

## SECOND PART

OF THE

**Institutes of the Laws of England;**

CONTAINING

THE EXPOSITION OF MANY ANCIENT AND OTHER  
STATUTES.

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*Jurisperito dixit, In lege quid scriptum est? quomodo legis? Luc. x. 26.**Quod non lego, non credo. August.**Jurisprudentia est juvenibus regimen, senibus solamen, pauperibus divitiæ  
& divitibus securitas.*

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HÆC EGO GRANDÆVUS POSUI TIBI, CANDIDE LECTOR.

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D E O,  
P A T R I Æ,  
T I B L.

A P R O E M E

TO THE

SECOND PART *of the* INSTITUTES.

**I**N the first part of the Institutes, following Littleton our guide, we have treated of such parts of the common laws, statutes, and customes, 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 doe appeare.

It is called *Magna Charta*, not that it is great in quantity, for there be many voluminous charters commonly passed, specially in these later times, longer then this is; nor comparatively in respect that it is greater then *Charta de Foresta*, but in respect of the great importance, and weightinesse of the matter, as hereafter shall appeare: and likewise for the same cause *Charta de Foresta*, is called *Magna Charta de Foresta*, and both of them are called *Magna Charta libertatum Angliæ*.

King Alexander was called Alexander Magnus, not in respect

Marlb. cap. 5.  
Inspex. 25 E. 1.  
12 H. 3. *Sententia lata super chartas* Bract. lib. 3. fol. 291. & lib 5. fol. 414.  
Mirror, cap. 9  
Registr.  
8 E. 3. Trin.  
Pick. Rot. 43.  
Arons case.  
Rot. Pat. 20.  
Marc' 11 E. 3. de perambulatione for' in com' Ef. sex. Rot. Parl. 22 E. 3. nu. 36.

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respect of the largenesse of his body, for he was a little man, but in respect of the greatnesse of his heroical spirit, of whom it might be truly said,

*Mens tamen in parvo corpore magna fuit;*

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

And it is also called *Charta libertatum regni*; and upon great reason it is so called of the effect, *quia liberos facit*: sometime 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 realme: foure most 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. lords spirituall, *viz.* Stephen Langton archbishop of Canterbury, E. bishop of London, I. 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 Battaile, the abbot of S. Augustines in Canterbury, the Abbot of Evesham, the abbot of Westminster, the abbot of Burghe S. Peter, the abbot of Reading, the abbot of Abindon, the abbot of Malmesbury, the abbot of Winchcombe, the abbot of Hyde, the abbot of Certesey, the abbot of Shernborn, the abbot of Cerne, the abbot of Abbotebury, the abbot of Middleton, the abbot of Selbie, the abbot of Cirencester; and 33. of the nobility, *viz.* Hubert de Burgo chiefe justice of England,

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land, and 32. earles and barons, *viz.* Randall earle of Chester and Lincoln, William earle of Salisbury, William earle Warren, Gilbert of Clare earle of Gloucester and Hertford, William de Ferrars earle of Derby, William Mandevile earle of Essex, H. de Bigod earle of Norffolk, William earle of Albemarle, H. earle of Hereford, John Constable of Chester, Robert de Ros, R. Fitzwalter, Robert de Vipount, William de Bruer, R. de Mountfitchet, P. Fitzherbert, William de Aubeine, Robert Gresly, Reignald de Brehus, John de Movenne, J. Fitz-Alen, Hugh de Mortimer, Walter de Beauchamp, William de S. John, Peter de Molo-lacu, Brian de Lisle, T. de Multon, Richard de Argentein, Jeffrey de Nevill, William Maudint, John de Baalim, and others.

There were many of the great charters, and *Charta de Foresta*, put under the great seale, 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.

Also 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 seale, as well to the justices of the forest, as to others, and to all sheriffes, 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 cathedrall churches, and that they should be read and published in every county four times in the yeare in full county, *viz.* the next county day after the feast of S. Michael, and the next county day after Christmas, and the next county day after Easter, and the next county day after the feast of S. John.

