PART III.

Explanatory Notes to the Great Charter of King John.

TO fully explain in minute detail all the different parts of the Magna Charta, would be the work of many volumes. As the reason which caused the insertion of each had its own historical birth, it would be almost an endless task to trace each one historically from its inception to its conclusion in the grant.

What I shall therefore undertake to do in this part of the work will be to concisely, and as clearly as I can, set forth and explain what each chapter of the Great Charter means. What caused it, and why, I shall not attempt to describe. For that the reader must do as I have done, study closely into the ancient English history and satisfy himself.

For the benefit of those who choose to delve deeper into this part of the subject, I will state that the information I derived upon these different chapters of the Magna Charta I obtained from the following authorities: Coke upon Littleton; Blackstone's Commentaries upon the Laws of England; Blackstone's Treatise on the Great Charters and Charter of the Forest, first London edition, 1755; the Hon. Daines Barrington's Observations on the More Ancient Statutes, fifth London edition, 1796; Christian's Notes to Blackstone's Commentaries; Coke's Institutes.

The following divisions of chapters correspond to the divisions of the Great Charter, and are thus written for convenience and easy reference.

Chapter 1.—This section provides that the Church shall be free from the control of the crown. It was for this purpose that John issued his "Charter for the Freedom of Ecclesiastical Elections" (see Part II. for the charter), and it is this charter which this chapter practically re-enacts.

This charter of John's, as by its terms, only mentioned the Church in England, had no relation to the Church in Ireland, which remained subject to the crown, as formerly, and continued so till 1495, during the reign of Henry VIII., when by act of Parliament it was decreed that all the laws of England should from thenceforth be the laws of Ireland, and their operation should be extended thereto. Whether or not it had been existent in that country before, is hard to say. It, no doubt, varied as the power and influence of the kings. Henry III. in 1216, by writ, extended his charter of that year to Ireland, but then in that charter this promise of John's in his charter is left out. The Church is, of course, declared free by Henry, but the right of election is not granted to the ecclesiastics.

Chapter 2.—According to the ancient feudal law, the lord of an estate was the real proprietor of it. The tenant who held of the Lord held it only upon condition of rendering certain services for it, and these services were mostly those of a soldier fighting in the field. They varied as to time, according to the degree of the holding. By the very ancient custom, the lord of the fee had the right, upon the death of the tenant, to regrant the land. This arose originally by reason of the peculiar service, as a tenant dying and leaving issue too young to render service, the lord granted the land to some one old enough and strong enough to fulfill the conditions pertaining to it. Afterward the change that arose in response to the demands of the heirs of the tenant, who at the time of the death of the tenant were too young to render

the proper service, was the payment of a reasonable relief, and this relief afterward became fixed through custom. This chapter of Magna Charta, which remains unchanged through subsequent grants, fixes and establishes what the relief shall be. It later became custom that the heir, upon entering upon his estate, should, in every case, pay the relief pertaining to his holding.

Chapter 3.—When the heir was in minority he was, of course, in guardianship, and, therefore, the lands were in custody of the lord of the estate. The ancient custom forbade the lord from having both the guardianship of the heir and, at the same time, his land; hence, when he assumed the rights of guardianship, the heir succeeded to his inheritance, upon becoming of age, without the payment of any relief or fine.

Chapter 4.—This chapter is meant to prevent the king from granting the land to a mercenary people, who would take from it more than it should render. Every estate had its service, which was granted by that value, and this chapter of the Great Charter was intended to prevent the taking from the estate of more than it was rated for. It also prescribed the penalties for waste and destruction which might occur by allowing the buildings to go to ruin, or by undue cutting of timber trees.

