SECOND PART

OF THE

Institutes of the Laws of England;

CONTAINING

THE EXPOSITION OF MANY ANCIENT AND OTHER STATUTES.

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Quod non lego, non credo. August.

Jurisprudentia est juvenibus regimen, senibus solamen, pauperibus divitia & divitibus securitas.

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AUTHORE EDWARDO COKE, MILITE, J. C.

HÆC EGO GRANDEVS POSUI TIBI, CANDIDE LECTOR.

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DEO,  
PATRIÆ,  
TIBI,  

A PROEME  

TO THE  

SECOND PART of the INSTITUTES.  

IN the first part of the Institutes, following Littleton our guide, we have treated of such parts of the common laws, statutes, and customs, as he in his three books hath left unto us. We are in this second part of the Institutes to speak of Magna Charta, and many ancient and other statutes, as in the table precedent due appear.

It is called Magna Charta, not that it is great in quantity, for there be many voluminous charters commonly palled, specially in these later times, longer than this is; nor comparatively in respect that it is greater than Charta de Foresha, but in respect of the great importance, and weightiness of the matter, as hereafter shall appear: and likewise for the same cause Charta de Foresha, is called Magna Charta de Foresha, and both of them are called Magna Charta libertatum Anglia.

King Alexander was called Alexander Magnus, not in respect
A PROEME.

The Ends.
Sapientia incipit a fine.

Men tamen in parvo corpo magnus est;

so as of this great charter it may be truly said, that it is magnus in parvo.

And it is also called Charta libertatum regni; and upon great reason it is so called of the effect, quia liberos facit: sometimne for the same cause, communis libertas, and le chartre des franchises.

There be four ends of this great charter, mentioned in the preface, viz. 1. The honour of Almighty God, &c. 2. The safety of the kings soule; 3. The advancement of holy church; and 4. The amendment of the realm: four excellent ends, whereof more shall be said hereafter.

By charter bearing date the 11. day of February, in the 9 yeare of king H. 3. and secondly, by that charter established by authority of parliament then sitting, and so entred into the parliament roll; the witnesses to the said charter were 31. Jords spirituall, viz. Stephen Langton archbishop of Canterbury, E. bishop of London, J. B. of Bath, P. of Winchester, H. of Lincoln, Robert of Salisbury, W. of Rochester, W. of Worcester, I. of Ely, H. of Hereford, R. of Chichester, William of Exeter, bishops. The abbot of S. Edes, the abbot of S. Albons, the abbot of Battle, the abbot of S. Augustines in Canterbury, the Abbot of Evesham, the abbot of Weftminster, the abbot of Burghs S. Peter, the abbot of Reading, the abbot of Abindon, the abbot of Malmsbury, the abbot of Winchcombe, the abbot of Hyde, the abbot of Certesey, the abbot of Shernborn, the abbot of Cerne, the abbot of Abbotbury, the abbot of Middleton, the abbot of Selbic, the abbot of Cirencester; and 33. of the nobility, viz. Hubert de Burgo chief justice of England.

A PROEME.


There were many of the great charters, and Charta de Forefa, put under the great seal, and sent to archbishops, bishops, and other men of the clergie, to be safely kept, whereof one of them remain at this day at Lambeth, with the archbishop of Canterbury.

Alfo the same was entred of record in a parliament roll.

And after king E. 1. by act of parliament did ordain that both the said charters should be sent under the great seal, as well to the justices of the forest, as to others, and to all sherifings, and to all other the kings officers, and to all the cities through the realm, and that the same charters should be sent to all the cathedrales churches, and that they should be read and publidhed in every county four times in the yeare in full county, viz. the next county day after the feaft of S. Michael, and the next county day after Christmas, and the next county day after Easter, and the next county day after the feaft of S. John.

It was for the most part declaratory of the principall grounds of the fundamental laws of England, and for the residue it is additionall to supply some defects of the common law;
law; and it was no new declaration: for king John in the
17 yeares of his reigne had granted the like, which also was
called Magna Charta, as appeareth by a record before, this
great charter made by king H. 3.