It was for the most part declaratory of the principall grounds of the fundamentall laws of England, and for the residue it is additionall to supply some defects of the commort law;

The great providence and policy for preservation of it.

25 E. 1. cap. 1.

25 E. 1. cap. 3.  
28 E. 1. ca. 2.  
& 17.

The quality.

The Ends.  
*Sapiens incipit à fine.*

By what authority, and when.

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Mat. Par. fo.  
246, 247, 248.

law; and it was no new declaration: for king John in the 17 yeare of his raigne had granted the like, which also was called *Magna Charta*, as appeareth by a record before this great charter made by king H. 3.

Pafch. 5 H. 3.  
tit' Mordaunc'  
f. 53.

*Homo ne fuer' mordanc' apud Westmonasterium des terres in auter countie, car ceo ser encon' lestatut de Magna Charta simon que illa assisa semel interminata fuit coram justic'.*

Stat. 25 E. 1.  
Confirm. Chart.

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.

How and upon  
what grounds it  
hath been im-  
pugned.

Soon after the making of this great charter, the young king by **evill counsell** fell into great dislike with it, which *Hubert de Burgo summus justiciarius Angliæ* perceiving (who in former times had been a great lover, and well deserving patriot of his country, and learned in the laws (for *Rot. clauf. 11 H. 3. membr. 44.* I finde that he, and many others were justices itinerant in 5 H. 3. and I have seen a fine levied before him, and sixe other judges, between Stephen de Wamcestre, and the abbot of Hales) yet meaning to make this a step to his ambition (which ever rideth without reines) perswaded and humored the king that he might avoid the charter of his father king John by duresse, and his own great charta, and *Charta de Foresta* also, for that he was within age when he granted the same, whereupon the king in the 11 yeare of his raign, 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 councill holden at Oxford, unjustly cancelled both the said charters, (notwithstanding the said Hubert de Burgo was the premier witnesse of all the temporall lords to both the said charters) whereupon he became in high favour with the king, infomuch as he was soon after (*viz.* the 10 of December, in the 13 yeare of that king, created to the highest dignity that in those times any subject had) to be an earle, *viz.* of Kent.

Rot. clauf.  
11 H. 3. membr.  
44. 5 H. 3.

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Kent. But soon after (for flatterers and humorists have no sure foundation) he fell into the kings heavy indignation, and after many fearfull and miserable troubles, he was justly, and according to law sentenced by his peeres in open parliament, and justly degraded of that dignity which he unjustly had obtained by his counsell for cancelling of *Magna Charta*, and *Charta de Foresta*. And the king by his charter granted, *Quod nos firmiter & integre tenebimus judicium de Huberto de Burgo per barones dictum*; he was buried in the Frier Predicants where Whitehall is now built, so as no monument remains of him at this day.

Rot. clauf. 17 H.  
3. m. 1. & 2.  
Rot. Pat. 17 H.  
2. m. 1. à terge  
& 12.

In this advice Hubert de Burgo either dissembled his opinion, or grossly erred (**as ever ambitious flattery bedazes the eye, even of them, that be learned**) first, for that a king cannot avoid his charter, albeit he make it when he is within age, for in respect of his royall and politique 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 successe those potent and opulent subjects, Hugh Spencer the father, and son had, for giving rash and evill counsell to king E. 2. *enconter la forme de la grand chartre*, I had rather you should read then I should declare.

*Exilium turgonis  
la Spencer pais  
& filii.*

After the making of *Magna Charta*, and *Charta de Foresta*, divers learned men in the laws, that I may use the words of the record, kept **schóoles 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 Foresta*,

Rot. clauf. anno  
19 H. 3. m. 22.