Chapter 5.—This chapter is practically an agreement on the part of the warden in charge to keep the estate in proper repair. To keep up the articles of husbandry as he found them, so that the heir, upon arriving at age, would have all that was necessary for him to have to properly till the land. The clause, "according as the term of wainage shall require," refers to the old customs of common law relating to such subject. The word wainage, being derived from a Saxon

word "wagna," meaning wagon, and the customs of wainage being those customs pertaining to carts, wagons and ploughs, or other similar articles of husbandry.

Chapter 6.—Under the feudal tenure system, the lord of an estate could prohibit his tenants from marrying without his consent. The reason for this is clear. All the tenants of a feudal lord held their land directly of him, and it was his object to have as his followers only those persons who were friendly to him, and would with willingness work his commands. To allow them freedom of marriage would in many cases have resulted in unions of great harm to him. This right he usually exercised to prevent his tenants from marrying his enemies, or any person who for any reason would be objectionable upon his estate. When this prerogative of the lord's was exercised as it was meant to be, justly, right, and with due and proper regard to the peace of his estate, it did no harm, but rather worked good. But as time went on, and so many unscrupulous men were succeeding to these vast tracts, they seized upon every opportunity that presented itself for enriching themselves, and this was one of them. By requiring in many cases the payment of large sums of money before consenting to such unions as there could be no objection to, they rendered the custom oppressive and abhorrent to the people. Frequently when military tenants married without the consent of their feudal lord, their whole estate was as a consequence forfeited.

Chapter 7—Before the conquest of England by William I., a widow had no right to marry again until one year had elapsed since the death of her husband. She was supposed to devote one year to the memory of her husband, by remaining for that period of time in mourning. She had the right to remain in his dwelling, if it were not a castle, for

forty days, and if it were a castle then some other dwelling was to be set aside for her use. During this time her dower, if it were a common law dower, was to be set aside for her. If, however, she married within this period she forfeited her dower and it was of course not set aside. The dower at common law was a third part of all the possessions of the decedent husband. But, however, a widow might be possessed of a very different kind of dower at that time, and called "dower ad ostium ecclesiæ," or dower at the church door. This was an old custom which allowed a man to endow the woman he was about to marry with whatever portion of his estate he saw fit, providing it was accepted by her, but which, however, could not in any case exceed her dower at common law. Hence any woman endowed in this manner could much more rapidly have her dower set aside for her, because in that instance it could readily be ascertained just what it was.

Chapter 8.—This chapter of the Great Charter is merely intended to prevent a widow from marrying an enemy either of the king or of the lord of whom she held. Formerly upon the lord of the estate providing and offering her a suitable spouse, she was compelled to marry him, or else lose her lands. By this chapter of Magna Charta she is not compelled to marry if she is willing to live without a husband, yet she shall not marry without the consent of the lord of whom she holds.

Chapter 9.—This is a provision to save, if possible, the lands to the tenant by enacting in effect that his personalty shall first be taken, if he have any, then his sureties, and lastly his land. This law is to-day in force in many of the States in the American Union. The personalty must first be taken in the collection of a debt, and then the realty can

be taken, but not otherwise. It was a favorite act of the military lords, when they wanted a debtor's land rather than the payment of the debt, to distrain the land for that debt, and so secure it. This chapter of Magna Charta worked a cure of this evil.

Chapters 10, 11.—Owing to the very ancient custom in England, extending back further than the time of Edward the Confessor, it was unlawful for Christians to take any sort of interest upon the money they loaned. This interest, of no matter what rate, was termed usury. As the Christians were prohibited from taking it, the custom of loaning fell to the Jews, and the enormous rate they charged, the exactions they demanded, and the hardships on the borrowers, got the Jews to be held by the Christians in the greatest hatred and contempt. This abhorrence of the Jews continued in England for very many centuries, in fact it was existent from the earliest times that we know anything of them, and continued down until nearly the fifteenth century. The crown in many instances used them as a source of revenue to itself by frequently taxing them for the right to transact their business in the different cities of England. Many were the riots and quarrels throughout the land, and particularly in London, caused by their usurious exactions.

