually; and besides we will cause to be summoned in general, through our sheriffs and bailiffs, all those who hold of us in chief—for a certain day, namely, at the end of forty days at least, and to a certain place. And in all such letters of summons we will state the cause of the summons; and when the summons has thus been made, the business assigned for the day shall proceed according to the counsel of those who are present, although all those summoned may not come.*

15. *In the future we will not grant to any one that he may take aid from his freemen, except for ransoming his body, for knighting his eldest son, and for once marrying his eldest daughter; and for these [purposes] only a reasonable aid shall be taken.*

16. No one shall be distrained to render greater service from a knight's fee, or from any other free tenement, than is thence owed.

17. Common pleas shall not follow our court, but shall be held in some definite place.

18. Assizes of novel disseisin, of mort d'ancestor, *and of darrein presentment*<sup>16</sup> shall be held only in their counties [of origin] and in this way: we, or our chief justice if we are out of the kingdom, will send two justices through each county<sup>17</sup> *four times a year; and they, together with four knights of each county elected by the county [court], shall hold the aforesaid assizes in the county on the day and at the place [set for the meeting] of the county court.*

19. *And if within the day [set for the meeting of the county [court]] the aforesaid assizes cannot be held, as many knights and free tenants shall remain of those present at the county [court] on that day as may be needed for holding the trials, according as the business is greater or less.*

20. A freeman shall be amerced for a small offence only according to the degree of the offence; and for a grave offence he shall be amerced according to the gravity of the offence saving his contenment.<sup>18</sup> And a merchant shall be amerced the same way, saving his merchandise; and a villein<sup>19</sup> in the same way, saving his

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<sup>14</sup> Literally "in the same way let it be done. . . ." The Londoners had wanted a guarantee of exemption from forced taxes but secured only this vague and ambiguous article; see C. Stephenson, *Borough and Town*, p. 183.

<sup>15</sup> The reissues here make specific mention of the barons of the Cinque Ports; see [S&M] p. 103, n. 17.

<sup>16</sup> See no 33 [Assize of Clarendon].

<sup>17</sup> The second reissue substitutes the following provisions: "once a year; and they together with the knights of the counties shall hold the aforesaid assizes in the counties. And those matters which cannot be concluded during that visit in the county by the aforesaid justices, sent to hold the said assizes, shall be concluded by the same men elsewhere on their eyre. And those matters which owing to the difficulty of some particulars cannot be determined by the same men shall be referred to our justices of the bench and there concluded. Assizes of darrein presentment shall always be held before the justices of the bench and there concluded." The court of the bench (*de banco*) was that which became known as the court of common pleas; see Pollock and Maitland, I. 198 f.

<sup>18</sup> Sufficient property to guarantee sustenance for himself and his family.

<sup>19</sup> The second reissue here inserts "of some one else, not our own."

wainage<sup>20</sup>—should they fall into our mercy. And none of the aforesaid amercements shall be imposed except by the oaths of good men from the neighbourhood.<sup>21</sup>

21. Earls and barons shall be amerced only by their peers,<sup>22</sup> and only according to the degree of the misdeed.

22. No clergyman shall be amerced with respect to his lay tenement except in the manner of those aforesaid not according to the value of his ecclesiastical benefice.<sup>23</sup>

23. Neither vill nor man shall be distrained to make bridges on river-banks, except such as by right and ancient custom ought to do so.

24. No sheriff, constable, coroner, or other bailiff of ours shall hold the pleas of our crown.<sup>24</sup>

25. *All counties, hundreds, wapentakes, and trithings<sup>25</sup> shall remain at the ancient farms without any increment, with the exception of our demesne manors.*

26. If any one holding a lay fee of us dies, and if our sheriff or bailiff shows our letters patent of summons concerning a debt that the deceased owed to us, our sheriff or bailiff shall be permitted, in view of lawful men, to attach and record such chattels of the deceased as are found on the lay fief to the value of that debt; so that moreover, nothing shall thence be removed until a debt that is manifestly owed shall be paid to us. And the residue shall be left to the executors for carrying out the will of the deceased. And if nothing is owed us from it, all the chattels shall be yielded to [disposition] by the deceased, saving to his wife and children their reasonable portions.