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*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 maior and sheriffes of London, *Quod per totam civitatem London clamari faciant & firmiter prohiberi, ne aliquis scholas tenens de legibus in eadem civitate de cetero ibidem leges doceat, & si aliquis ibidem fuerit hujusmodi scholas tenens, ipsum sine dilatione cessare fac'*; Teste Rege, &c. 11 die Decembris, 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 seale confirme both *Magna Charta*, and *Charta de Foresta*, he being then 29 yeare old. And after in the 52 yeare of his raigne established and confirmed both the same by act of parliament, with the clause, *Quod contravenientes per dominum regem, cum convicti fuerint, graviter puniantur*. 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. 1. by act of parliament in the 25 yeare of his reign: and the said two charters have been confirmed, established, 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 so 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 charter, or *Charta de Foresta*, by the justices, or by any other of the kings

19 H. 3. ubi supra.

Marlb. cap. 5. 15 E. 4. 13.

20 Aff. p. 17. 14 H. 4. 2, & 3. Br. Alien. ians license. 10.

Of what high estimation it hath been.

Confirm. Chart. 25 E. 1. ca. 1. & 2. Ver. Mag. Chart. 2. part. fol. 35.

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kings ministers, &c. it shall be undone, and holden for nought.

And that both the said charters shall be sent under the great seale 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 established by parliament; and by authority of that highest court it is enacted (only to shew their tender care of *Magna Charta*, and *Charta de Foresta*) 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 those charters are now repealed; and the nobles and great officers were to be sworn to the observation of *Magna Charta*, and *Charta de Foresta*.

*Magna fuit quondam magnæ reverentia chartæ.*

We in this second part of the Institutes, treating of the ancient and other statutes have been enforced 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 what 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 Customier de Normandy, where it agreeth with the laws of England, and sometime where they disagree, *ex diametro*, 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 customs of the duchie of Normandie, which book was composed

25 E. 4. ubi supra.

42 E. 3. cap. 7. 25 E. 1. ubi supra.

posed in the reign of king H. 3. viz. about 40 yeares after the coronation of king Richard the first, 3 *Septembris anno* 1 of his reign, *anno Dom.* 1189. about 138 yeares after the conquest. See that book cap. 22. fo. 29. a. and the comment upon the same, & cap. 112. In which Customier a great number of the courts of justice, of the originall 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. *Aluredus, alias Alfredus, alias Elfredus,* began to reign *anno Dom.* 872. and deceased 901. Of this *Alured* it is thus written, *Aluredus acerrimi ingenii princeps per Grimbaldum & Johannem doctissimos monachos tantum instructus est, ut in brevi librorum omnium notitiam haberet, totumque novum & vetus Testamentum in eulogiam Anglicæ gentis transmutaret. (cujus translationis pars nobis feliciter accidit.)* This learned king in advancement of divine and humane knowledge, by the persuasion of those two monks founded the famous university of Cambridge. *Edwardus,* son of the said *Alured,* began to reign *anno Dom.* 901. and deceased 924. <sup>a</sup> *Ethelstanus, alias, Adelstane* eldest son of the said *Edward* began to reign *anno Dom.* 924. and deceased 940. <sup>b</sup> *Edmundus* began to reign *anno Dom.* 940. and deceased 946. <sup>c</sup> *Eggarus* began to reign *anno Dom.* 959. and deceased 975. <sup>d</sup> *Ethelredus* began to reign *anno Dom.* 979. and deceased 1016. <sup>e</sup> *Canutus* began to reign *anno Dom.* 1016. and deceased 1035. <sup>f</sup> *Edwardus* began to reign *anno Dom.* 1042. and deceased 1066. <sup>g</sup> *Willielmus Bastardus* began to reign *anno Dom.* 1066. and deceased 1087.

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

said kings doe yet remain, but not onely 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 specially in the times of the ancient Brittons (an inestimable losse) 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 Edward the Confessor, is never named *per nomen regis, sed per nomen Comitis Haroldi, seu Heraldi;* and therefore we have omitted him.