These two sections of Magna Charta were inserted to protect the heirs and widow from these leeches, but it did not go so far as working upon them an injustice. The money they advanced was in nearly all cases paid to them, saving when in setting aside the widow's dower, it should not prove sufficient. These clauses appear only in the charter of John, and are not to be found in any of the other charters.

Having extended the provisions to cover the exactions of the Jews, the barons made the terms to include all debts for borrowed money.

Chapter 12.—This chapter is to be found in its present shape in the Charter of King John only. Henry III. in his first charter omitted all mention of it, reserving it for future consideration. In his second charter in that clause referring to it which he restores, he says that scutages and aids shall only be taken as was accustomed to be in the time of his grandfather.

Scutage itself is a tax which was levied upon and paid by all who held lands by knight's service, which sum was only to be used towards equipping and supplying the army.

By the provisions of this chapter of John's charter, the king could not levy any scutage without the consent of the Great Council, provided for in another section of the same charter.

The exact nature of aids is somewhat uncertain. They were not a feudal obligation, and were originally resorted to by the barons to recoup themselves for the oppressive taxes levied upon them by the king. Aids, therefore, seem to have been the money which was obtained directly from the tenant through the lord, and sometimes were levied by the lord himself for his own use, and sometimes by the lord by the command of the king, for the use of the king. For just what purposes the lords themselves had a right to levy aids is also in much doubt. That they seldom levied them for their own benefit seems assured, for when they did they were mostly, so far as we can learn, for the benefit of military operations. This charter of John stopped all levies of these taxes by either the king or his barons, and they were not again levied without the consent of the council, as provided for in this charter. Although Henry III. reserved to himself the *right* to levy them, he never did so, much as he wanted money. He could, so far as their legal usages were concerned, have levied scutages for use in his foreign wars, but he knew to do so would bring down upon him the united enmity of the whole

of his barons. He therefore found it the better part of wisdom to desist from a course which would only mean his ruin.

The three cases of exception noted in this chapter are reasonable ones, but the levy for their purpose was never made, as the occasion for it did not arise.

Chapter 13.—What has been said in explanation of Chapter 12 applies with equal force to that portion of this chapter relating to aids of the city of London. By the latter part of this chapter the ancient customs and liberties of London were reserved unto it, but the right of levying aids in the City of London was not reserved to the king. This is one thing he could not do, even with the advice of the Great Council.

The customs and liberties of the cities varied in nearly every town. In some cities, as in London, the right belonged to them to elect certain of their officers from among their own number free from appointment by the crown. King John granted to London the right to elect a Sheriff. Other cities had rights of a similar nature. In some cities certain kind of taxes could not be levied, etc. Those rights which they enjoyed through ancient custom or by grant were reserved unto them.

Chapter 14.—The provisions made in this chapter of Magna Charta, it will readily be seen, are those providing for the calling of the Great Council or Parliament of the nation. These provisions are not thus contained in any of the subsequent charters. By this chapter the king himself was to call into parliament all those men forming the class of Greater Barons, such as the Archbishops, Bishops, Abbots, Earls, and Barons holding in chief a whole barony undivided. At that time the highest rank of the nobility was the Earl. It was

more than a hundred years from this time when the next title of Duke was created; Marquises some time after that.

The provision for the calling of the lesser barons was delegated to the Sheriffs of the different counties. The Lesser Barons were those who held a portion or part of a divided barony. Originally the baronies consisted of a large tract of land, which, through the birth of many heirs and their subsequent marriage, caused a division of it to take place. Those holding this small portion of what originally constituted a whole barony, were termed Lesser Barons, and were not entitled to, nor did they command, the same power and respect that the Greater Barons did, hence the different mode of their notification.

In the time of Henry VII. this privilege of allowing the Greater and Lesser Barons to come into a parliament as an act of right was changed by an act passed in his time. Each county or shire, instead of sending all of its Lesser Barons, elected, out of their whole number, two to represent it. Hence the origin of the term "Knights of the Shire."

