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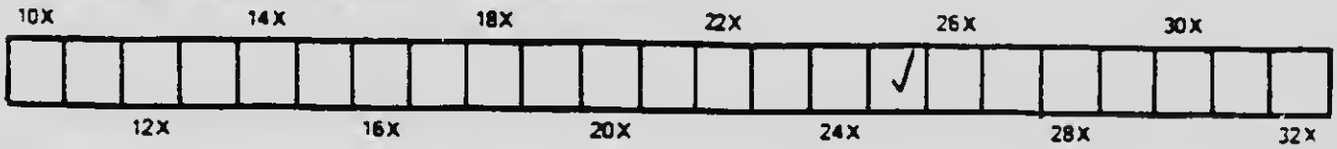

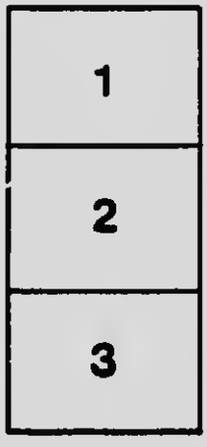

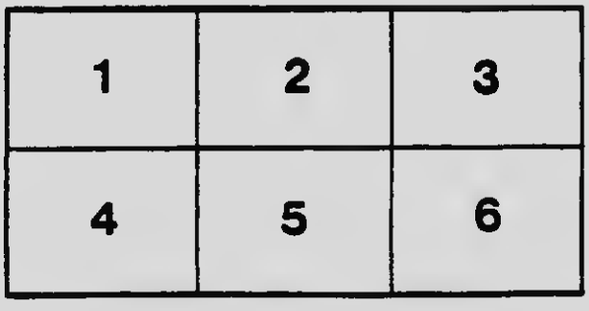

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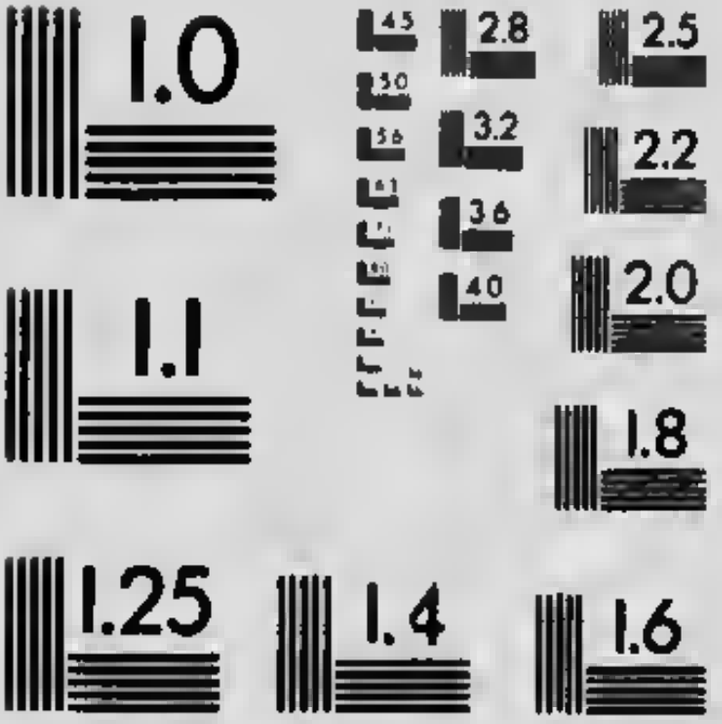

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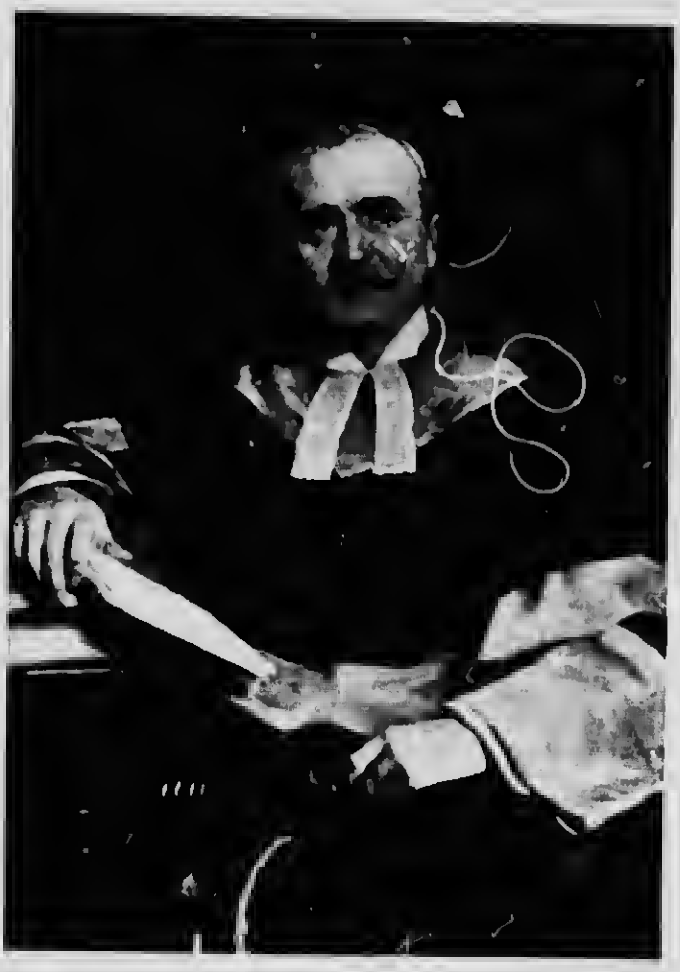
WILLIAM RENWICK RIDDELL, LL.D.,
F. R. Hist. Soc.,
Justice of the Supreme Court of Ontario.

BEFORE

THE LAW ACADEMY OF PHILADELPHIA

May 3, 1917



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Published by
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MAGNA CARTA

BY

WILLIAM RENWICK RIDDELL, LL.D.,
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Justice of the Supreme Court of Ontario.

PROËM

In the year of Grace, twelve hundred and fifteen, there was gathered in the Meadow of Runnymede by the Thames between Staines and Windsor, a "Congress into an extraordinary session because there" were "serious, very serious, choices to be made and made immediately."

It was still (even in England) the time of "the old unhappy days when the people were nowhere consulted by their rulers": an autocratic King claiming to rule by Right Divine and not by the consent of the governed, whose acts were based "only in the selfish designs of a Government that did what it pleased," had contemptuously disregarded the ancient rights of his people, had repeatedly for his own interest and that of "little groups of ambitious (and greedy) men who were accustomed to use their fellow men as pawns and tools," "put aside all restraints of law and of humanity," had violated the law which "by painful stage after stage" had "been built up with meagre enough results indeed after all was accomplished that could be accomplished, but always with a view," more or less clear, "of what the heart and conscience of mankind demanded."

Occasionally and for a time "in the progress of the cruel and unmanly business * * *, a certain degree of restraint was observed"; but tho king had gone from bad to worse, "the new policy * * * swept every restriction aside" and the Government had "thrown aside all considerations of humanity and right," "put aside all restrnints of law or of humanity."

The Barons of England with the higher Clergy had the choice to submit or to resist, if need be to fight —the choice was unhesitating—"We will not choose the path of submission and suffer the most sacred rights of our nation and our people to be ignored or violated"—"we are * * * of the champions of the rights of mankind"—"the wrongs against which we now array ourselves are not common wrongs; they cut to the very root of human life" and all that makes life worth living. "Our object * * * is to vindicato * * * justice * * * as against selfish and autocratic power and * * * henceforth insure the observance of" that principle; "we are now about to accept gage of battle with this natural foe of liberty, and shall if necessary spend the whole force of the nation to check and nullify its pretensions and its power;" "our motive will not be revenge or the victorious assertion of the physical might of the nation but only the vindication of right, of human right."

By bitter experience they knew that "no autocratic Government could be trusted to keep faith * * * or observe its covenants," could be a partner in "a league of honor"—broken faith had

proved to them that they must be prepared to enter upon war, that they might be "forced into it because there" was "no other means of defending" their rights. They knew, too, that there were very many foreigners within their country, brought in and supported by their foe, that the king in his autocratic Government was "backed by organized force which" was "wholly controlled by" his "will not by the will of the people." But they felt that "right was more precious than peace"; and notwithstanding that there might be "many months of fiery trial and sacrifice ahead," they mustered their forces and marched to Runnymede, dedicating to their task their lives and their fortunes, everything that they had, and defying the "lawless and malignant few" who would for their own non-patriotic reasons, support the lawless and tyrannical violator of right.