In citing of the abovesaid 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 referre the reader, as he may easily finde it;) *sed ut unicuique suus tribuatur honos,* all those statutes in the reigns of all the abovesaid kings were of ancient time plainly and truly translated 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 civill law, there be so many glosses and interpretations, and again upon those so many commentaries, and all these written by doctors of equall 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 expositions or commentaries upon Magna Charta, and other statutes, are the resolutions of judges in courts of justice in judiciall courses of proceeding, either related and reported in our books, or extant in judiciall records, or in both, and therefore.

In Historia Eli-  
casi fo. 38. lib.  
2.

Cl: Caius D. m.  
Cart.

<sup>a</sup> Fortis, sapiens,  
& fortunatus:  
Danos expulit &  
Angliam in mo-  
narchiam reduxit.

<sup>b</sup> Marci: apud  
Hoxon dicitur He-  
gildon.

<sup>c</sup> Pacificus, rex  
excellentissimus.

<sup>d</sup> Named in Do-  
meſday. Glouc'  
Ecclesia de Eve-  
shan. Adelredus.

<sup>e</sup> In Domeſday  
he is ever writ-  
ten C. ut Rex.

<sup>f</sup> He is ever cal-  
led in Domeſd.  
Episcopus S.

<sup>g</sup> Edu. C. ut: Rex  
Edwardus dicitur  
regi Griffino ter-  
ram que jacebat  
trans aquam que  
De vocatur.

<sup>h</sup> He is in  
Domeſ. written  
Willielmus Rex,  
vel Willielmus,  
vel W. Rex.

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therefore being collected together, shall (as we conceive) produce certainty, the mother and nurse of repose and quietnesse, and are not like to the waves of the sea, but *Statio bene fida. peritis & for Judicia sunt tanquam juris dicta.*

*Finis Proemii.*

But now let us peruse the Text it selfe.

MAGNA

MAGNA CHARTA.

EDITA Anno nono. H. III.

**H**ENRICUS Dei gratia rex Angliæ (1), dominus Hiberniæ, dux Normaniæ, et Aquitaniæ, et comes Andegaviæ, archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus (2), vicecomitibus, præpositis, ministris, et omnibus ballivis, et fidelibus suis, præsentem chartam inspecturis, salutem. Sciatis quod nos intuitu Dei, et pro salutè animæ nostræ, &c. et ad exaltationem sanctæ ecclesiæ, et emendationem regni nostri (3), spontanea et bona voluntate nostra (4), dedimus et concessimus archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, et omnibus liberis de regno nostro, has libertates subscriptas, tenend. in regno nostro Angliæ in perpetuum.

**H**ENRY by the grace of God, king of England, lord of Ireland, duke of Normandy and Guyan, and earl of Anjou, to all archbishops, 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, 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 archbishops, bishops, abbots, priors, earls, barons, and to all free-men of this our realm, these liberties following, to be kept in our kingdom of England for ever.

(1) Inst. 81, Statutes of Confirmation. 52 H. 3. c. 5. 25 Ed. 1. c. 1, 2, 3, & 4. 28 Ed. 1. stat. 3. c. 1. 1 Ed. 3. stat. 2. c. 1. 2 Ed. 3. c. 1. 4 Ed. 3. c. 1. 5 Ed. 3. c. 1, 9. 10 Ed. 3. stat. 1. c. 1. 14 Ed. 3. stat. 1. c. 1. 15 Ed. 3. c. 1. 28 Ed. 3. c. 1. 31 Ed. stat. 1. c. 1. 36 Ed. 3. c. 1. 37 Ed. 3. c. 1. 38 Ed. 3. stat. 1. c. 1. 42 Ed. 3. c. 1. 45 Ed. 3. c. 1. 50 Ed. 3. c. 2. 1 Rich. 2. c. 1. 2 Rich. 2. c. 1. 5 Rich. 2. c. 1. 6 Rich. 2. c. 1. 7 Rich. 2. c. 2. 8 Rich. 2. c. 1. 12 Rich. 2. c. 1. 1 Hen. 4. c. 1. 2 Hen. 4. c. 1. 4 Hen. 4. c. 1. 7 Hen. 4. c. 1. 9 Hen. 4. c. 1. 13 Hen. 4. c. 1. 4 Hen. 5. c. 1.)