Chapter 15.—As this chapter occurs only in the charter of King John, it will not be necessary to go again into explanation of it, particularly as the subject itself is fully explained in the note to Chapter 12.

Chapter 16.—This chapter of the charter does of itself state pretty clearly what it means, as it is freed from any technicalities of any kind. It was inserted to prevent the unjust extortions levied by the kings, by their demanding of their tenants more than was the duty of the tenants to grant, and was in a measure but a restoration of the old common or feudal law of the kingdom, by which each tenant was bound to render *only* those services which pertained to his holding.

Chapter 17.—Upon this question of Magna Charta much has been written by many learned lawyers. Coke, Littleton, Blackstone, and many others have all written upon it at great length, in explanation of its purpose; and to the student who wishes to pursue it in detailed research, these are the authorities to which he must have recourse.

The reason, it is so stated, is in all probability to fix it in a definite place, so that it could be free from the influence and control of the crown. When the court followed the king, it caused much hardship and injustice to those who were compelled to seek its relief. Especially was this so in John's time, who was always on the move, and who never hesitated to exert his influence upon its members when he desired to do so. To put it in one place and to keep it there, was expected to free it from both of these objections.

Chapters 18 and 19.—The term assize contained in this chapter of Magna Charta, at that time comprised an assembly of the knights of the county, who, together with the justice, held the assize or court.

The trials of Novel Disseisin were cases tried for the recovery of lands of which any person had been unjustly dispossessed or ejected.

The trial of Mort d'Ancestre was the trial after the death of an ancestor to determine the title to property, which since the death of the ancestor, had passed into the hands of others than its real heirs.

The trial of Darrien Presentment, or last presentation, was an assize called for the purpose of determining who had the right to a presentation to a benefice, by inquiring at the assize who it was who last presented to the vacant church. The right of presentation was the right existent in certain nobles to appoint clerks to a benefice.

Chapters 20, 21 and 22.—Amerciaments were penalties levied by the nobles upon offending parties. The word itself is derived from the French "a merci," signifying the penalty laid upon the offending person who lies at the mercy of his peer. This chapter states clearly to what extent these amerciaments shall be laid. They shall not be laid to such an extent as "to deprive the man fined from giving his neighbor good entertainment," by which the word contenement, or countenance, is interpreted.

The amerciament of a merchant is to be made, "saving his merchandise," for it would be unjust to fine him to such an extent that his living would be ruined.

A provision is also made in favor of a villein, a bondman, or servant. This provision, "saving to him his wainage," which has already been explained in a note to Chapter 5, was meant to secure unto him such articles—wagons, carts, ploughs, rakes, and the like—which were necessary for him to have to earn his livelihood. These three clauses were meant to prevent the complete stripping of the offender of all vestige of property, which, had it been done, would have thrown upon the community a former working man as a pauper, and, therefore, a charge upon the community. This, in other words, was his exemption.

Chapter 23.—The purpose of this chapter was to prevent the taxation of towns or villages, or even of persons holding large tracts of lands, for the purpose of building bridges, bulwarks or embankments. During John's reign the taxations for this purpose had been excessively heavy and the people themselves derived, in nearly all cases, absolutely no benefit from the results. There was little or no necessity for new fortifications in places other than they had already existed, excepting to hold in check those barons who were fighting for the Magna Charta. Therefore they determined

that no more of them should be erected, excepting upon those places where it was right it should be, to resist the invasion of a foreign foe. For this purpose the Great Council could provide them.

Chapter 24.—This short chapter of Magna Charta was of more importance than to the casual reader it would appear. Its main object was to take away from the officers mentioned —sheriffs, constables, coroners and bailiffs—the right to hear and determine causes and disputes, which anciently they had exercised. These officers exercised great authority, espepecially the constables, or keepers of the castles. As each castle had its prison, which was in charge of the constable of that castle, the injury wrought in many cases was very severe. This clause of the charter takes from these officers all right to try any offence, and places the trial of the cause before the judges who were learned in the law.