God helping them, they could do no other.

What they did is embodied in Magna Carta, the great Charter of the liberties and rights of all English speaking peoples and powerful in its influence, direct or indirect, in establishing our conceptions of liberty and right throughout the world.

Nearly seven hundred and two years after that memorable Congress, another Congress met in a city upon a continent unknown to, undreamt of by John and his Barons, to consider the acts of a World-criminal. The results of the work of that Congress are as yet in great measure hidden in the womb of time; but who may doubt that the principles inherent in Magna Carta will, through the efforts and the sacrifices of those who are saturated with its spirit—Americans,

thank God, taking their full share—triumph in world affairs and international law as in affairs and law between man and man?

We Canadians, joint heritors of the Great Charter, joyously and exultantly welcome our American brethren to the mighty, the last struggle for democracy, for international justice, right and good faith, the Armageddon of all the ages, the glory and the pride of our peoples who as they live so would they die for "whatsoever things are honest, whatsoever things are just, whatsoever things are of good report." We know that we are one with you in all that is worth while and are as one prepared together to do all and sacrifice all for our ideals of right and democracy.

I am now to speak of that Scrap of Paper we call

"MAGNA CARTA"[1]*

"Whatever Magna Carta may be in law, whether a treaty between king and subjects, a charter or grant from the king, a declaration of rights, a constitution, a statute or what not, it is also a long and miscellaneous code of laws."[2]

And this code of laws has been appealed to in all succeeding generations in England and her Colonies as assuring their dearest rights. Sometimes, indeed, it has been the subject of rude and coarse jibe—the great Cromwell despised or affected to despise Magna Carta, and Chief Justice Kelyng did not hesitate to imitate him.[3] Cromwell, however, was at the time

* Numerals refer to the notes attached at the end of the text.

indifferent to, as he was above, all law; and Kelyng's life and condnct were at all times a scandal to the King he served and to the law he was snpposed to administer.

In most instances, the mention of Magna Carta was received with respect and even reverence; and to this day there are no English speaking peoples who do not take pride in it.

Much of it has been repealed, mnch has become obsolete even in England, much never was applicable to a new country like one of the Thirteen Colonies or Canada; but the spirit of that wondrons document lives wherever onr freedom exists. Other nations have their own conceptions of liberty, their own kultur, which has nothing in common with Magna Carta and to which the principles of Magna Carta are as foreign as they are to the Aleutians: but we

* * * who speak the tongue
That Shakespeare spake; the faith and morals hold
That Milton held,

are saturated with the spirit of the Charter, it is part of our birthright—and may I add "We mnst be free or die" in part for that very reason. So prond were our ancestors of it and its congener, the Carta de Forestâ, that Sir Edward Coke in the Proëme to his Second Institute (which contains a valuable and learned Commentary on the Great Charter) says that they "have been confirmed, established and commanded to be put into execntion by thirty-two several Acts of Parliament in all."

It was not without reason that many American lawyers of the highest standing united two years ago

in celebrating the Seventh Centennial Anniversary of the Sealing of the Charter by King John at Runnymede on June 19th, 1215. For the Constitution of the United States is implicitly adumbrated in it as is the Bill of Rights of 1689.

In all institutions we must look below the surface and find the soul underlying the form. Not quite right was he who said

"For forms of government let fools contest,
Whate'er is best administer'd is best";[5]

many law-abiding, patriotic Americans would fight to the death before they would submit to a monarchy, and many law-abiding and patriotic Canadians would fight to the death against a republic. But there is more than a grain of truth in Pope's apothegm. The Canadian with a King who reigns but does not rule and the American with a President who rules but does not reign have the same conceptions of liberty, the same ideals of justice, the same aspirations toward individualistic freedom of act, thought and speech, combined with a state repression of act or perhaps even of speech noxious to the community—freedom according to law.

That result necessarily follows from the democracy of those peoples which for want of a better term we are accustomed to call the Anglo-Saxon peoples.[6]

Democracy is not a form of government but a state of thought.

A century ago, Upper Canada had on paper almost the same form of government as Ontario has today—yet a century ago the common people had almost no control over the Administration, today the Adminis-

tration bows and mnst bow to the people in everything, mnst jnstify every act to the electorate or cease to he the Administration.

A little moro than a century ago, an unwise if conscientions king could lose to the Empire, flourishing Colonies which desired to remain loyal if they could be loyal consistently with self-respect—Colonies which did not set out to separate from the British Crown hut which were forced to choose between heing loyal and being free. Today, no king would venture on such a policy—and if he did he conld not carry it into operation. And yet the constitution of the Mother Conntry is not altered externally—hut the whole soul and spirit of her institutions have suffered a revolutionary change.

It is not alone or chiefly in the letter of Magna Carta, the form or the content of its provisions that we are to look to discover its importance and revolutionary character hnt to the tendency, the implication of the whole magnificent document.

It is significant that it was wrung hy force from a king of Norman descent. The ancestors of the English people had hefore the Norman Conquest looked upon their kings as chosen hy themselves to rule over them; and the noxious ahsnrdity (according to our democratic thought) of Divine Right had scarcely a footing amongst them. Whcn Acthelred the Unready displeased his people, the Witan promptly deposed him and later recalled him on his promise to do hetter—the Saxon King was a President for life subject to recall.

The Norman Conquest set hack the hands of the

clock for centnries in this as in many other essentials of civilization—as we nnderstand civilization. The Norman kings claimed hy conqnest althongh they did bolster np their right hy an cmpty and formal acclaim by the people of England; and they also claimed the throne hy the Grace of God, that is hy Divine Right. It was with a king who looked upon himself as the vicegerent of the Almighty that the Barons had to deal; bnt they did not admit that they were traitors to God or that they warred against Him. The language of conrtiers is proverhially fnlsome with flattery—the address to King James I, fonr hnndred years later, of the translators of tho Anthorized Version of the Bihle, rouses the gorge of the people of today—that shambling cowardly king was like "the Snn in his strength," whose "confidence and resolution" had "so bonnd and firmly knit the hearts of all Your Majesty's loyal and religions people nnto you that Your very name is precions among them": he was "that sanctified person who under God" was "the immediate Anthor of their true happiness"—and more of the same kind. But these very translators would have promptly raised the standard of rebellion against that marvel of wisdom and strength if he had attempted to allow his zeal toward the Honse of God so mnch lauded hy them, to show itself in favor toward the "Popish Persons at home or abroad" or the "self conceited Brethren who rnn their own ways," whom they so reprohated.[7]

His son, Charles I, found how far his people believed in Divine Right of Kings when a qnarter of a century later, he lost his head literally, having long before lost it metaphorically—and his son James had to

go on his travels because he presumed too far on the forbearance of his "loyal subjects."

And, too, however courtly in their speech toward King John, were his subjects, they did not hesitate to employ force to achieve their ends. It is the unhesitating use of force to attain their rights from a sovereign, which distinguishes a free people (as we understand freedom) from an abject people. No matter how strong, learned, pious a nation may be, if and so long as it believes that its sovereign reigns by the Grace of God, that he is really the donee of a power of which God is the donor, and that he does not owe his sovereignty to the consent of his subjects—these subjects are not freemen, they cannot conscientiously use force against him, anything they wish they may ask for but not demand, anything they may obtain is not a right but a gift which may be recalled—they are subjects in reality as we British are subjects in name.

With kings who have that conception of their position, negotiation may be successful for a time but, as has recently been pointed out in a State Paper of transcendent importance and great ability, "No autocratic power could be trusted to keep faith * * * or observe its covenants."

Accordingly the Barons using force as they did to obtain promises, did not fail to provide means whereby these promises would be implemented—they took possession of the City of London, the Archbishop of Canterbury (their colleague), of the Tower, and provision was made for the election of twenty-five Barons of the Kingdom to cause the terms of the Charter to be observed.

Had this provision been carried into effect much of the subsequent trouble would have been avoided; failing it, England had again and again to experience the *Punica fides* of her kings.