(1) *Henricus Dei gratia Rex Angliæ, &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, *Sectione prima.*

(2) *Archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, &c.* This of the like particular direction, this king and his progenitors before him used; and so did E. 1. E. 2. and E. 3. King R. 2. in his letters patents med a more generall, and compendious direction, viz. *Omnibus ad quos præsentis litteræ pervenerint, &c.* which direction is used to this day, saving in charters of creation of dignities, the directions to this day, are *archiepiscopis, episcopis, ducibus, marchionibus, &c.* and *hinc restibus*, in the end.

(3) *Nos intuitu Dei, pro salutè animæ nostræ, ad exaltationem sanctæ ecclesiæ, et emendationem regni nostri.* Here bee four notable causes of the making of this great charter rehearsed. 1. The honour of God.

The first Part of the Institutes, *Secc. 1.*

Note not onely the preamble of this Charter, & of the forest, but the bodies of the Charters themselves are contained in the Charter of King John, An. 17. of his reign, *Mar. Par. pag. 246. Quæ ex parte maxima legas antiquas & regni consuetudines consistebant. p. 244.*

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 be those 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 realme.

[ 2 ] (4) *Spontanea, et bona voluntate nostra.*] 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 duress.

This great charter is divided into 38 chapters.

## C A P. I.

**I**MPRIMIS, concessimus Deo (1), et hac presenti charta nostra confirmavimus pro nobis et heredibus nostris in perpetuum (2), quod ecclesia Anglicana (3), libera sit (4), et habeat omnia jura sua integra (5), et libertates suas illasas (6). Concessimus etiam, et dedimus omnibus liberis hominibus regni nostri (7), pro nobis et heredibus nostris in perpetuum, has libertates subscriptas (8). Tenenda et habenda eis et heredibus, (9) suis, de nobis, (10) et heredibus nostris in perpetuum.

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 also, 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 to them and their heirs, of us and our heirs for ever.

(2) Inst. 1. 52 H. 3. c. 5. & 42 Ed. 3. c. 1.

\* Inter Leges seu Institutiones Regis, H. 1. cap. 1.

*Sanctam \* Dei, imprimis, ecclesiam liberam facio, ita quod nec vendam, nec ad firmam ponam, nec mortuo archiepiscopo sive episcopo, vel abbate aliquid accipiam de dominio ecclesie, seu de hominibus ejus, donec successor in eam ingrediatur, et omnes malas consuetudines, quibus regnum Anglie injuste opprimebatur, inde aufero.*

(1) *Concessimus Deo.*] We have granted to God: 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 ecclesie, datum est Deo.*

And this and the like were the formes of ancient acts, and grants, and those ancient acts and grants must be construed and taken as the law was holden 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, *concessimus.* The first king that I read of before him, that in his grants wrote in the plural number, was king John, father of our

See the first part of the Institutes. Sect. 1.

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

(2) *Pro nobis et heredibus nostris in perpetuum.*] These words were added to avoid all scruples, that this great parliamentary charter might live and take effect in all successions of ages for ever. More of this word (heires) hereafter in this chapter: When *Pro nobis, heredibus et successoribus nostris* came in, shall be shewed in his fit place.