Chapter 25.—This chapter does not appear in any subsequent charter to the one of King John.

From the time of William the Conqueror when the feudal system was instituted, all cities and towns were vested in one of the three classes, either the king, the prelates, or the nobles.

Those which belonged to the king, which he had not taken, but held by virtue of his kingly office, were called "ancient demesne." They had anciently belonged to the crown. The town of Exeter was a demesne city of William I. From his time he was accustomed to let out and rent these different demesnes and also those other properties he held by virtue of conquest. There were other properties also which he distributed to his barons, and which they in turn farmed out at a fixed rental. The purpose of this chapter

was to prevent the increase of the rental for others than those anciently held by the king.

Hundreds, trethings, and wapentakes were also sub-divisions of the county.

The hundred was the ancient division of country containing ten towns, each of which consisted of ten families.

The trething was a large division and amounted to the third part of a county.

The wapentake, which is equivalent for the hundred, was so called on account of the military discipline which was maintained there.

Chapters 26 and 27.—These two chapters relate to the right of decedent to dispose of his property,—the power he had over it by will.

According to the old common law a man's property was divided into three parts.. One third went to his wife as her dower, one third went to his heirs, and the other third he could do with as he pleased, and therefore was the subject of his will if he made one. If, however, he had no children his widow, instead of taking one third, took one half. If he were a widower, however, and had children, upon his death they also claimed an equal portion. These portions which the children under these circumstances were entitled to, were denominated their reasonable shares. The object, therefore, of this 26th chapter is to make the king a preferred creditor by recovering first out of the estate such sums of money as were due to the crown. In a measure this provision is in existence in a somewhat changed form in nearly every country to-day. The revenues and taxes due to the government, which in England is the king, are always paid first.

Chapter 27, which follows, relates only to those persons who have died intestate,—without leaving a will. By

the law of the church this was considered a very reprehensible act, as the church always expected to get a tenth through the will, and it failed in this when the decedent died intestate. Hence the old saying that one might as well die a suicide as intestate, for in either event he was eternally condemned. In the case of a suicide the estate was forfeited to the crown; in the event of intestacy to the chief lord. But in this case also time worked a change, for in many instances sudden death in battles brought forth such a condition of things that the church through its bishops was compelled to alleviate its hardships and make equitable distribution; in every case, however, where it did so, it reserved to itself the one-tenth it should have received under a will.

This chapter makes provision to guard against this condition by providing in just what manner the estate shall be distributed.

Chapters 28 and 29.—Are both very similar in their scope, and were intended to provide a remedy whereby the governors of the different castles could not levy such oppressive exactions on their tenants.

The different chapters state clearly those evils they pretend to correct and remedy, from which it would seem the customs at that time relating to castles and castle-guard were very oppressive. The duty of castle-guard was formerly a personal one only, and could not be delegated. It had to be rendered by the person who was bound by his holding to give it. This chapter allows him, if he choose, to perform it by or through a deputy, which is only a just and proper provision, it being a duty that could be performed by any able-bodied man.

Chapters 30 and 31.—These two chapters are so clear in their meaning, containing nothing of technicalities, that

any explanation on their part would be unnecessary. It is only proper to state, however, that they were inserted in the charter in order to prevent the abuse which was formerly unjustly exercised *ad libitum*.

Chapter 32.—Those who by the ancient law were convicted of high crimes were called felons. A felon was one whose crime brought upon him the punishment of death. In those times it included very many crimes, not alone murder or treason, for in the time of William the Conqueror there were nearly one hundred crimes the commission of which was punishable with death.