Passing, however, from that unhappy consideration, we may notice that it is not without significance that while those who forced the Charter from an unwilling king were Barons, they had the common people with them—inarticulate as these were and for some time were to be in affairs of state, the commonalty of London secretly agreed to open their gates to the Barons; and notwithstanding that King John secured himself in the Tower, the City, defying his vengeance, opened Aldgate and the reforming Barons marched in thereat.

True it is that most of the provisions of the Charter are made for the advantage of the nobility and their ‘ ·nants; but underlying the form there is ever found the principle which looks forward to the times when the common man will be recognized as the real object of the State's regard, whose well-being must always be in the eye of the State.

The first thing I notice is the set of Articles concerning the Courts.*

It is impossible for a student of the ancient law not to recognize that the Royal Courts of Justice were considered a personal appanage of the king and that a main object of their existence was to secure to the king

* My references are to the Charter as given in Richard Thomson's "An Historical Essay on the Magna Charta," London, 1829, which is the treatise most generally available. A more recent work is McKechnie's Magna Carta, Glasgow, 1915. Sir William Blackstone's sumptuous and valuable volumes should not be overlooked.

a sufficient revenue. Whatever might he said of the local conrts, the king's courts were a costly luxury.[9] Being presided over hy courtiers, members of the household of the king, these courts naturally followed the king in all his journcys throughout the rcalm—and if there is one thing more noticeahlo than another in the ancient kings, it is their constant journeying from one place to another. Much of this was of course due to the Royal Prerogative of taking for the king's use any chattel property of the suhject at a price to be fixed hy the king's officer. Naturally the supply would run ont at the placc at which the court was stationed; and purveyors must seek fresh fields and pastures new—and the court would move again. Or it might be that the king would graciously favor one of his suhjects hy ahiding with him for a time, the glory of entertaining a king being snpposed to be an equivalent for the ruinous expense.[10]

The Royal Courts following thc king, the suitors must needs do tho same, to their constant uncertainty, their freqnent inconvenience and their occasional undoing.

It was accordingly provided in the Charter that that court or portion of the conrt (I do not enter into contentions matters) which dealt with canscs hetwcen subjects should be stationary; and cap. XVII was framed—"Commnnia placita non sequantur curiam nostram sed teneantur in aliqno ccrto loco."[11]

This was the first definite prononncement that the conrts wcre for thc people's convenience, not for the king's advantage.[12]

And onr courts have today their seat at some fixed

place, convenient for suitors and not where a king, a president or a governor may chance to be for the time being or may direct them to be held.

Provision was also made for trial courts sitting in each County four times a year, thus bringing justice to the door of the litigent and relieving the jurors from the intolerable burden and expense of leaving their own County and traveling to Westminster or elsewhere to perform their functions.

Little advantege would be derived from courts, wherever they might sit, if the judges were not versed in the law they were to edminister. In the olden time, it was not legel knowledge or high attainments which procured an appointment as Judge or even Chief Justiciar—too often it was the royal favorite who became the judicial officer, not that he might do justice according to the law, for he was not infrequently grossly ignorant of law, but that he might increase his income by fees or bribes and the royal income by fines. Corruption cannot be guarded against, gross ignorance may. The King promises, cap. XLV, "Nos non faciemus Justiciarios, Constabularios, Vice-Comites, vel Bellivos, nisi de talibus qui scinnt legem regni, et eam bene velint observere."[13]

While constables, sheriffs and bailiffs continued and still continue to be appointed who are laymen, they are liable both civilly and criminally for violetion of the law—and while a Lord Chancellor or Lord Keeper might for some centuries be appointed from those who were not lawyers,[14] Judges began shortly after the Charter, and no donbt largely in consequence of it, to be appointed almost exclusively from the Bar.

By the British North America Act 1867, the written Constitution of the Dominion of Canada, all Judges must be appointed from the Bar of the Province in which they are to act; by the Statutes of Ontario, even a County Court Judge must have been at least seven years at the Bar of the Province.[16]

In England for a time the House of Lords sat as a whole as the final Court of Appeal, but for many years the Lay Lords have not taken part in such matters.[16]

It took six hundred years and more to get rid of the lay-judge in England; but the principle was declared in Magna Carta—and is it not the same in essence as the principle that it is the law that must govern, not the will of men capriciously exercised?

The same underlying thought was responsible for the provision, "Nullas Vicecomes, Constabularius, Coronatores, vel alii Ballivi nostri teneant placita coronae nostrae."[17]

In the Courts, the right of life, liberty and property were to be protected.

"Nullus Ballivus ponat de caetero aliquem ad legem, simplici loquela sua, sine testibus fidelibus ad hoc inductis."[18] The full explanation of this provision would require the discussion of law now happily obsolete; it is sufficient to say that the meaning is that no one against whom a charge is made is bound, simply because a claim is made against him, to prove the claim to be unfounded—he is not "put to his law" until credible witnesses are adduced against him; in other words the plaintiff must prove his case before the defendant can be called upon, a cardinal principle in

our jurisprudence. It involves also the principle that anyone charged with crime shall be considered innocent until he is proved guilty—that his guilt must he proved hy witnesses and not hy confession wrung from him hy torture, physical, moral or mental—it excludes the French system which suggests that an accused must be held guilty till he proves his innocence—it excludes equally tho hideous "Third Degree" which disgraces some English speaking communities to this day.

Then comes the corresponding protection to one charged with an offence against the State—"Nullus liber homo capiatur vel imprisonetur aut dissaisiatur aut utlagetur aut exuletur aut aliquo modo destruatur; nec super eum ibimus, nec super enm mittemus, nisi per legale judicium parium suorum vel per legem terrae."[19]

Whatever may he the origin of the jury system and whatever may have heen its prevalence at the time of the Charter (and perhaps the last word has not yet heen said on either point), Magna Carta made it hy this clause a cardinal principle in English jurisprudence. This is not the time or the place to discuss the merits or the beauties of the jnry system—while we in Ontario have got rid of it in the vast majority of cases, it has free course and is glorified in most if not all of the United States.[20] It would appear that the Barons introduced this clause, fearing that they might bo deprived of their right to he tried hy their peers, the other Barons; and that they might he tried by justices appointed by the king who would he professional and not occasional judges. They huilded better than they knew —the King's Courts became the refuge and protec-

tion of the innocent accused, and the common man was tried by a jury of common men and his peers, while the Baron had his jnry from his own class. As the Royal Courts and not the local courts administered justice, the criminal law of England became uniform, an enormons advantage.

If we in Ontario have forgotten the merits of the jury we have not failed to remember and act upon the spirit of tbe next section. "Nulli vendemus, nulli negabimus, nulli differimus, rectum aut justitiam."[21] I do not know that anywhere in the English-speaking world is it charged or if charged generally believed, that jnstice in the Courts is sold, seldom is it thought that justice is absolutely denied; but is there no country, no State where justice and right are delayed? And is not the delay of justice, a denial of justice? Is not even the time taken up waiting for a hearing, a denial of justice? Not only does hope deferred make the heart sick but delay often produces irreparable loss—not only is the law blamed and the judges cursed, the administration of justice brought into disrepute—a public loss and calamity—but there often is private loss, private calamity. That being so in civil matters, not less important is reasonable speed in criminal cases—punishment loses half its effect if not promptly administered, and no one gains by delay but the criminal and his lawyer. In the Dominion we think that if a murderer is not hanged within a year of his crime he has the right to complain that he has been deprived of his rights under Magna Carta.[22]

In connection with this should be read the earlier section "Nihil detur vel capiatur de caetero pro Brevi

Inquisitionis de vitâ vel membris, set gratis concedatur et non negatur." [23]

In the change in criminal proceeding brought about by subsequent legislation, this clause became useless and almost unintelligible; but it was long a living and important reality. One committed to gaol on a charge of crime might be imprisoned a long time before trial; and at the trial it might appear that there was no foundation for the charge. In view of this possibility, the law provided that he could sue out a Writ of Inquisition—Breve de Odio et Aciâ or de Bono et Malo—upon which the Sheriff must inquire whether he had been committed on just cause of suspicion or from hatred and ill-will (odium et aciam)—if the latter turned out to be the case, the prisoner had a right to be admitted to bail. [24]

This provision of Magna Carta throws a lurid light on the practices of the Royal Officers whose duty it was to issue these writs; and of course, the writ itself was the early predecessor of the writ of Habeas Corpus (which did not come into general use until about the end of the 16th century).