(3) *Quod ecclesia Anglicana, &c.*] This at the making of this great charter, extended not to Ireland, nor to any of the king's foreign dominions; but by the law of Poynings, 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 within the realm, their possessions, and goods, shall be freed from all unjust exactions and oppressions, but notwithstanding should yeeld all lawfull duties, either to the king or to any of his subjects, so as *libera* here, is taken for *liberata*, for as hath been said, this charter is declaratory of the ancient law and liberty of England, and therefore no new freedom is hereby granted, (to be discharged of lawfull tenures, services, rents and aids) but a restitution of such as lawfully they had before, and to free them of that which had been usurped and incroached upon them by any power whatsoever; and purposely, and materially, the charter saith *ecclesia*, because *ecclesia non moritur*, but *moriuntur ecclesiastici*, and this extends to all ecclesiastical persons of what quality or order soever.

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

(6) *Et libertates suas illasas.*] *Libertates* are here taken in two senses. 1. For the laws of England so called, because *liberos 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 libertatibus allocandis*, and in another writ *De libertatibus exigendis in itinere*, but it is but *libertates suas*, such as of right they had before; *jura ecclesie publicis equiparantur.*

Every archbishoprick and bishoprick in England are of the king's foundation, and holden of the king *per baroniam*, and many abbots 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, were lords of parliament; and this is a right of great honour that the church, viz. the archbishop and bishops now have. *Ecclesia est infra etatem, et in custodia Domini Regis, qui tenetur jura et hereditates suas manutene et defendere*; and in other records it is said, *Ecclesia que semper est infra etatem fungitur semper vice minoris, nec est juri con-*

[ 3 ]

Rot. Parliam.  
4 R. 2. Nu. 13.

Registr. fol. 193  
& 262.  
F. N. B. fo.  
229.  
Regula.

Olson. l. 7.  
c. 1. Bract. lib.  
3. fol. 226. l. 5.  
fo. 427. Tr. 22.  
E. 1. in com.



Banc. Rot. Fleta lib. 2. See hereafter c. 21. 14 E. 3. cap. 12. stat. 2. 18 E. 3. cap. 4. 1 R. 2. cap. 3. 8 E. 3. fol. 26. Regit. 289. vid. 27. H. 8. c. 24. vid. postea. c. 21.

sonum quod infra etatem existentes, per negligentiam custodum suorum exheredationem patiantur seu ab actione repellantur.

They are discharged of purveyance for their own proper goods.

And this was the ancient common law, and so declared by divers acts of parliament, and there is a writ in the register for their discharge in that behalfe: and this is not restrained by the said act of 27. H. 8. for thereby it is provided that the purveyor shall observe the statutes for them provided, so as where the purveyor is prohibited to purvey by any statute, the said act of 27. H. 8. setteth him not at liberty.

And true it is, that ecclesiasticall persons have more and greater liberties then other of the king's subjects, wherein, to set down all, would take up a whole volume of it self; and to set down no example, agreeth not with the office of an expositor; therefore some few examples shall be expressed, and the studious reader left to observe the rest as he shall reade them in our books, and other authorities of law.

If a man holdeth lands or tenements, by reason whereof he ought (upon election, &c.) to serve in a temporall office, if this man be made an ecclesiasticall person within holy orders, he ought not to be elected to any such office, and if he be, he may have the king's writ for his discharge, and the words of the writ are observable, Rex, &c. cum secundum legem et consuetudinem regni nostri Angliæ clerici infra sacros ordines, constituti ad tale officium eligi non debeant, nec hæcenus consenserunt, &c. and the reason thereof is expressed in the writ, Quia juri non est consonum, quod hiis qui salubri statu animarum, &c. (in tali loco, &c.) deseruiunt, alibi extra (eundem locum) secularibus negotiis compellantur.

Regit. 58. F. N. B. 175.