"Home ne fietur mordanc apud Westminsterium des torres
in aueter counties, car cen fer enent' lefstatut de Magna Charta
fion que illa effita femel interminata sit coram justis".

Also by the said act of 25 E. 1. (called Confirm' Chartar")
it is adjudged in parliament that the great charter, and
the charter of the forest should be taken as the common law.

Soon after the making of this great charter, the young
king by evil counsell fell into great mislike with it, which
Hubert de Burgo summus jufliciarius Angliae perceiving
(who in former times had been a great lover, and well
serving patriot of his country, and learned in the laws (for
Rot. claus. 11 H. 3. membr. 44. I finde that he, and many
others were justices itainant in 5 H. 3. and I have seen a
fine levied before him, and sise other judges, between Ste-
phen de Wancocle, and the abbot of Hales) yet meaning to
make this a step to his ambition (which ever rideth without
reines) persuaded and humored the king that he might avoid
the charter of his father king John by dueffe, and his own
great charters, and Charta de Forfia also, for that he was
within age when he granted the same, wherepon the king
in the 11 yeares of his reign, being then of full age, got one of
the great charters, and of the forest into his hands, and by the
counsell principally of this Hubert his chiefe justice, at a
councell holden at Oxford, unjustly cancelled both the said
charters, (notwithstanding the said Hubert de Burgo was
the primier witness of all the temporall lords to both the said
charters) whereupon he became in high favour with the
king, insomuch as he was soon after (viz. the 10 of Decem-
ber, in the 13 yeares of that king, created to the highest dignity
that in those times any subject had) to be an earle, viz. of
Kent.

In this advice Hubert de Burgo either dissembled his opin-
ion, or groffy erred (as ever ambitious flatterer bedazles the
eye, even of them, that be learned) first, for that a king can-
not avoid his charter, albeit he make it: when he is within
age, for in respect of his royall and politque capacity as king,
the law adjudgeth him of full age. Secondly, it being done
by authority of parliament, and enrolled of record, it was
strange that any man should think that the king could avoid
them in respect he was within age. Thirdly, it was to no
end to cancell one where there were so many, or to have
cancelled all, when they were of record in the parliament
roll, or to have cancelled roll and all, when they were, for
the most part, but declaratories of the ancient common
laws of England, to the observation, and keeping whereof,
the king was bound and sworn. What successful thefe potent
and opulent subjects, Hugh Spencer the father, and fon
had, for giving rash and evil counsell to king E. 2, enconter
la forme de la grand chartre, I had rather you should read
then I should declare.

After the making of Magna Charta, and Charta de For-
shla, divers learned men in the laws, that I may use the words
of the record, rep. (choyes of the law in the city of London,
and taught such as resorted to them, the laws of the realme,
taking their foundation of Magna Charta, and Charta de
Forfia,
A PROEME.

Foresta, which as you have heard, the king by ill advice sought to impeach.

The king in the 19 year of his reign, by his writ, commanded the mayor and sheriffs of London, Quod per totam civitatem. London clamari faciant & firmiter prohiber, ne aliquisilibus tenens de legibus in eadem civitate de cetero. ibidem leges decem, & si aliquis ibidem fuerit buiesendi libellus tenens, ipsum fine dilatione cafferre fas; Tolete Regis, &c. 11 die Decemberis, anno regni sui decimo nono. But this writ took no better effect then it deserved, for evill counsell being removed from the king, he in the next yeare, viz. in the 20 yeare of his raigne compleat, and in the one and twentieth yeare current, did by his charter under his great seal confirmed both Magna Charta, and Charta de Forstia, he being then 29 years old. And after in the 52 yeare of his raigne establihed and confirmed both the same by act of parliament, with the clause, Quod controversiventes per dominum regem cum convivis fuerint, graviter punitur. Hereby shall some opinions and resolutions in our books be the better understood, which speak of alienations without license before or after 20 H: 3, which yeare was named for that the king then confirmed the said great charter, and in like manner did king E: 14 by act of parliament in the 25 yeare of his raigne: and the said two charters have been confirmed, establihed, and commanded to be put in execution by 32 severall acts of parliament in all.