The unlawful taking by the King or his officers of the property of the subject is restrained by several sections—the "Relief" to be paid on the death of those holding direct from the King is kept down to the "antiquum relevium," the ancient relief [24a]—towns or private individuals were not to be obliged to build bridges or river-embankments except such as they had been accustomed to build as of right [25]—only reasonable amerciaments were to be assessed and these not to deprive a merchant of his goods or the villein or

laboring man of his cart—"for trade and traffic" says Coke "are the livelihood of a merchant and the life of the commonwealth"; and it would be brutal to take away the laborer's cart and make the miserable creature carry his fertilizers on his back.[26]

"Omnes Comitatus et Hundredi, Trethingii et Wapentachii sint ad antiquas firmas, absque ullo incremento, exceptis Dominicis maneriis nostris."[27]

The City of London and all other Cities, Towns, Burghs and Ports were to have all their ancient liberties and free customs in all respects.[28] Custom is the life of the law.

While purveyance continued to show its evil head for some centuries later, (for it was not formally abolished till after the Commonwealth), much of its evil was destroyed by the Charter—"Nullus Constabularius vel alius Ballivus noster capiat blada vel alia catalla alicujus, nisi statim inde reddat denarios aut respectum inde habere possit de voluntate venditoris."[29] The King had to have provisions, fuel, etc.; but his officers were thenceforward to pay on the spot for it (unless the owner voluntarily gave credit) and the immediate payment of "denarii" has a wonderfully quieting effect both on the subject who must give up his goods a[illegible] the officer who might be tempted to exceed his mas[illegible]'s necessities.

All this is rudimentary Eminent Domain; but we do not at the present time recognize that there is that necessity to supply the personal wants of the king which characterized the ancients—indeed the whole frame of society has changed, open markets and the laws of supply and demand have made it possible for

the king to procure his supplies without forcing an unwilling subject.

Where there is a real necessity as for land in a certain place, the head of the State may still expropriate, but as in Magna Carta, he pays *denarios* down.

The corresponding practice of taking the use of the common man's horses and carts for carriage of the king's goods was stopped by the Charter—"Nullus Vicecomes vel Ballivus noster vel aliquis alius capiat equos vel carrettas alicujus liberi hominis pro carragio faciendo, nisi de voluntate ipsius liberi hominis." [30] We cannot allow the King to starve but he must send for his necessaries and not compel us to take them to him.

By far the most important provision of the Charter, although it is certain that none of the parties, King, Bishops, Barons, thought so, is that which is the foundation of all freedom in a monarchy, that which gives control of the purse—"Nullum Scutagium vel auxilium ponatur in regno nostro nisi per commune consilium regni nostri * * * ." [31]

The Commune Consilium, the Common Council, at this time was the body of tenants *in capite*, tenants holding directly from the king, and qualified simply by virtue of that tenure. The king looked for his "aids" to his tenants in chief, and this clause provided that they, not he, should raise the aid, should grant him money. But the principle was fixed—no money was the king to have from his people except such as they were minded to give him. The time had not come when the Common Council was to develop into a Parliament, but it was to come, and when it came, the principle

of Magna Carta was not forgotten; Parliament held the purse strings and the king must look to the Commons for money to carry on his wars. Thus it was and is that Parliament in fact declares war, for it must supply the means to carry it on—and thus the Congress of the United States is wholly seized of all questions of peace and war.[32] In some nations, the king may alone declare war, at least if the war be defensive; he judges whether it is defensive, and if he wants war, it is sure to be defensive.

While the Barons thus clipped the wings of the Royal power, the mesne Lords, the inferior Lords of the fee were also checked in their illegal demands upon the terre-tenant. "Nos non concedemus de caetero alicui quod capiat auxilium de liberis hominibus suis, nisi ad corpus suum redimendum et ad faciendum primogenitum filium suum militem et ad primogenitam filiam suam semel maritandam; et ad haec non fiat nisi rationabile auxilium."[33] This was in reality to fix the amount of rent for which the immediate occupant of the soil was to be liable.

While merchants were to be free to come into and go out of England and to buy and sell, and foreign merchants were in time of war to be treated as well as English merchants were by the hostile belligerent[34] (for commerce was the life of the nation), care was to be taken for one set of weights and measures, common to tho Kingdom—"Una mensura vini sit per totum regnum nostrum et una mensura cervisiae et una mensura bladi, scilicet quartarium Londonii: et una latitudo pannorum tinctorum et russettorum et halbergettorum,

scilicet, duae ulnae infra listas. De . . nderibus autem sit ut de mensuris."[35]

Subjects also were to be allowed to go out from England and to return safely and securely by land or water "salvâ fide nostrâ," saving their allegiance, unless it be in time of war.[36] This "salvâ fide nostrâ" is very important—at the Common Law of England, no subject could without the will of the Sovereign divest himself of his allegiance—"Nemo exuere patriam possit"; and this proviso was intended to preserve the right of his Sovereign and country to the faithful allegiance of the natural born subject.

It will be remembered that there has been a claim made that the war of 1812-14 was due at least in part to the practice of Britain seizing and "pressing" her natural born subjects who had become American citizens; this practice was based upon the Common Law of England (and of the United States) as laid down by all text-writers, English and American, and affirmed by the Supreme Court of the United States from the first and as late as 1830. The Treaty of Ghent was silent on the subject. Britain refused to give up her right; the negotiations between Webster and Ashburton in 1842 effected nothing as to this and Britain retained her right until 1870. The principle is not very unlike that principle vigorously disputed but still more vigorously and successfully maintained half a century ago that an American State cannot leave the Union—"Nulla natio exuere patriam possit." It never was contended by any English-speaking people that a subject might on becoming a citizen of the United States obtain permission to retain his former allegiance at

the same time and so in case of dispute be a traitor to one country of his allegiance or the other; that discovery was made by another nation whose conception of international law and international decency all know, because it is the marvel of the ages—I do not add, the admiration of the world.

Certain private rights of property are protected; the widow has her quarantine and her dower free from her deceased husband's debts and is not to be forced to marry that she may find a protector—thereby a *status* is secured to her a little higher than that of a cow.[37] Orphan children are not to be defrauded of their heritage by guardians who take charge of their estate during their infancy, whether the guardian be a kinsman or a person appointed by the king who is *parens patriae;* and if the father die indebted to the Jews or others, the children must first be provided with necessaries and the debt paid out of the residue and in any case no interest is to be paid on the debt as long as the heir is under age.[38] This is not wholly unlike the homestead law of some States and Provinces; and indicates a consideration for the manhood of the kingdom before commercial considerations.

A vivid light is cast upon the state of society of the time by the following section—"Si aliquis liber homo intestatus decesserit, catalla sua per manus propinquorum parentum et amicorum suorum, per visum Ecclesiae distribuantur; salvis unicuique debitis quae defunctis ei debebat."[39]

The man who died without a will having no longer any use for his chattels and not having expressed his wishes as to their destination, was considered to have

abandoned them, and anciently the king became entitled to them as "*parens patriae*"—after a time the kings gave these abandoned goods to the Church to do therewith what was best for the soul of the dead man; the Bishop was accountable to no one for his disposition of these chattels, too often not even the poor had any advantage from them, and rarely did the widow and orphan have any share. Creditors had no possible chance of being paid; the Church took all.

This section enables creditors to be paid and the remainder of the goods divided by the hand of near relatives and friends—our "Administrators."

Unfortunately this provision was more honored in the breach than in the observance; flagrant abuses continued, the church was aggrandized, the creditors, widow and orphan were defrauded for many years longer until the Statute of Westminster II in 1285 commanded that creditors should be paid, and a subsequent Statute in 1357 directed that the estate should be administered by the nearest and most lawful friends of the deceased.[40] This injustice therefore existed for nearly a century and a half after its abolition had been solemnly provided for; during all which time, they who "sent widows away empty" were high in the Church and often in the State—whether or not they for a pretence made long prayers, they braved the woe pronounced by the Master upon those "who devour widows' houses."

Other and more public wrongs were directed to be righted. Some living on the Thames and other rivers, built weirs across the stream with a narrow sluice at their own side of the stream; the fish with

which the English rivers at that time teemed were forced in their passage up or down to take to the sluice; there they were caught in shoals to the detriment of the other Englishmen living on the river and having an equal right to catch fish. These weirs, "Kydells" they were called, were ordered to be removed throughout all England—similar structures were allowed however at the coast where no man's right was interfered with. [41]

In Canada and, I presume, in the United States, those who build dams on streams are bound to provide some means whereby fish may make their way up and down—this is simply preserving the riparian rights of everyone who has land on the stream.