When a man had been convicted of felony his lands were taken and laid waste; that is, the houses and buildings torn down, the trees cut down, and the ground all ploughed up, and all and everything done to it that could be to damage and destroy it. It was then turned over to the lord of the fee from whom he held. As this destruction was wanton and needless, and only operated as a punishment on the lord of the fee rather than the felon, it was altered by custom, in that instead of the king ordering the waste to be committed, he in lieu thereof took the custody of the land for one year and a day, and at the expiration of that time returned it to the lord of the fee. In that way the king was remunerated pecuniarily for the felony, while the lord of the fee did not necessarily suffer damages.

Chapter 33.—This chapter provides for the removal of Kydells, or Wears, out of the rivers of England. Kydells, or Wears, are dams, built of stone, extending out into the river in a slanting direction, and were anciently used to force the fish in the waters to swim into a narrow enclosure, where they were more easily caught. The greatest effect they had was to pretty effectually clear the rivers of all the fish that

were in them. They, moreover, also acted as an obstruction to navigation, preventing the floating down stream of logs of wood, which was at this time the only fuel with which the people of England were acquainted.

Chapter 34.—A writ is a paper in writing issuing out of the king's court and directed to the Sheriff of the proper county, in which the Sheriff is commanded to do or perform some act therein mentioned. There are many different kinds of writs, and in that day there were more kinds than there are to-day.

The writ of *præcipe* was a writ which was supposed to grant a proper remedy to any one who was deprived of his freehold estate. When any one was thus deprived, upon making proper oath in the king's court, this writ was issued on his behalf, and the lord through whom he held was bound to make answer there to the complaint. But this should have been done in the court of the lord of the fee. But before this writ could be granted, oath should have been made that the claimant held his land directly of the king and not of the lord, otherwise a writ of "disceit" was issued on behalf of the lord, and against the party claiming the lands, upon which the lord recovered it. Therefore the effect of this chapter was to prevent any false transfer of property under color of the writ of præcipe from one lord to another.

This writ, after the granting of the Great Charter, was first brought into the court of the lord of whom the lands were held. This did not, then, deprive the lord of his hearing in his proper court and where the case should be heard.

Chapter 35.—This chapter provides for the efficient and very just laws regarding measures. It was formerly the custom that the scales were so hung that the buyer would get an

allowance of ten per cent. or twelve per cent., but this afterwards came under good laws to be changed, so that the scales should hang even. The ancient ell was a measure of about the length of one yard.

Halberjects was a very coarse and thick-mixed cloth of various colors, used principally for the dress of the monks.

Russets was also a coarse kind of homespun, and much used by the ecclesiastics.

The meaning of "two ells between the lists" refers to the width of the cloth. No cloth narrower than two ells was allowed to be sold, hence the French and German cloth, which was only half this width, was not allowed to be sold in England.

Chapter 36.—The object of this chapter of Magna Charta was to prevent the holding in prison of an offender for any great length of time without trying him for the offence for which he was accused. The similarity between the writ of inquisition and the more modern writ of habeas corpus is very considerable, and by many was considered as the prototype of our present writ of habeas corpus. The custom of keeping an offender in prison, and thus exacting from him payment for this writ, was done away with in this chapter, and it was decreed that it should be granted without charge.

Chapter 37.—There are four divisions of tenure mentioned in this chapter, viz.: Fee Farm, Socage, Burgage and Petty-Sergeantry.

Fee Farm is when the lord of an estate on the creation of any tenancy reserves to himself a reasonable rent in money or its equivalent, rather than in military service.

Socage is derived from an old French word, soc, meaning a plough-share, and refers to that portion of an estate held by a rustic, as large in extent as he with one plough could

till. It was at one time the largest tenancy in point of numbers in existence.

By Burgage "is defined to be when the king or any other" "person is lord of an ancient borough in which tenements" "are held by a rent certain." In this respect it somewhat resembles Socage and was commonly called town Socage in contra-distinction to common, or rural Socage.