27. *If any freeman dies intestate his chattels under ecclesiastical inspection, shall be distributed by the hands of his near relatives and friends, saving to each [creditor] the debts that the deceased owed him.*

28. No constable or other bailiff of ours shall take grain or other chattels of any one without immediate payment therefor in money, unless by the will of the seller he may secure postponement of that [payment].<sup>26</sup>

29. No constable shall distrain any knight to pay money for castle guard when he is willing to perform that service himself, or through another good man if for reasonable cause he is unable to perform it himself. And if we lead or send him on a military expedition, he shall be quit of [castle-]guard for so long a time as he shall be with the army<sup>27</sup> *at our command.*

30. No sheriff or bailiff of ours, nor any other person, shall take the horses or carts of any freeman for carrying service,<sup>28</sup> *except by the will of that freeman.*

31. Neither we nor our bailiffs<sup>29</sup> will take some one else's wood for [repairing] castles or for building any other work of ours, except by the will of him to whom the wood belongs.

32. We will hold the lands of those convicted of felony only for a year and a day, and the lands shall then be given to the lords of the fiefs [concerned].

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<sup>20</sup> See above, [note] 9.

<sup>21</sup> Under such conditions the amercement was said to be afeered.

<sup>22</sup> Social equals.

<sup>23</sup> The wording of this article is changed in the reissues but without affecting its meaning.

<sup>24</sup> See above, [note] 16.

<sup>25</sup> Certain large counties were divided into trithings or ridings, and these were subdivided into hundreds or wapentakes.

<sup>26</sup> Changed in the second reissue to read: "No constable or his bailiff shall take grain or other chattels of any one who is not of the vill where the castle is situated without immediate payment therefor in money unless by the will of the seller he may secure postponement of that [payment]. If, moreover, he is of that vill, payment must be made within forty days."

<sup>27</sup> The reissues here substitute "to perform the service owed from his fief."

<sup>28</sup> The reissues end the clause as follows: "unless he makes the anciently established payment [for such service]: namely, for a two-horse cart 10*d.* a day and for a three-horse cart 14*d.* a day. No cart from the demesne of any ecclesiastical parson or knight, or of any lady, shall be taken by the aforesaid bailiffs."

<sup>29</sup> The second reissue here inserts: "nor other men."

33. All fish-weirs shall henceforth be entirely removed from the Thames and the Medway and throughout all England except along the sea-coasts.

34. Henceforth the writ called praecipe shall not be issued for any one concerning any tenement whereby a freeman may lose his court.<sup>30</sup>

35. There shall be one measure of wine throughout our entire kingdom, and one measure of ale; also one measure of grain, namely the quarter of London; and one width of dyed cloth, russet [cloth], and hauberk [cloth],<sup>31</sup> namely, two yards between the borders. With weights, moreover, it shall be as with measures.

36. Nothing henceforth shall be taken or given for the writ of inquisition concerning life and limbs,<sup>32</sup> but it shall be issued gratis and shall not be denied.

37. If any one holding of us by fee-farm or by socage or by burgage<sup>33</sup> holds land of some one else by military service on account of that fee-farm or socage or burgage we are not to have the wardship of the heir or of the land that is another's fee unless the said land held by fee-farm owes military service. By virtue of some little serjeanty held of us by the service of rendering knives or arrows or something of the sort, we are not to have wardship of any one's heir or of land that he holds of another by military service.

38. No bailiff shall henceforth put any one to his law<sup>34</sup> by merely bringing suit [against him] without trustworthy witnesses presented for this purpose.

39. No freeman shall be captured or imprisoned or disseised<sup>35</sup> or outlawed or exiled or in any way destroyed nor will we go against him or send against him except by the lawful judgment of his peers or<sup>36</sup> by the law of the land.

40. To no one will we sell, to no one will we deny or delay right or justice.

41. All merchants<sup>37</sup> may safely and securely go away from England, come to England, stay in and go through England, by land or by water, for buying and selling under right and ancient customs and without any evil exactions,<sup>38</sup> except in time of war if they are from the land at war with us. And if such persons are found within our land at the beginning of a war, they shall be arrested without injury to their bodies or goods until we or our chief justice can ascertain how the merchants of our land who may then be found in the land at war with us are to be treated. And if our men are to be safe, the others shall be safe in our land.