Much land had been withdrawn from cultivation and turned into forest—the terrible New Forest of the Conqueror is the best known example, but other forests were made. The deer and other wild animals were the property of the king and must not be killed on pain of mutilation, even though they should be found destroying the crops of the unfortunate farmer—a forest was a curse to everybody but Royalty and a few favorites. King John undertook to disforest all forests which had been made in his time and to abolish all evil customs of Forest and Warrens and the officers in charge of them. Moreover all fences whereby his subjects were kept from the rivers, the king was to remove at once.[42]

The Barons well knew that as soon as the king might think it safe to break his contract, he would be liable to do so—they saw to it that those who had been most active in wrong-doing in the king's service were

to be sent out of the kingdom; but a more important provision was made concerning his mercenary army: "Et statim post pacis reformationem, amovebimus de regno omnes alienigenas milites, balistarios, servientes stipendarios, qui venerint cum equis et armis ad nocumentum regni."[43]

And ever since (as indeed before,) a large standing army has been looked at askance, as a likely instrument of oppression and tyranny in the hands of an unscrupulous monarch; all danger has been avoided by placing the military power below the civil power, a plan that would horrify the heroes of Zabern.

Knowing that they and their people must suffer in all cases of conflict with the neighboring peoples, the Barons stipulated for conciliatory measures toward Llewellyn of Wales and Alexander of Scotland, for the delivery up to the Welshmen of any lands wrongfully taken from them by the king, by his brother Richard or his father Henry II[44]—the first time perhaps in English history that foreign affairs were thus interfered with, but by no means the last.

Where war is not entered on without an impulse from the people or without "their previous knowledge or approval," there will be few unnecessary wars.

"We are at the beginning of an age in which it will be insisted that the same standards of conduct and of responsibility for wrong done shall be observed among nations and their governments that are observed among the citizens of civilized states"; nothing in my opinion will do more to prevent wilful wrong internationally than giving those who must suffer, the right of declaring through their representatives

whether they will go to war. "Where public opinion commands, and insists upon full information concerning the nation's affairs," right is in most cases likely to be done.

The hundred years of peace between the United States and Britain have been made possible only by both peoples standing by their pledged word and by their disputes being fought out in the open. Both have said

> A scrap of paper where a name is set
> Is strong as duty's pledge and honor's debt;

and both have avoided intrigue and cunningly contrived plans of deception and aggression—they felt and knew that any advantage obtained by fraud or cunning would be a real detriment not only to the world at large but to themselves. As in the past so in the future, God grant that these nations filled with the spirit of Magna Carta and with the consciousness of true brotherhood, may be toward each other and toward the world, open in their aims, honest in their statements, true to their pledged faith, for so the world will be bettered in their betterment.

Above all, be it ever remembered in the darkest days to come,

"Only free peoples can hold their purpose and their honor steady to a common end and prefer the interests of mankind to any narrow interest of their own."

NOTES

1 A few years ago, in considering the power of the Legislative Assembly of the Province of Ontario to take away the property of one and give it to another, I said:— "the Legislature within its jurisdiction can do everything which is not naturally impossible and is restrained by no rule human or divine • • • The prohibition 'Thou shalt not steal' has no legal force on this Sovereign body • • We have no such restriction upon the power of the Legislature as is found in some States." Florence v. Cobalt (1908), 18 O. L. R. 275, at p. 279. The late Goldwin Smith made a spirited (if ignorant) attack upon my judgment, basing much of his objections upon Magna Carta. In a subsequent case, Smith v. London (1909), 20 O. L. R. 133, Magna Carta was urged in argument, and I took occasion to point out what Magna Carta has and to show that many of its provisions have become obsolete or have been repealed. In considering this case, I found (or made) occasion to examine Magna Carta with some minuteness both in its letter and in its spirit—some of the results of this examination appear in this Address.

2 The quotation is from my judgment in Smith v. City of London (1909), 20 O. L. R. 133, at p. 140.

3 Cromwell's fling at Magna Carta is mentioned in Campbell's Lives of the Chief Justices, Vol. I, p. 433. Kelyng's will be found in the same volume, p. 509, but more fully in 6 State Trials, p. 995. Their jingling jibe is amusing to a not unusual type of mind, but too coarse for our present polite society. It is no wonder that the Grand Committee of Justice of the House of Commons reported "That in the place of Judicature, the Lord Chief Justice [Kelyng] hath undervalued, vilified and contemned Magna Carta, the great preserver of our lives, freedom and property." 6 St. Tr., 995.

4 An objectionable practice is not uncommon in the United States of speaking of Sir Edward Coke, Sir Matthew Hale, etc., as Lord Coke, Lord Hele, etc.—I have even seen "Lord Cockburn." True, Coke, Hale and Sir Alexander Cockburn were Lords Chief Justices, and were in their Courts addressed as "My Lord," "Your Lordship," but they were not Peers. In olden days it was not unusual to speak of "My Lord Coke," etc., but that custom is as dead as the contemporaneous custom of speaking of Judges as "the Reverend."

6 Pope's Essay on Man, Epistle iii, ll. 303-4.

6 I who am neither Angle nor Saxon, yet call myself "Anglo-Saxon" in the sense used here, *i. e.*, "English or having the same language and the same conception of government, etc., as the English."

7 It does no great harm to speak of King George V as King by the Grace of God, so long as we carefully bear in mind as we, the British folk, do that we mean and he knows we mean and the fact is that he is King by Grace of an Act of Parliament.

8 Of course, I refer to the epoch-making Address of the President of the United States to Congress on Tuesday, April 3, 1917—O faustum et felicem hunc diem! Had Charles I not shown that it was impossible to rely upon his pledged faith he would never have been executed. Yet there can be no doubt that, entertaining the views he did of the origin and character of royal power, he would have regarded himself as recreant to the trust given him by God, had he kept the promises made to his subjects which he had been forced to give.

The President's statement just quoted is in my opinion the most pregnant deliverance in this generation—no one but a historian would have thought of it, no one but a statesman made it the basis of action. I am quite sure its tremendous significance will display itself in the future of the world.

9 "The popularity of this Court [the Curia Regis] is attested by the number of fines which litigants paid for writs, for pleas, for trials, for judgment, for expedition or for delay." Holdsworth, History of English Law, Vol. 1, p. 27. All these were "honest graft" in the opinion of the king and his officers. Even in the time of the Plantagenet Edwards and later, "The King's rights to escheats and forfeitures and the chattels of felons seem sometimes to interest the judges almost as much as the due maintenance of law and order." Holdsworth, History of English Law, Vol. III, p. 242. The learned author puts the case very mildly indeed: I should have reversed the comparison and said, "Sometimes the due maintenance of law and order seem to interest the judges almost as much as the King's rights to escheats and forfeitures and the chattels of felons."

10 The right of Purveyance, as it was called, "was a right enjoyed by the Crown of buying up provisions and other necessaries by the intervention of the king's purveyors for the use of his royal household at an appraised valuation in preference to all others and even without the consent of the owner." Blackstone Comm., Book I, p. 287. This right will be spoken of more at length later on. Queen Elizabeth was a notorious sinner in the practice of imposing herself as a guest on her subjects, but the custom is noted of many monarchs to act in this way.

I have in the American Journal of Criminal Law for 1917 given an account of a trial for witchcraft arising almost directly from a visit of Edward II and his Court to the Prior of Coventry.

11 Thomson, p. 7; (XVII, 8). See his notes, pp. 197, 198, "Common Pleas shall not follow our Court, but shall be held in some certain place."

12 I am not unmindful of the Justices in Eyre; no one can read of the proceedings berore Justices in Eyre without seeing that much of their duty consisted in procuriug money for the King: very many of those who came before them were *in misericordiâ*, in mercy, and liable to pay a fine. It might be noted that while the Court of Common Bench generally sat at Westminster, it occasionally sat elsewhere, *e. g.*, at York in the reigne of Edward III and Richard II; at Hertford in that of Elizabeth. Edward III claimed the right to have it sit where he pleased, and apparently had the claim allowed. Holdsworth, History of English Law, Vol. 1, pp. 74, 75.