Petty-Sergeantry is described by Littleton, "in holding" "lands of the king, by the service of giving him some small" "weapon of war, as a bow, a sword, a lance, etc." But as it was always given as a payment of a certain rent, it also partook of the nature of Socage and Burgage.

This chapter of the Magna Charta forbade the king from claiming by virtue of lands held on the tenure of Petty-Sergeantry (which tenure could only exist directly from him), any profits which could be derived through the land which he held in wardship for another.

Chapters 38, 39 and 40.—These three chapters, it will readily be seen, relate to the jury system.

The trial by jury, about which so much has been written, is so ancient in some of its forms that it would be difficult, if not impossible, to tell where it originated, and what the causes were. Much has been written upon it by eminent lawyers and historians, and it forms so great a subject that it would be impossible to explain in this short note the reasons and the causes that led to its enactment in the Magna Charta. It was in existence for many years before John's time. It had become pretty firmly established under the reign of Henry II., and was known in a more or less imperfect state for several centuries before his time. King Ethelred is said to have borrowed the institution from the Danes, it having been instituted in Denmark by Regnurus, surnamed Lodbrog, who commenced to reign in that country about 820. It was not

always essential that there should be unanimity of the twelve jurors, in fact in early times in civil cases a verdict of the majority was sufficient. The vote of them all being required only in criminal cases.

By putting a man to his law, is meant putting him upon his oath.

Before the granting of the Magna Charta by King John, he took his judges and court with him wherever he went, consequently the provision of the 17th chapter in this charter, that "common pleas shall not follow our court, but shall be held in any certain place" (vide note to Chapter 17).

The custom of bringing presents to the king and paying him for the adjudication of cases undetermined before that court was one of the reasons that led to the insertion of the 40th chapter. By it the king was prevented from taking either money or presents for the granting of justice by his courts.

Chapters 41 and 42.—These two chapters are clear and simple in their meaning, so clear and simple indeed that they need no words of explanation.

The 41st relates and provides for the protection of foreign merchants visiting England.

The 42d relates to the subjects of the crown, who in time of peace can go and come from the kingdom at their pleasure, and who are only under the ban of kingly refusal during times of war, because, in that case, their services would be needed in defence of their country.

Chapter 43.—The meaning of the word "Honour" in this chapter is to be a more exalted kind of lordship. All Honours were holden directly of the king, and ceased to be Honours when holden of another. Moreover, they must be created by the king, and include in their demesne the vassalage of manor lords.

The purpose of this chapter relating to them is in other respects perfectly clear, and needs no greater explanation than has been given in previous notes upon subjects relating to reliefs.

Chapter 44.—This provision for the regulation of the forests seems to have been the first act of King John relating to them. Later on, however, in the reign of Henry III., the laws governing the forests were becoming so severe and oppressive, that Henry found it necessary to grant a separate charter concerning them.

This Forest Charter is of itself of such importance that it is only second to the Magna Charta.

Chapter 45.—Prior to the time of William I., and in fact for many years after, all the lawyers there were, were the ecclesiastics. They were the only persons who devoted themselves to the study of the laws, consequently were always appointed to administer them. William the Conqueror, who considered himself much oppressed by the clergy, and was determined to down their power, removed very many of them, and appointed laymen to their places. With the reign of Henry II., the time of law and order, very many men of great ability and knowledge of the law, among whom was Glanville, sprang into existence. It was only as the laws multiplied, increased, and became technical, that they required a set of trained men to interpret and administer them, hence this clause in the Great Charter.

Chapter 46.—A provision inserted to prevent the king from claiming the abbeys or their rents as a revenue of the crown.' John did this in some instances. It was only right that the barons who founded and endowed these abbeys should when they became vacant become entitled to their revenues.

Chapter 47.—By this chapter John surrendered to the people as of their right, all lands which he had taken for the purpose of increasing his forests.