42. *Every one shall henceforth be permitted, saving our fealty, to leave our kingdom and to return in safety and security, by land or by water, except in the common interest of the realm for a brief period during wartime, and excepting [always] men imprisoned or outlawed according to the laws of the kingdom and people from a land at war with us and merchants, who are to be treated as aforesaid.*

43. If any one holds of any escheat—such as the honour of Wallingford, Nottingham, Boulogne, Lancaster, or the other escheats that are in our hands and are baronies—and if he dies, his heir shall give

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<sup>30</sup> That is to say through which procedure a baron or other freeholder may lose jurisdiction over his men; see no. 33F.

<sup>31</sup> Perhaps cloth to be worn under a hauberk.

<sup>32</sup> Also called the writ *de odio et atia*; it was designed to relieve a man of trial by combat when he had been appealed through spite and hatred. At this point the third reissue inserts: "by him who seeks the inquisition."

<sup>33</sup> These three tenures were alike in being free though non-military.

<sup>34</sup> See above, [note] 3. The second reissue expands this phrase to "manifest law or oath." The new provision was probably intended to cover substitutes for the ordeal which had been abolished by the Lateran Council of 1215.

<sup>35</sup> The second reissue adds: "of any free tenement or liberties or free customs."

<sup>36</sup> Presumably meaning "and"; cf. art. 56. The interpretation is also aided by John's writ of May 1215 (*Rotuli Litterarum Patentium* I, 141): "Know that we have granted to our barons who are opposing us that we will neither capture nor disseise them or their men nor will we go against them with force or with arms except by the law of our kingdom or by the judgment of their peers in our court." See McIlwain in *Magna Carta Commemoration Essays*, pp. 122 f.; and, for another interpretation, M. Radin, *Anglo-American Legal History*, pp. 165 f.

<sup>37</sup> The reissues here insert: "unless they have earlier been given public prohibition."

<sup>38</sup> *Malis toltis* (maltotes); see [S&M] no 51C.

only such relief and shall render us only such service as would be due to the baron if that barony were in the hands of the baron; and we shall hold it in the same way that the baron held it.<sup>39</sup>

44. *Men duelling outside the forest shall no longer, in consequence of a general summons, come before our justices of the forest, unless they are [involved] in a Plea [of the forest] or are sureties of some person or persons who have been arrested for [offences against] the forest.*<sup>40</sup>

45. *We will appoint as justiciars, constables, sheriffs, or bailiffs only such men as know the law of the kingdom and well desire to observe it.*

46. All barons who have founded abbeys, concerning which they have charters from kings of England or [enjoy] ancient tenures, shall have the custody of those abbeys during vacancies, as they ought to have.<sup>41</sup>

47. *All forests that have been afforested in our time shall at once be disafforested; and the same shall be done with regard to river banks which in our time we have placed under ban.*<sup>42</sup>

48. *Concerning all bad customs of forest and warrens, of foresters and warreners, of sheriffs and their officers, and of river-banks and their wardens, inquisition shall at once be made in each county through twelve knights of that same county placed under oath, who ought to be elected by the good men of the same county. And within forty days after the inquisition has been made, they shall be utterly abolished by the same [knights], so that they shall never be restored: in such fashion [however] that we may have prior notice, or our justiciar [may] if we are not in England.*

49. *We will immediately restore all hostages and charters which were delivered to us by Englishmen as security for the peace or for faithful service.*

50. *We will utterly remove from their offices the relatives of Gerard d'Athee, Engelard de Cigogné, Peter and Guy and Andrew de Chanceaux, Guy de Cigogné, Geoffrey de Martigny and his brothers Philip Marc and his brothers and his nephew Geoffrey together with all their adherents, so that henceforth they shall have no office in England.*

51. *And immediately after the restoration of peace we will remove from the kingdom all alien knights, crossbowmen, serjeants and mercenaries who have come with horses and arms to the injury of the kingdom.*

52. *If any one, without the lawful judgment of his peers has been disseised or deprived by us of his lands, castles, liberties, or rights, we will at once restore them to him. And if a dispute arises in this connection then let the matter be decided by the judgment of the twenty-five barons, concerning whom provision is made below in [the article on] security for the peace. With regard, however, to all those [possessions] of which any one, without lawful judgment of his peers, was disseised or deprived by King Henry, our father, or by Richard, our brother,—which possessions we have in our hands or which are held by others whose possession we are bound to warrant—we are to have respite for the ordinary term of crusaders,<sup>43</sup> each of those [possessions] concerning which suit was brought or inquest was made by our precept before we took the cross. Moreover, when we return from our journey or if perchance we abandon our journey, we will at once administer justice in such matters.*

53. *Moreover, we are to have similar respite and in the same way with regard to the disafforestation or retention of the forests which Henry, our father, or Richard, our brother, afforested: with regard to*

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<sup>39</sup> The second reissue adds: "Nor shall we, by virtue of such barony or escheat, have any escheat or [enjoy] wardship over any of our men unless he who held the barony or escheat [also] held of us in chief elsewhere." And after this a new article is inserted, as follows: "Henceforth no freeman shall give or sell to any one so much of his land that from what remains of it what ever service pertains to the fief cannot adequately be performed for the lord to whom it is owed."