This appeareth partly by that which hath been said, for that it hath of often been confirmed by the wise providence of so many acts of parliament.

And albeit judgements in the kings' courts are of high regard in law, and judicia are accounted as juris dicta, yet it is provided by act of parliament, that if any judgement be given contrary to any of the points of the great charters, or Charta de Forstia, by the justices, or by any other of the kings' ministers, &c. it shall be undone, and helden for nought.

And that both the said charters shall be sent under the great seal to all cathedrall churches throughout the realm there to remain, and shall be read to the people twice every yeare.

The highest and most binding laws are the statutes which are establied by parliament; and by authority of that highest court it is enacted (only to shew their tender care of Magna Charta, and Charta de Forstia) that if any statute be made contrary to the great charter, or the charter of the forest, that shall be holden for none: by which words all former statutes made against either of these charters are now repealed; and the nobles and great officers were to be sworn to the observation of Magna Charta, and Charta de Forstia.

Magna fuit quondam magna reverentia charta.

We in this second part of the Institutes, treating of the ancient and other statutes have been informed almost of necessity to cite our ancient authors, Bracton, Britton, the Mirror, Fleta, and many records, never before published in print, to the end the prudent reader may discern the common law was before the making of every of those statutes, which we handle in this work, and thereby know whether the statute be introductory of a new law, or declaratory of the old, which will conduce much to the true understanding of the text it selfe. We have also sometime in this and other parts of the Institutes, cited the Grand Cufumier de Normandy, where it agreeth with the laws of England, and sometime where they disagree, ex diamentro, being a book compounded as well of the laws of England, which king Edward the Confessor gave them, as he that commenteth upon that book testifieth (as elsewhere we have noted) as of divers customes of the duchie of Normandie, which book was comp
posed in the reign of king H. 3. viz. about 40 years after
the coronation of king Richard the first, 3 Septembris anno 1
of his reign, anno Dom. 1189. about 158 years after the
conquest. See that book cap. 22. fo. 29. a. and the com-
ment upon the same, & cap. 112. In which Custumier a
great number of the courts of justice, of the original writs,
and of many other of the titles of the laws of England, are not
so much as named or mentioned. And seeing we have in
these, and other parts of our Institutes, cited the laws and
statutes of divers kings before the conquest; and in the
Conquerors time, we have thought good for the ease of the
reader, to set down the times wherein those kings lived; and
deceased. Inas began to reign anno Dom. 689. and
deceased 726. Alfredus, alias Alfredus, alias Elfredus, began
to reign anno Dom. 872. and deceased 901. Of this Alfred
it is thus written, Alfredus acerrimi ingenii princeps per
Grimbaldum & Johanneo duellismo monachi tantum in-
stitutus est. ut in brevi libro omnium notitiam habereb,
totique novum & vetus Testamentum in subgeneratione
Anglicii gentis transmutaret (cujus translationis pars nobis feliciter
accidit.) This learned king in advancement of divine and
humane knowledge, by the perfection of those two monks
founded: the famous university of Cambridge. Edwardus,
on of the said Alfred, began to reign anno Dom. 901. and
deceased 924. * Ethelstanus, alias, Adelystone eldest son
of the said Edward began to reign anno Dom. 924. and
deceased 940. b Edwardus-began to reign anno Dom. 940.
and deceased 946. c Edgarus began to reign anno Dom.
959. and deceased 975. d Ethelredus began to reign anno
Dom. 979. and deceased 1016. e Cnutus began to reign
anno Dom. 1016. and deceased 1035. f Edwardus began
to reign anno Dom. 1042. and deceased 1066. g Willilmus
Bejardus began to reign anno Dom. 1066. and deceased 1087.