Of course, the Exchequer always sat at Westminster where its offices, recorde and pipe-rolls were kept.

13 Thomson, p. 84 (XLV, 42). "We will not make Justiciaries, Constahles, Sheriffs or Bailiffs except of such as know the law of the realm and are well disposed to obey it." Thomson, p. 240, says, "In the Statutes of King Ethelred it is ordained that 'a Judge who ehall give any unjust judgment, shall pay to the King CXX shillings unless he be heard to swear that he did not know how to judge rightly' [I may remark parenthetically that I fancy the chances would be 100 to 1 that he would not be "heard" so to swear and thus deprive the King of 120 shillings—at least $1000 of present value]. The Laws of Canute add that he shall be dismissed from his legal dignity if he do not redeem it from the King, according as it shall be allowed him." While a Judge acting within the powers of his office is protected from action, he may be removed on the address of both Houses of Parliament in England and Canada—or impeached in the United States. More than one Lord Chancellor has suffered condign and more, speedy punishment. "In the time of King Richard II, Earl Typtoft, a Chancellor," says Thomson, p. 240, "was even beheaded for acting on the King's warrant against the law:" but Lord Campbell knows him not. Ex-Chancellor Arundel in that reign was impeached and convicted but escaped death as he was an ecclesiastic; and unfortunate Simon de Sudhury was beheaded on Tower Hill by Wat Tyler and Jack Straw; but that was on general principles, the same general principles enunciated later hy "Jack Cade the Clothier" and "Dick the Butcher," namely, "the first thing we do, let's kill all the lawyers." King Henry VI, Act 4, Sc. 2. It is almost if not quite certain that the person referred to as Earl Typtoft,

was John Tiptoft, Earl of Worcester, who was a Commissioner of Oyer and Terminer, *i. e.*, a Judge at the Criminal Assizes: he was Lord High Treasurer and Chief Justice of North Wales: as Constable he tried and sentenced to be hanged several Lancastrians and when the wheel turned and Edward IV fled, the vengeful votaries of the Red Rose caused his head to be struck off. He was appointed Chancellor of Ireland in 1462 (or, as the D. N. B. says, 1464) by his grateful sovereign: it does not appear whether he ever sat as such. His execution was not for corruption, but was purely political. See D. N. B., Vol. 56, pp. 411-414; Haydn's Book of Dignities, p. 575.

The impeachments of Francis Bacon, Lord Vernlam and of Lord Macclesfield are well known; and Lord Westbury had a rather narrow escape.

Thomson goes on to say, If a Judge "who has no jurisdiction of a cause give judgment of death and award execution, the Judge and the officer who executes the sentence are both guilty of felony." There was a very curious case on this Continent.

When Canada passed under the British rule, Detroit was surrendered and Lieutenant Governors were sent out to command "Detroit and its Dependencies." These Lieutenant Governors or Commandants took it upon themselves to appoint Justices of the Peace, and in 1767 one Philip Dejean was so appointed: he also received a Commission from the Commandant, Major Bayard, as "Second Judge" to hold a "Tempery Court of Justice to be held twice in every month at Detroit, to Decide on all actions of Debt, Bond, Bills, Contracts, and Trespasses above the value of £5 New York Currency." (In New York Currency, a shilling was 12½ cents—a York shilling or "Yorker" still in vogue on the north shore of Lake Ontario in my boyhood, fifty years ago. £1=20s=$2.50, £5=$12.50.)

When Henry Hamilton was sent as Lieutenant Governor in 1775, he allowed Dejean to continue in his Court as Justice of the Peace, and Dejean went far beyond the limits of the authority of a Justice of the Peace. We are told that a man and woman were tried in 1776 by Dejean with a jury, six English and six French, on a charge of arson and larceny, and convicted of the larceny, but the jury "doubted of the arson." The man was executed, it is said by the hands of the woman who thus bought her freedom. The attention of the authorities at Quebec was drawn to the state of matters in Detroit by these extraordinary proceedings, and warrants were issued for Governor and Justice. The Grand Jury at the Court of King's Bench at Montreal on Monday, September 7, 1778, presented Dejean for "divers unjust & illegal Terranical & felonious Acts" during 1775, 1776 and 1777 at Detroit, and Henry Hamilton the Governor for that he "tolerated,

suffered and permitted the same under his Government, guidance and direction''—hence the warrant.

The stirring times following the American invasion of Quebec were on, and the offenders escaped immediate punishment.

By letter of April 16, 1779, Lord George Germain, Secretary of State for the Colonies (afterwards Viscount Sackville) said ''The presentments of the Grand Jury at Montreal against Lieut.-Gov. Hamilton and Mr. Dejean are expressive of a greater degree of jealousy than the transaction complained of in the then circumstances of the Province appeared to warrant. Such stretches of authority are, however, only to be excused by unavoidable necessity and the justness and fitness of the occasion.'' He therefore ordered that the Chief Justice should examine the evidence of ''the Criminal's Guilt, and if he be of opinion that he merited the Punishment . . . . tho' irregularly inflicted . . . a 'nolle prosequi' '' should be entered. This was done.

See my Address before the Michigan State Bar Association, June, 1915, ''The First Judge of Detroit and his Court.''

14 Anthony Ashley Cooper, Lord Shaftesbury, was the last non-lawyer to reach the Woolsack: he was appointed Lord Chancellor in 1672 by Charles II, and at once proceeded to make a fool of himself, as all interested may read in Campbell's Lives of the Lord Chancellors, Vol. III, pp. 253 sqq. Sir Christopher Hatton had been appointed by Queen Elizabeth apparently for his skill in dancing (1587); but Shaftesbury's appointment was for political reasons of the most corrupt kind—no political machine, Tammany or other, could give points to the ancient English statesman. But no king or cabinet ever again ventured to appoint a lay chancellor after Shaftesbury: and no one has ever triumphed for long who showed contempt for the gentlemen of the Bar. Lawyers are quick to resent and have long memories.

15 The B. N. A. Act (1867), 30-31 Vict., c. 3, s.s. 97, 98 (Imp.): R. S. O. (1914) c. 58, s. 3. The County Courts are local Courts of Record of inferior and limited civil jurisdiction: but the County Court Judges have very extended criminal jurisdiction.

16 On this Continent, for many years the Second Chamber of the Legislature (*i. e.*, the Senate) of New York, sat with some judges as the Final Court of Appeal: this came to an end many years ago without regret on any side. (The Constitution of the State of New York 1777 by Article XXXII provided ''That a court shall be instituted for the trial of impeachments and the correction of errors, under the regulations which shall be established by the Legislature, and to consist of the President of the Senate for the time being, and the Senators, and

Judges of the Supreme Court, or the major part of them''; there was no provision that the Senators should necessarily be lawyers, and the natural result was that the lay Senators sometimes thought the judgment unjust, and voted to reverse it, notwithstanding the fact that it was sound, as a matter of law.

In other words, there was a sort of referendum to selected lay Judges, as our Court of Appeals, and, as one may well judge from this Court coming to be called the ''Court of *Errors*,'' the plan did not work very well.

Nevertheless, when the second Constitution was adopted in 1821, the same provision was continued in Article V. It thus came about that from 1777 until the Constitution of 1846, which took effect in 1847, or for substantially 70 years, the State muddled along with its Court of Errors. The result became more and more unsatisfactory to the Bar of the rapidly growing State. During all this time, it is said that Court had the courage of decision to condemn laws as unconstitutional only three times. The Judges had all been appointed down to 1846, and they had been men of learning and high character, who were too often humiliated by having their judgments reversed by the Court of Errors.