<sup>40</sup> This became art. 2 of the Forest Charter. no. 45.

<sup>41</sup> Changed in the second reissue to read: "All patrons of abbeys who have charters from kings of England concerning their advowson, or [who enjoy] ancient tenure or possession [of that privilege], shall have custody of those [abbeys] when they are vacant, as they ought to have and as has been declared above."

<sup>42</sup> That is to say, reserved for the king's hawking. Part of this article was incorporated in the Forest Charter (no. 45); the rest was made into a new article in the second reissue.

<sup>43</sup> The three years' grace enjoyed by crusaders in meeting their obligations.

*wardships over lands of another's fee, which sort of wardships we have hitherto enjoyed on account of a fee that any one holds of us by military service<sup>44</sup> and with regard to abbeys which were founded in a fee other than our own and over which the lord of the fee has asserted that he has the right. And when we return, or if we abandon our journey, we will at once give full justice to those making complaints in such matters.*

54. No one shall be seized or imprisoned on the appeal of a woman for the death of any one but her husband.<sup>45</sup>

55. *All fines which have been made with us unjustly and contrary to the law of the land, and all arrangements made unjustly and contrary to the law of the land, are to be entirely pardoned; or decision is thereon to be made by the judgment of the twenty-five barons concerning whom provision is made below in [the article on] security for the peace, or by the judgment of the majority of them, together with the aforesaid Stephen, archbishop of Canterbury, if he can be present, and other men whom he may wish to associate with himself for this purpose; and if he cannot be present, the business shall nevertheless proceed without him; yet so that, if any one or more of the twenty-five barons aforesaid are [involved] in a dispute of this kind, they shall be removed so far as this judgment is concerned, and others, elected and sworn for this purpose, shall be substituted in their places by the rest of the twenty-five.*

56. *If, without the lawful judgment of their peers, we have disseised or deprived Welshmen of their lands, liberties, or other things in England or in Wales, [the same] shall be immediately restored to them. And if a dispute arises in this connection, then decision is thereon to be made in the [Welsh] march by the judgment of their peers—according to the law of England for their tenements in England, according to the law of Wales for their tenements in Wales and according to the law of the march for their tenements in the march. Welshmen shall act in the same way toward us and our men.*

57. *Moreover, with regard to those [possessions] of which any Welshman, without the lawful judgment of his peers, was disseised or deprived by King Henry, our father, or King Richard, our brother. . . .*<sup>46</sup>

58. *We will at once restore the son of Llewelyn and all the [other] hostages of Wales together with the charters that were given us in security for the peace.*

59. *We will act toward Alexander, King of the Scots, in the matter of restorings his sisters and the [other] hostages together with his liberties and rights in the same way as we act towards our other barons of England,<sup>47</sup> unless by the charters which we have from his father William, one time King of the Scots, the action ought to be otherwise; and this shall be [determined] by the judgment of his peers in our court.*

60. Now all these aforesaid customs and liberties, which we have granted, in so far as concerns us, to be observed in our kingdom toward our men, all men of our kingdom, both clergy and laity, shall, in so far as concerns them, observe toward their men.

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<sup>44</sup> Cf. art. 37.

<sup>45</sup> The second reissue adds three new articles:

“Henceforth no county [court] shall be held oftener than once a month: and wherever a longer time [between sessions] has been customary, let it be longer. Nor shall any sheriff or his bailiff make his tourn [see Pollock and Maitland, I. 530 f.] through a hundred more often than twice a year; and [then he shall hold the court] only at the due and accustomed place [and time], namely, once after Easter and again after Michaelmas. And view of frankpledge shall without excuse be made then, at that Michaelmas term; and in such a way that every one shall enjoy the liberties which he was accustomed to have in the time of King Henry, our grandfather, or which he has subsequently acquired. The view of frankpledge, moreover, shall be made in this way: namely, so that our peace is maintained, the tithings are [kept] whole as has been accustomed, and the sheriff does not seek excuses [for additional revenue], but is content with what the sheriff was accustomed to have for making his view in the time of King Henry, our grandfather.