Some fragments of the statutes in the reigns of the above-
said

faded kings doe yet remain, but not only many of the statutes,
and acts of parliament, but also the books and treatises of the
common laws both in these and other kings times, and spe-
cially in the times of the ancient Buttones (an inestimable
loafe) are not to be found.

It is to be observed that in Domesday Haroldus, who
usurped the crown of England, after the decease of king Ed-
ward the Confessor, is never named per nomen regis, fed per
nomen Comitis Haroldi, seu Heraldi; and therefore we have
omitted him.

In citing of the above-said laws originally written in the
Saxon tongue, we have referred you to M. Lambard, who
accurately and faithfully translated the same into Latin, one
page containing the Saxon, and next the Latin, and is in
print (for our manner is not to cite any thing, but so to
reffer the reader, as he may easilie finde it;) sed ut unique fuis
tributur bunct, all those statutes in the reigns of all the
above-said kings were of ancient time plainly and truly tran-
lated into Latin, (whereof we have a very ancient, if not the
first manuscript) which no doubt did not a little abbreviate
M. Lambards pains.

Upon the text of the civil law, there be so many glosses
and interpretations, and again upon those so many com-
mentaries, and all these written by doctors of equal degree and
authority, and therein so many diversities of opinions, as
they do rather increase then resolve doubts, and uncertainties,
and the professors of that noble science say, that it is like a
sea full of waves. The difference then between those glosses
and commentaries, and this which we publish, is, that their
glosses and commentaries are written by doctors, which be
advocates, and so in a manner private interpretations: and
our explications or commentaries upon Magna Charta, and
other statutes, are the resolutions of judges in courts of justice
in judicij: courses of proceeding, either related and reported
in our books, or extant in judicijal records, or in both, and
therefore-
therefore being collected together, shall (as we conceive) produce certainty, the mother and nurse of repose and quietness; and are not like to the waves of the sea, but Statia bene fide peregris & for judicia sunt tanquam juris dicta.

Finis Praeambuli.

But now let us peruse the Text itself.

**MAGNA CHARTA.**

**EDITA Anno nono H. III.**

HENRICUS Dei gratia rex Angliae, (1) dominus Hiberniae, dux Normanniae, et comes Aquitaniae; archiepiscopi, episcopi, abbatibus, prioribus, comitibus, baronibus (2), vicecomitibus, prepositis, ministris, et omnibus bali- libus, et fidelibus suis, praestantem chartam infe- turur; saltatem. Scientiis quaedam intuitu Dei, et pro salute animae nostre, &c. ut ad salvationem fummarum ecclesiae, et omnationem regni nostrir (3), spontanea et bona voluntate nostra (4), dedimus et concessimus archiepiscopos, episcopos, abbatibus, prioribus, comitibus, baronibus, et omnibus libere de regno nostro, habet libertates subscriptae, tenendor in regno nostro Angliae perpetuum.

(1) Henricus Dei gratia Rex Angliae, &c. Concerning the styles of the kings of England, both before and after this king; and how often they altered the same; see in the first part of the Institutes, Secutio prima.

(2) Archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, &c. This is the like particular direction, this king and his progenitors before him used; and so did E. 1, E. 2, and E. 3, King R. 3. In his letters patens used a more general, and compendious direction; viz. Omnibus ad quos professes litera perveniet, &c. which direction is used to this day, having, in charters of creation of dignities, the directions to this day, are archiepiscopis, episcopis, ducibus, marquissibus, &c. and visibus, in the end.

(3) Not intuitu Dei, pro salute animae nostre, ad salvationem santer ecclesiae, et omnationem regni nostrir. Here be four notable causes of the making of this great charter rehearsed, "1. The honour of the King, de fide et regno," fide et regno. The first Part of the Institutes, Sect. 1.