In 1846, a wave of what was considered democracy swept over the State, and in the new Constitution appointed Judges were done away with, and in the place of the Court of Errors the Court of Appeals was provided; which Court consisted of four elected Judges of the Court of Appeals, and the four Justices of the Supreme Court having the shortest remaining period of time to serve before their terms expired. In other words, the Court of Appeals consisted of four Judges elected for terms of eight years, and the four Supreme Court Justices elected for the same period of time, whose terms would first expire. In this way, the senior Supreme Court Justices in matter of service constituted one-half the Court of Appeals. This Court of Appeals proved more satisfactory than the Court of Errors, but it was too fluctuating to be stable. Furthermore, there was no provision that a Justice of the Supreme Court should not sit in review of his own judgment, an oversight which resulted in Justices of the Supreme Court thinking it their duty to sit in cases they had heard in the Court below, at times, with the naturally resulting criticism of a Court that too often affirmed its own decisions. The result was that when the Constitutional Convention of 1867 sat, a provision was made which was approved by the people (all the rest of the proposed Constitution was voted down). It proposed a revision of the Court of Appeals part of the Constitution, under which the people elected a new Court of Appeals for terms of 14 years, and that able Court soon began to give satisfaction to the people and the Bar. Except as to limitations of appeals, that Court was continued in practically

its present form by the Constitution of 1894, which is still in effect. There is an additional constitutional provision, under which the Governor can appoint Justices of the Supreme Court to sit in the Court of Appeals when the calendar of that Court is overcrowded, and the Governor has exercised that power for some years by appointing four Justices of the Supreme Court to sit as Judges of the Court of Appeals.

In your adjoining State of New Jersey there are also lay judges: but I understand they are not troublesome. Nowhere else in the Union, I think, is such a practice known. Even as late as 1834 lay peers constituted a House of Lords to hear an appeal—the last occasion was June 17 of that year—in 1844 when the celebrated O'Connor case came on for decision some non-legal peers attempted to vote but on the President of the Council (Lord Wharncliffe) expostulating, they withdrew. Lord Wharncliffe said, speaking of the Law Lords, "In point of fact * * they constitute the Court of Appeal, and if noble lords unlearned in the law should interfere to decide such questions by their votes instead of leaving them to the decision of the law lords, I very much fear that the authority of this House as a court of justice would be greatly impaired." In 1883, in the case of Bradlaugh v. Clarke, (1883) 8 A. C. 354, the second Lord Denman attempted to vote but his vote was ignored. I have myself seen him sitting in the House with the Law Lords on the hearing of an Appeal, but absolutely no attention was paid to him—he was a well-known "eccentric" who died in 1894 in his 90th year. The curious in this matter may consult 17 Law Quarterly Review, pp. 367-370: Courtenay's Working Constitution of the United Kingdom, London, 1901, pp. 102, 103: Holdsworth's History of the English Law, Vol. 1, pp. 187, 188.

17 "No Sheriff, Constable, Coroners or other of our officers shall hold Pleas of the Crown." Thomson, pp. 76, 77 (XXIV, 14) (we must not be too critical of the grammar—"Rex super grammaticam.") The Coroners even later were responsible for much "Crowner's-quest law." "Is that the law?" says the Second Clown in the Churchyard to his learned and sententious colleague. "Ay marry is't; crowner's-quest law," answers the wise First Clown (Hamlet, Act V, Sc. 1): and the hash the clown made of a famous case in 1562 (Hales v. Petit, Plowden's Reports, pp. 253 sqq.) is not much worse than Coroners have been known to make of the law in more modern times.

18 "No officer shall hereafter put anyone to his law on his own simple charge without credible witnesses adduced for that purpose." Thomson, pp. 80, 81 (XXXVIII, 28).

19 "No freeman shall be seized or imprisoned or dispossessed or outlawed or in any way molested, nor will we condemn him or commit him

to prison except by the legal judgment of his peers or by the law of the realm." Thomson, pp. 82, 83 (XXXIX, 29). (Perhaps "set forth against him or send against him" more nearly expresses the sense of the original.)

20 On the introduction into Canada in 1763 by Royal Proclamation of the English law including trial by jury, the French Canadians expressed their astonishment at the English preferring to leave their rights to the adjudication of tailors and shoemakers rather than their judges, and we in Ontario have by a process of evolution almost reached the same mental attitude.

In an Address before the Illinois Bar Association, May 28, 1914, I stated as follows on this matter: "In Ontario there are very few cases in which a jury is of right; in most instances the presiding judge is master of the situation, he may try a case with or without a jury as seems best. At Toronto in 1913, in the lowest court, the Division Court, not one per cent. were tried with a jury (the official report for 1913 shows that out of 63,675 suits only 117, less than one-fifth of one per cent. were tried by a jury).

"In the next higher, the County Court, 18% were tried with a jury, and in the Supreme Court, 26%. In most of these cases the jury were not allowed to find a general verdict but were confined to answering certain questions of fact submitted to them by the judge, he reserving everything else to himself. In more than thirty years' experience I have known of only two appeals against the action of a trial judge in striking out a jury notice—both unsuccessful.

"The saving of time—and wind—is enormous. The opening and closing speeches of counsel to the jury and the charge of the judge are done away; in argument there are very few judges who care to be addressed like a public meeting and quite as few who are influenced by mere oratory—all indeed must *ex officio* be patient with the tedious and suffer fools gladly. Vehement assertion, gross personal attacks on witnesses or parties, invective, appeal to the lower part of our nature, are all at a discount; and in most cases justice is better attained, rights according to law are better ensured. Moreover, during the course of a trial a very great deal of time is not uncommonly wasted in petty objections to evidence, in dwelling upon minor and almost irrelevant matters which may influence the jury, wearisome cross-examination and reiteration, etc., all of which are minimized before a judge.

"But it is never to be forgotten that the courts belong to the people, and the wishes—even the prejudices—of the people must be borne in mind. If for any reason the body of the people were to come

to the opinion that a judge trial was not a just trial, justice would not be satisfactorily administered if that form of trial were adopted. There I leave the matter."

In criminal cases the proportion of cases tried by a jury with us is small, although in most cases the accused has the option to be tried by a jury if he so desires; in murder and a few other cases, a jury must try.

Jury trial was once and for long a real bulwark of liberty, particularly in cases of alleged offences against the State or King: whether it is still the Palladium of liberty every people must judge for itself. It seems to me that if our liberty gets in such a bad way as to require a Palladium, the Jury system will no more save it than the original Palladium saved Troy. Perhaps, *sub judice lis est.*

21 "To none will we sell, to none will we deny or delay right or justice." Thomson, pp. 82, 83 (XL, 30).

22 I may be permitted to add here an extract from the Address mentioned in Note 20 supra. Speaking of the long drawn out criminal trials reported in some States, I said:

"Is all this good for the State?

"Of course, if the people really want that sort of thing they must have it; but do the people really want it? Of course the criminal classes, the potential criminal, the lawyer who is paid by the length of time he can make a case last or who seeks glory from technical ingenuity or florid rhetoric, the yellow and near yellow paper and its readers, all are in favor of it. But the man who has to pay for it, the sober-minded citizen who takes an interest and a pride in his country, who is jealous of her honor and reputation—what of him? and is he not to be considered?

"If a criminal trial is a game, well and good. The fox hunter who was expostulated with on the cruelty of his sport said, "The men like it, the horses like it, and nobody can be certain that the fox does not like it." But even fox-hunters pay for their game out of their own pocket, and if a fox does get away now and then, there is no great harm. We in Canada are too poor to be willing to pay for such a sport and too busy to be willing to waste weeks on an investigation for which days or even hours are ample. We think that except in very grave offences, such as murder and the like, an accused should have the option to be tried by a judge and without delay, instead of waiting for a jury sittings. If one charged with crime be desirous of trial by jury we allow him a copy of the jury panel in sufficient time to make inquiries as to any objection to the jurymen, and when a trial is set we insist on it being proceeded with, with due diligence and reasonable speed. The first time I met your ex-president, Mr. Taft, he spoke

of the intolerable delay in criminal trials in the United States. I told him that a short time before, I had gone to a Canadian city to hold the Assizes on the same day that a few hours further along the same line of rail but across the international boundary, a judge began to get his jury in a murder case; that I had tried four criminal cases and seven civil cases, and was home in Toronto before my American brother had half his jury. I told the New York Bar Association that in my thirty years' experience I never saw it take more than half an hour to get a jury. Let me add that I have never but once heard a proposed juryman asked a question about reading newspapers, forming an opinion, or anything else. I have never known even a murder case (except one) take four days; very few indeed take more than two; none tried before me has taken as much as two full days; and medical or other experts are not allowed to drag out proceedings. We think four on each side enough except in special circumstances and we keep these well in hand.''

23 ''Nothing is to be given or taken hereafter for the Writ of Inquisition of life or limb; but it is to be given gratis and is not to be refused.'' Thomson, pp. 80, 81 (XXXVI, 26).