“Henceforth no one shall be permitted to give his land to any religious house in such a way as to receive it back, to be held of that house; nor shall any religious house be permitted to accept the land of any one on condition that it be given back, to be held by the man from whom it has been received. If, moreover, any one henceforth grants his land to any religious house in this way and is convicted of so doing, his grant shall be utterly quashed and that land shall be forfeit to the lord of the fief.

“Scutage shall henceforth be taken as it was customarily taken in the time of King Henry, our grandfather.”

<sup>46</sup> The rest of the article repeats the ending of art. 52.

<sup>47</sup> The Scottish king held the earldom of Huntingdon and other English fiefs of King John.

61. Since moreover for [the love of] God, for the improvement of our kingdom, and for the better allayment of the conflict that has arisen between us and our barons, we have granted all these [liberties] aforesaid wishing them to enjoy these [liberties] by full and firm establishment forever, we have made and granted them the following security: namely, that the barons shall elect twenty-five barons of the kingdom, whomsoever they please, who to the best of their ability should observe, hold and cause to be observed the peace and liberties that we have granted to them and have confirmed by this our present charter; so that, specifically, if we or our justiciar or our bailiffs or any of our ministers are in any respect delinquent toward any one or transgress any article of the peace or the security, and if the delinquency is shown to four barons of the aforesaid twenty-five barons, those four barons shall come to us or to our justiciar if we are out of the kingdom to explain to us the wrong, asking that without delay we cause this wrong to be redressed. And if within a period of forty days, counted from the time that notification is made to us or to our justiciar if we are out of the kingdom, we do not redress the wrong, or if we are out of the kingdom our justiciar does not redress it, the four barons aforesaid shall refer that case to the rest of the twenty-five barons, and those twenty-five barons, together with the community of the entire country, shall distress and injure us in all ways possible—namely, by capturing our castles, lands and possessions and in all ways that they can—until they secure redress according to their own decision, saving our person and [the person] of our queen and [the persons] of our children. And when redress has been made, they shall be obedient to us as they were before. And any one in the land who wishes shall swear that, for carrying out the aforesaid matters he will obey the commands of the twenty-five barons aforesaid and that he, with his men, will injure us to the best of his ability; and we publicly and freely give licence of [thus] swearing to every one who wishes to do so and that no one will ever prohibit [such] swearing. Moreover, all those of the land who of themselves and by their own free will are willing to take the oath for the twenty-five barons, with them to distress and injure us, we will by our mandate cause to swear [such an oath] as aforesaid. And if any of the twenty-five barons dies or departs from the land, or in any other way is prevented from carrying out these aforesaid matters, the rest of the twenty-five barons aforesaid shall by their own decision choose another in his place, who is to be sworn in the same way as the others. Moreover, in all the matters entrusted to those twenty-five barons for execution, if perchance the same twenty-five are present and disagree among themselves in some respect, or if certain of those summoned are unwilling or unable to be present, that which the majority of those present may provide or command shall be held as settled and established, just as if all twenty-five had agreed to it. And the aforesaid twenty-five shall swear that they shall faithfully observe all that has been set forth above. And neither of ourself nor through others will we procure from any one anything whereby any of these concessions and liberties may be revoked or diminished; and should anything of the sort be procured it shall be null and void, and we will never make use of it either of ourself or through others.

62. And to all we freely pardon and condone all the ill-will, indignation, and rancour that from the beginning of the conflict have arisen between us and our men, both clergy and laity. Furthermore, to all, whether clergy or laity, we fully pardon and condone, in so far as pertains to us, all trespasses committed on account of the said conflict since Easter in the sixteenth year of our reign until the reestablishment of peace. And besides we have caused to be drawn up for them letters patent of the lord Stephen, archbishop of Canterbury, of the lord Henry, archbishop of Dublin, of the bishops aforesaid, and of Master Pandulf,<sup>48</sup> in witness of that security and the concessions aforesaid.

63. Wherefore we wish and straitly enjoin that the English Church shall be free and that the men in our kingdom shall have and hold all the aforesaid liberties, rights and grants well and in peace, freely and quietly, fully and completely, for themselves and their heirs from us and our heirs, in all things and in all places forever, as aforesaid. Moreover, it has been sworn both on our part and on the part of the barons that all the aforesaid [provisions] shall be observed in good faith and without malicious intent.