Note not only the preamble of this Charter, &c. of the forest, but the bodies of the Charters themselves are contained in the Charter of King John, An. 17, of his reign, Mat. Fl. pag. 246. Quae ex parte maximam legum Anglicanarum & regni confessiones evas.
Magna Charta.

**Cap. 1.**

God. 2. For the health of the king's soul. 3. For the exaltation of holy church; and fourthly, for the amendment of the kingdom.

These are the excellent laws contained in this great charter, and digested into 38 chapters, which tend to the honour of God, the safety of the king's conscience, the advancement of the church, and amendment of the kingdom, granted and allowed to all the subjects of the realm.

(4) *Suetonius, et bona voluntate nostro.* These words were added, for that king John, as hath been said, made the like charter in effect, and sought to avoid the same, pretending it was made by durex.

This great charter is divided into 38 chapters.

**CAP. I.**

**IMPRI MIS, constitutus Deus (1), et haec brevissima charta nostrae conservarum usus pro nobis et hereditibus nostris imperpetuum (2), quod ecclesia Anglicana (3), libera sit (4), et habeat omnium jurarum integra (5), et libertates suas illius (6). Constitutus igitur, et de illo omnibus liberis bonis regni nostri (7), pro nobis et hereditibus nostris imperpetuum, has libertates suas illius (8). Tenenda et habeenda igitur, et hereditibus nostris (9) jussi, de nobis, (10) et hereditibus nostris imperpetuum.

First, we have granted to God, and by this our present charter have confirmed, for us and our heirs for ever, that the church of England shall be free, and shall have all her whole rights and liberties inviolable.

We have granted and given to all the free-men of our realm, for us and our heirs for ever, these liberties underwritten, to have and to hold them and their heirs, of us and our heirs for ever.

(2) Inter Legem, Constitutum Rege, qui ille constat, Cap. 1. & J. 45 Ed. 3. c. 1.

Sancti *Dei, in prinis, ecclesiam libaram facio, ita quod nec utriusque, nec ad firmam ponam, nec mortuo archiepiscopo, nec episcopo, vel abbas aut aliquid accipiam de dominio ecclesiae, seu de dominibus suis, donec fecesserit in eam benefactionem, et enures malas consistantur, quibus regnum Angliae injuste opprimamur, inde auxero.*

(3) *Constitutus Deus.* We, have granted to God; and when any thing is granted for God, it is deemed in law to be granted to God, and whatsoever is granted to his church for his honour, and the maintenance of his religion and service, is granted for and to God; *Quod datum est ecclesiae, datum est Deo.*

And this and the like were the forms of ancient acts, and grants, and those ancient acts and grants must be construed and taken as the law was held at that time when they were made.

Here in this charter, both in the title and in divers parts of the body of the charter, the king speaketh in the plural number, *constitutus.* The first king that I read of before him, that in his writ in the plural number, was king John, father of our king.

**Cap. 1.**

Magna Charta.

king H. 3. other kings before him wrote in the singular number, they used *ego,* and king John, and all the kings after him, *Nec.*

(a) *Pro nobis et hereditibus nostris imperpetuum.* These words were added to avoid all feruples, that this great parliamentary charter might live and take effect in all succession of ages for ever. More of this word (helres) hereafter in this chapter: When *Pro nobis, hereditibus et successibus nostris* came in, shall be shewed in his fit place.

(b) *Quod ecclesia Anglicana, &c.* This is the making of this great charter, extended not to Ireland, nor to any of the king's foreign dominions; but by the law of Poyning, made by the authority of parliament in Ireland, in anno 11. H. 7. all the laws and statutes of this realm of England before that time had or made do extend to Ireland, so as now Magna Charta doth extend into Ireland.