24 Blackstone Commentaries, Bk. III, pp. 128, 129, gives a fair account of this Writ de Odio et Aciâ (Atiâ or Athiâ).

24a Thomson, pp. 66, 67 (II, 1): as to ''Relief'' see Blackstone Comm., Bk. II, pp. 65, 66.

25 Thomson, pp. 76, 77 (XXIII, 11).

26 Thomson, pp. 74, 75, 76, 77, 201, 202 (XX, 9).

27 Thomson, pp. 76, 77 (XXV): ''All Counties and Hundreds, Trithings and Wapentakes shall be at the ancient rent, without any increase, excepting in our Demesne manors.'' (This is somewhat differently worded in McKechnie's work.)

28 Thomson, pp. 72, 73 (XIII).

29 Thomson, pp. 78, 79 (XXVIII, 18): ''No Constable or other officer of ours is to take grain or other goods from anyone without forthwith paying cash for them unless the vendor willingly gives credit.''

The Statute (1660) 12 Car. II, c. 24, finally abolished Purveyance and many other feudal absurdities: but the credit for this should be given to the Commonwealth which rendered the whole feudal system offensive to the nation at large—the influence of the Commonwealth upon English legislation and law generally was very great, and in every respect beneficial—perhaps this influence for good has not even yet received full recognition.

''Royal Progresses'' continued to survive for a time: but now the King pays for what he gets like any one else.

30 Thomson, pp. 78, 79 (XXX, 20): "No Sheriff or officer of ours, or any one else is to take the horses or carts of any freeman for the purpose of carriage without the consent of the said freeman."

31 Thomson, pp. 72, 73 (XII, 32): "No scutage or aid shall be imposed in our realm except by the Common Council of our Kingdom * * " (There are trifling exceptions depending upon feudal law and custom but of no moment at the present and of little at any time.)

32 This is, of course, the origin of the "constitutional rule" that all money votes must originate in the House of Commons—and that the other House cannot amend or change them. In Canada, the British North America Act (1867) specifically provides that "Bills for appropriating any part of the public revenue or for imposing any tax or import, shall originate in the House of Commons." Sec. 53. This is intended to crystallize the practice at Westminster and to make it plain that the people hold the purse-strings. Sometimes for convenience bills involving public expenditures are introduced in the Canadian Senate: the money sections are printed in the bill so as to make it intelligible, but these sections are always struck out in Committee. When the bill is sent up to the Commons, these sections are in red ink or italics and supposed to be black and inserted in the Commons.

While by Rule of the House of Commons copied from the celebrated Rule passed by the Imperial House of Commons, July 30, 1878, (9 E. Com. J. 235, 509) when the House of Lords rejected the Paper Duties Bill, the "aid and supplies granted to His Majesty . . . are the sole gift of the House of Commons . . . and . . . such grants . . . are not alterable by the Senate," instances have been known, not many in number and "not to be drawn into a precedent," that no amendment in the Senate has been acquiesced in by the Commons—for example, when such a course has been found necessary so as not to delay the passage of a bill at a late period of the session.

The usual course, however, is to give the Senate an opportunity of withdrawing its unconstitutional interference.

Where as in the United States both Houses are elected, the necessity for such a constitutional rule is not so manifest.

33 "We will not hereafter give leave to anyone to exact aids from his freemen except to ransom himself, to make his eldest son a knight and to give a dowry once to his eldest daughter: and not even these unless the amount is reasonable." Thomson, pp. 72, 73, 74, 75 (XV, 6). It was wholly natural that the Lord should be redeemed from captivity and his eldest son should be made a soldier: and in the then existing condition of English society (not yet wholly obsolete) a dowry went with the bride: but the tenants were to be called upon to pay dowry

only for the eldest daughter and for her only once (not because a divorce court was then flourishing but because war public or private was at once the business and the recreation of a gentleman, a raid on the Scots or the Welsh or even a disagreeable neighbor was the existing equivalent of a hunting trip to the Maine or Canada moose grounds and the mortality was quite as high as amongst our deer-hunters).

34 Thomson, pp. 82, 83 (XLI, 31).

35 Thomson, pp. 80, 81 (XXXV, 12): "There shall be one measure of wine throughout the whole Kingdom and one measure of ale and one measure of grain, that is the quarter of London, and one breadth of dyed cloth and of russet and of halberjects, namely, two ells within the lists. Also it shall be the same with weights as with measures."

This is the origin of the "Wine Measure," the "Ale or Beer Measure," the "Dry Measure" and the "Cloth Measure," which those of my age will remember learning at school. The "quarter" is eight bushels, still used in the English corn market, although on this Continent we always use the bushel. Russets were an inferior kind of cloth dyed a dull reddish hue with bark (not unlike the "butternut" of American and Canadian pioneers—I have worn it) used generally by monks and rustics: halberjects, hauberjets, haubergets or haubergits, a very thick and coarse mixed English cloth of various colors (not unlike our coarse tweeds)—the precise meaning does not seem to be clear. See Murray's New English Dictionary. The "ulna" was the "English ell" of 45 inches: the "lists" were the selvage strips (the word is used by Shakespeare in this sense).

It is unfortunate that the provisions of this section were not put into full effect: and also unfortunate that so far as they were put into effect, the simple decimal division was not employed. We must not despair of seeing such a system become universal in commerce as it is (almost) universal in science.

36 Thomson, pp. 82, 83 (XLII, 33). The claims of the United States and Britain at the outbreak of the War of 1812 are discussed in an Address by Hon. John W. Foster at the meeting in Washington, December 15, 1910, of the American Society for the Judicial Settlement of International Disputes and in a series of articles by the Editor, Col. Asa Bird Gardiner and myself in the "Army and Navy Gazette," New York, May 17, June 7, July 19, November 1 and November 29, 1913. I have in my articles quoted the authorities rather fully. Webster's Works, Vol. V, pp. 145-6, 540; Vol. VI, p. 318; Winsor, Vol. VII, pp. 483-488. Mahan, Vol. I, p. 3, may be looked at.

37 Thomson, pp. 68, 69, 70, 71 (VII, 4; VIII, 17; XIII, 35).

38 Thomson, pp. 70, 71, 72, 73 (X, 34; XI, 35).

39 Thomson, pp. 78, 79 (XXVII, 16): "If any freeman die intestate, his chattel property shall be distributed by the hands of his nearest relatives and friends under the supervision of the Church, saving to everyone the debts which the deceased (the spelling should be 'defunctus,' as McKechnie has it) owed him."

40 The Statute of Westminster II is 13 Edward I, c. 19, in 1285; the subsequent Statute, 31 Edward III, St. 1, c. 11, in 1357.

41 Thomson, pp. 78, 79 (XXXIII, 23). "Kydelli" are said to be still in use in Devon and Cornwall on the seacoast under the name of "Kettles" or "Kettlenets." Thomson, p. 214.

42 Thomson, pp. 84, 85, 86, 87 (XLVII, 47; XLVIII, 39).

43 Thomson, pp. 86, 87 (L, 40; LI, 41). "And as soon as peace is restored, we will send out of the kingdom all foreign knights, crossbowmen, mercenary soldiers, who have come with horses and arms to the injury of the kingdom." (McKechnie inserts a comma between "servientes" and "stipendiarios," making both words nouns, he translates "serjeants and mercenary soldiers"—I think incorrectly.)

44 Thomson, pp. 90, 91, 92, 93 (LVI, 44; LVIII, 45; LIX, 46).

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(The Academy does not possess a copy of those marked with an asterisk.*)

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[illegible] of Foreign Missions..Charles J. Ingersoll (4).

(1) "An address delivered at the opening of the Law Academy of Philadelphia before the Trustees and Members of the Society for the Promotion of Legal Knowledge, February 21, 1821."

(2) "A valedictory address delivered to the students of the Law Academy of Philadelphia at the close of the Academical year on the 22d of April, 1824."

(3) Published in the "National Gazette and Literary Register," November 22, 1826.

(4) Published in "Public Ledger," October 25, 1843.

*1846 Practice of Law Pertaining to the Sheriff's Office ..... William A. Porter (1).
1849 Profession of the Law.... William A. Porter.
1851 Want of Uniformity in the Commercial Law of the Different States.... John William Wallace.
1854 Lien of Debts of a Decedent ..... George W. Biddle.
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(1) Published in "Penn. Law Journal," vol. 5, page 193.
(2) Manuscript of this address was lost on the evening of its delivery. Martin's Bench and Bar, page 233.

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