By the witness of the aforesaid men and of many others. Given by our hand in the meadow that is called Runnymede between Windsor and Staines, June 15, in the seventeenth year of our reign.

(Latin) [Stubbs, *Select Charters*], pp. 292 f., 336 f., 341 f.. 350 f.

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<sup>48</sup> The papal legate.



## THE TREATY OF WINCHESTER OF 1153

in EHD II, D.C. Douglas & G.A. Greenaway ed. (2d ed., Oxford, 1981) pp. 436-9 (No. 22)

Charter of Stephen describing the Treaty of Winchester, made between the king and Henry, son of the Empress Maud, at the conclusion of the civil war (November, 1153)

This charter is important as marking the end of the civil war and determines the succession. It deserves study also for the feudal conditions prevailing in England (cf. No. 257 [Treaty between the earls of Chester and Leicester]; and the long list of important witnesses is significant. It has been suggested that this charter relates only some of the terms of this arrangement. It is discussed in J. H. Round, *Studies in Peerage and Family History* (1901), pp. 147-180, by C. T. Clay in *Early Yorkshire Charters*, vol. VII, pp. 15, 16, and by A. L. Poole, *Domesday Book to Magna Carta*, p. 165, and the text is printed in L. Delisle and E. Berger, *Recueil des Actes de Henri II*, vol. I, p. 61; *Hist. MSS. Comm. 12th Rep.*, App. IX, p. 119.

STEPHEN, king of England, to the archbishops, bishops, abbots, earls, justiciars, sheriffs, barons, and to all his liegemen of England, greeting.

Know that I, King Stephen, have established Henry, duke of Normandy, as my successor in the kingdom of England, and have recognized him as my heir by hereditary right; and thus I have given and confirmed to him and his heirs the Kingdom of England.

The duke in return for this honour and gift and confirmation which I have made to him, has done homage to me, and given me surety by oath. He has sworn that he will be my liegeman, and that he will guard my life and honour by every means in his power according to the agreements made between us which are described in this charter.

I also have given an oath of surety to the duke, that I will guard his life and honour by every means in my power, and that I will maintain him as my son and heir in all things, and that I will do all I can to guard him against all men.

William, my son,<sup>1</sup> has done liege homage and given surety to the duke of Normandy, and the duke has granted him to hold from him all the lands which I held before I acquired the kingdom of England, whether in England or in Normandy or in other places. He is also to hold whatever came with the daughter of the earl of Warenne,<sup>2</sup> whether in England or in Normandy, and whatever pertains to those honours. And the duke will put William, my son, and the men of that honour into possession of all the lands, villages and boroughs and revenues which the duke has now in his demesne, and especially those which pertain to the honour of the earl of Warenne, particularly the castle of Bellencombre, and the castle of Mortemer: the agreement being that Reginald of Warenne<sup>3</sup> shall, if he wish, keep the castle of Bellencombre and the castle of Mortemer, giving the duke hostages in respect of it; but if Reginald does not wish to do this, then other liegemen of the earl of Warenne agreeable to the duke shall keep the said castles likewise giving the duke good hostages.

The duke shall return to him the other castles, which belong to the count of Mortain,<sup>4</sup> at my pleasure, when he can, for safeguard and with safe hostages, it being understood that all hostages shall be returned without dispute to my son when the duke comes into possession of the kingdom of England.

The duke has agreed to the increment which I have given to my son, to wit, the castle and the town of Norwich with 700 librates of land, it being understood that the revenue of Norwich itself is included within those 700 librates; and the whole county of Norfolk, except what pertains to churches and prelates and abbots and earls, and excluding particularly the third penny which pertains to Hugh Bigot as earl, and excepting in all things the rights of the royal justice - which are reserved.

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<sup>1</sup> A younger son, died in 1159.

<sup>2</sup> Isabel, daughter of William third earl of Warenne, married William of Blois, son of King Stephen. After his death she married in 1164 Hamelin, an illegitimate son of Geoffrey of Anjou by an unknown mother.

<sup>3</sup> Younger brother of William, the third earl. He was ancestor of the Warennes of Wormegay.

<sup>4</sup> William, son of the king was also count of Mortain.