[ 4 ]

2 Timot. c. 2.

By this writ it appeareth that this was the ancient common law, and custome of England, and had a sure foundation, Nemo militans Deo, implicet se negotiis secularibus, ut ei placeat cui se probavit. Ecclesiasticall persons have this priviledge that they ought not in person to serve in warre. Also ecclesiasticall persons ought to be quit and discharged of tolles and customes, avirage, pōntage, paviage, and the like, for their ecclesiasticall goods, and if they be molested therefore, they have a writ for their discharge, by which writ it appeareth that this was the ancient common law of England. Rex, &c. cum personæ ecclesiasticæ secundum consuetudinem hæcenus in regno nostro usitatæ, et approbatæ; ac ad telonium, paviagium et muragium, &c. de bonis suis ecclesiasticis alicubi in eodem regno præstandi nullatenus teneantur, &c.

Litt. fol. 20. Regit. fol. F. N. B. 227.

If any ecclesiasticall person be in feare or doubt that his goods or chattells, or beasts, or the goods of his farmor, &c. should be taken by the ministers of the king, for the businessse of the king, he may purchase a protection cum clausula volumus.

Distresses shall not be taken by sheriffs or other of the king's ministers in the inheritance of the church wherewith it was anciently endowed, but otherwise it is of late purchase.

If any ecclesiasticall person knowledge a statute merchant or statute staple, or a recognizance in the nature of a statute staple, his body shall not be taken by force of any proceffe thereupon, and for more surety thereof the writ thereupon to take the body of the consufor is si laicus sit.

If a person bee bound in a recognizance in the chancery or in any

F. N. B. 29. Regit. 289.

See the exposition of the statute of Artic. Cler. cap. 9. Regit. 300. F. N. B. 266. a. 16. E. 3. p. ces 165. Regit. judi. 22.

any other court, &c. and he pay not the sum at the day, by the common law, if the person had nothing but ecclesiasticall goods, the recognizee could not have had a levary sue to the sheriffe to levie the same of these goods, but the writ ought to be directed to the bishop of the dioces to levie the same of his ecclesiasticall goods.

In an action brought against a person (wherein a capias lieth) for example, an account, the sheriffe returns quod clericus est beneficiatus, nullum habens laici feodum, in which he may be summoned, in this case the plaintiffe cannot have a capias to the sheriffe to take the body of the person, but he shall have a writ to the bishop to cause the person to come and appeare. But if he had returned quod clericus est nullum habens laicum feodum, then is a capias to be granted to the sheriffe, for that it appeared not by the returne that he had a benefice, so as he might bee warned by the bishop his diocefan, and no man can be exempt from justice. See more of this matter Artic. Cleri. cap. 9.

Secundum legem et consuetudinē regni Angliæ clerici in decima, &c. poni non debeant; vel ea occasione distringi vel inquietari non consueverunt; and ecclesiasticall persons are not bound to appeare at tournes or viewes of frankpledge.

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

(7) Concessimus etiam et dedimus omnibus liberis hominibus regni nostri, &c. These words (omnibus liberis hominibus regni) doe include ail persons ecclesiasticall and temporall incorporate politique or naturall, nay they extend also to villeines, for they are accounted free against all men saving against the lords.

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

(9) Hæredibus. At this time hæredes were taken for successores, and successores for hæredes.

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

Note that courts of justice are also called libertates, because in them the lawes of the realme quæ liberos faciunt, are administered.

218. E. 2. Proc. 205. 9 E. 3. 39. 24 E. 3. 44. 25 E. 3. 44. 29 E. 3. 44. 32 E. 3. Proce. 58. 34. E. 3. Scir. fac. 153. 45. E. 3. 6. 47 E. 3. 14. 21 H. 6. 16. Regit. judic. 62. Artic. Cler. c. 9. Marlebr. c. 10. Briton. f. 19. B. Fleta. li. 2. c. 45. Rot. brevi. an. 2. R. 2. part 2. m. 3.

Litt. sect. 189.

See the statute of 34. E. 1. de tallagio non conc. cap. 4. which is more general.

[ 5 ]

2 Mich. 17. E. 1. in Com. banc. rot. 22 r. lic. see the first part of the Institut. sect. 1.

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