(4) *Quod ecclesia Anglicana libera sit.* That is, that all ecclesiastical persons in the realm, their possessions, and goods, shall be freed from all unjust exactions and oppressions, but notwithstanding, should yield all lawfull duties, either to the king or to any of his subjects, so as *libera* here, is taken for *liberata,* for as it hath been said, this charter is declaratory of the ancient law and liberty of England, and therefore no new freedom is hereby given, (to wit, the discharge of lawful dues, services, rent and aide) but a reiteration of such lawfully they had before, and to free them of all which had been usurped and increas'd upon them by any power whatsoever; and purposely, and materially, the charter (faith ecclesia, because ecclesia non moritur, but moviumur ecclesiatistic, and this extends to all ecclesiastical persons of what quality or order forever.

(5) *Et habeat omnium jurarum integra.* That is, that all ecclesiastical persons shall enjoy all their lawful jurisdictions, and other their rights wholly without any diminution or subtraction whatsoever; and *jurab sit* prove plainly, that no new rights were given unto them, but such as they had before, whereby are confirmed; and great were sometimes their rights, for they had the third part of the possessions of the realm, as it is affirmed in a parliament roll.

(6) *Et libertates suas illius.* Liberates are here taken in two senses. 1. For the laws of England so called, because liberis faciunt, as hath been said. 2. They are here taken for privileges held by parliament, charter, or prescription, more then ordinary; and in this sense it is taken in the writ *De libertatuibus aliquo* and another writ *De libertatuibus exigentibus in itinere,* but it is *libertates suas* such as by right they had before; *jurab ecclesiae publicarum ambiguation.*

Every archbishoprick and bishoprick in England are of the king's foundation, and holden of the king *per baroniam,* and many abbeys and priors of monasteries were also of the king's foundation, and did hold of him *per baroniam,* and in this right the archbishop and bishops, and such of the abbots and priors as held *per baroniam,* and called by writ to parliament, and this is right of a great honour that the church, viz. the archbishop and bishops now have. *Ecclesia et infra stetare, et* in specula Domini Regis, qui tenetur juras et habeat suarum sanatarum beneficarum et desinence, in salterio, et in recordo, ita sit, *Ecclesia sua imprimis et infra stetare fautoribus suis nomine, et de jure com."
Magna Charta.  Cap. 1.

1. In an action brought against a person (wherein a capias lieth) for example, an account, the sheriff returns good clerks of beneficia, nullam hanc literatum dicit, in which he may summon, in this case the plaintiff cannot have a capias to the sheriff to take the body of the person, but he shall have a writ to the bishop to cause the person to come and appear. But if he had returned, good clerks of nullam hanc literatam dicit, then is a capias to be granted to the sheriff, for that it appeared not in the return that he had a benefice, so as he might be warned by the bishop his diocesan, and no man can be exempt from justice. See more of this matter Artic. Cleri. cap. 9.

Secundum legem et constitutiur regni Angliae clerici in tenente, &c. ponent iurisdebit, vel suum iurisdictio vel invocatur iurisdictio suae, et ecclesiastici potestazed to appear at tournours or views of frankpledge.

But hereof this little tale shall in this place suffice, with this, that as the overflowing of waters doe many times make the river to lose his proper channel, so in times past ecclesiastical persons seeking to extend their liberties beyond their true bounds, either lost or enjoyed not that which of right belonged to them.

(7) Canons legis et decretum ecclesiae, libri dominii regni anglici, &c. These words (omnibus liberis dominii regni anglici) doe include all persons ecclesiastical and temporall incorporate politic over natural, nay they extend alio to villicins, for they are accounted free against all men living against the lords.

(8) Has libertates subcriptas.] Here it is to be observed that the aforesaid clause that concerned the church only, is in favour of the church general without any restraint, but this clause that concerns all the king's subjects hath a restraint by this word (subscriptas) which restraineth liberties to the 38. chapters of this great Charter.

(9) Harredibius.] At this time haereses were taken for suocceffores, and successores for haereses.

(10) De nobis.] In this place these words are not inserted to make a legal tenure of the king, but to intimation that all liberties at the full were derived from the crowne.

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