Also, in order to increase my thanks and to strengthen my love towards him, the duke has given to my son, William, all those things which Richer of Laigle had from the honour of Pevensey. And besides this castle and town of Pevensey, and the service of Faramus, apart from the castle and town of Dover, and which pertains to the honour of Dover, the duke has confirmed the church of Faversham with its appurtenances and will confirm all the other things given or returned by me to other churches by the advice of holy Church, or through my own intention.

The earls and barons of the duke, who were never my men, in consideration for the honour which I have done to their lord, have sworn homage to me, saving only the agreements made between me and the duke; and the others who in previous times had done homage to me, and performed fealty to me as to their lord.

If the duke goes back from his promises, these shall altogether break their service to him until he corrects his errors; and my son also, following the counsel of holy Church, shall act likewise in similar circumstances.

My earls and my barons have done liege homage to the duke saving their fealty to me so long as I live and have the Kingdom with a similar understanding that if I go back from my promises they shall altogether break their service to me until I correct my errors.

The citizens of towns and the men of castles, which I have in my demesne, have likewise by my order done homage and given surety to the duke saving the fealty which they owe to me so long as I live and have the kingdom. Those who keep the castle of Wallingford have done me homage, and have given me hostages that they may keep their fealty to me.

And I have given surety to the duke concerning castles and fortifications, according to the counsel of holy Church, so that the duke on my death may not here suffer loss or hindrance in his acquisition of the kingdom.

The Tower of London and Windsor Castle have with the counsel of holy church been given into the keeping of Richard of Lucé. But the said Richard has sworn in the hand of the archbishop, and has given his own son as pledge, that on my death he will hand over these castles to the duke.

Likewise, with the counsel of holy Church, Roger of Lucé is keeping the castle of Oxford, and Jordan 'de Buselo' is keeping the castle of Lincoln; and they are the liegemen of the duke, and have sworn and have given hostages in the hand of the archbishop that when I die they will hand over these castles to the duke without any dispute.

The bishop of Winchester<sup>5</sup> has pledged himself in the hand of the archbishop, and in the presence of the bishops, that when I die he will hand over the castle of Winchester and the fortification of Southampton to the duke.

But if any one of those to whom castles have been entrusted shall make delay, or shall go away from the castle to which he has been appointed, then, with the counsel of holy Church, another custodian shall be appointed in his place until he returns.

And if anyone who keeps my castles shall show himself contumacious or a rebel, to wit, concerning the castles which pertain to the crown, then the duke and I making common cause shall wage war upon him until he has been compelled to give satisfaction to both of us.

The archbishops, bishops and abbots of the kingdom of England, by my order, have sworn fealty to the duke. And those who shall henceforth be made bishop or abbots in the kingdom of England shall do the same.

And the archbishops and bishops severally have undertaken that if either of us departs from these agreements, they will visit him with the justice of the Church until he has corrected his errors and returned to the proper observation of this pact.

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<sup>5</sup> Henry of Blois, brother of the king.

The mother of the duke,<sup>6</sup> and his wife, and his brothers, and all his men to whom this applies have likewise given sureties about this. In all the business of the kingdom I will act with the advice of the duke.

But in the whole kingdom of England, both in that part which pertains to the duke and in that part which pertains directly to me, I shall exercise royal justice.

All these were witnesses: Theobald, archbishop of Canterbury; Henry, bishop of Winchester; Robert, bishop of Exeter; Robert, bishop of Bath; Jocelyn, bishop of Salisbury; Robert, bishop of Lincoln; Hilary, bishop of Chichester; William, bishop of Norwich; Richard, bishop of London; Nigel, bishop of Ely; Gilbert, bishop of Hereford; Walter, bishop of Chester; Walter, bishop of Rochester; Geoffrey, bishop of St. Asaph's; Robert, prior of Bermondsey; Otun, knight of the Temple; William, earl of Gloucester; Reginald, earl of Cornwall; Baldwin, earl of Devon; Roger, earl of Hertford; Patrick [earl of] of Salisbury; William of Aumale, the earl; Aubrey the earl; Roger, earl of Clare; Richard, earl of Pembroke;<sup>7</sup> Richard of Luce; William Martel; Richard of Le Hommet; Reginald of Warenne; Manasser Biset; John of Norwich; Richard of Canville; Henry of Essex.

At Westminster.

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<sup>6</sup> Maud, the empress.

<sup>7</sup> [Richard of Clare, nicknamed] "Strongbow" (*see* No. 12 [Chronicle of William of Newburgh], pp. 368–70).