Chapter 48.—Provides means for ridding the forests of the evil customs from which they had so long suffered. Nothing was done under this chapter till in the reign of Edward I., when he had the forests thoroughly bounded and laid out, and the laws governing them commenced to be really operative.

Chapter 49.—These hostages of which this chapter speaks were persons held by John, sons and nephews of the barons, who were delivered unto him at different times, as surety for their good faith in their dealings with him.

Chapter 50.—Why the barons wanted these people removed from the kingdom history fails to inform us. Whether on account of their great wealth, their influence over John, or because they were foreigners, we do not know. The barons must have had some good reason, however, for doing so.

Chapter 51.—Provides that John shall send out of the kingdom all the foreign soldiers whom he had hired in his cause.

Chapter 52.—By this chapter John promised to restore to the barons any and all property he had taken from them by reason of his disputes and war with them.

As to the property which John held, and which had been taken by Henry II. and Richard I., he was to have till the common term of the crusades (three years) in which to do justice, for it will be remembered that early in 1214 John assumed the cross as a protection against the barons, and had the Pope's aid in consequence thereof. But the barons,

thinking, perhaps, John might not go on the crusade, inserted this saving clause to themselves.

Chapter 53.—The same explanation applies to this chapter as is given under the previous one.

Chapter 54.—This chapter of Magna Charta remains unchanged in all the others, and is so technical in its phraseology that some explanation is absolutely necessary.

The appeal of death which is here spoken of is not what we would mean properly by an appeal. It, however, was confined to the case of a woman for the murder of her husband.

When a woman's husband had been killed she had by ancient custom what was called the appeal of death, which was an action against the murderer and partook of the nature of a civil action. This action was for damages, caused by the death.

This appeal of death was confined as we see in the chapter to the widow of the murdered man. If, for any reason she failed in the prosecution of her case to obtain a verdict in her favor, no criminal action could then be instituted against the murderer. He then went free. The crown set aside its right to prosecute criminally, in order that if it were possible the widow might recover in a civil action, sufficient money for her support.

Chapter 55.—Provides means for the remission of those taxes and aids which King John levied unlawfully. All the amerciaments provided for under this chapter, were those levied by John for his aids in fighting the barons, hence considered by them unlawful.

Chapter 56.—By this John provides and agrees to restore to the Welshmen any of their lands he may have seized; to restore to the English likewise any land he may have

taken from them; and to restore to the Marches such as he took from them. And in the event of any dispute upon this point it is to be determined by the laws governing the lands in question.

Chapter 57.—Provides for the return to the Welshmen of such lands held by John which were taken by Henry II., or Richard I. (see previous note to Chapter 56.)

Chapter 58.—John by this agreed to surrender to Llewellyn his son, whom he held a prisoner, together with many others, who were delivered to him as hostages when he was in Wales in 1212. After the peace had been arranged with Llewellyn, John agreed to surrender these hostages, but with his usual sense of honor did not do so. The English barons took this in charge among their many other causes when they brought this coward to terms.

Chapter 59.—In 1173, William I., King of Scotland, had been captured by Henry II., and to secure his freedom agreed to do homage to the crown of England, and to give, as security for his homage and good intentions, the castles of Roxborough, Berwick, Sterling and Edinburgh.

In the year 1200 William did homage to John as agreed, John then being King of England, and at that time demanded that John should return him the castles. John of course did not return them, and as a consequence the two kings parted in anger. William refused from thenceforth to do any further homage to the crown of England. Later, however, the kings became better friends, and in 1212 John knighted Alexander, the eldest son of William. This Alexander, having helped the barons in their cause against John (he in the meantime having succeeded to the crown of

Scotland), was rewarded by them, by the insertion of this clause in the Charter.

Chapter 60.—This clause binds the barons to do the same justice to their vassals and tenants as they expected and demanded that John should do to them. This clause is said by some to have been inserted in the charter upon the demands of John himself, but it is very greatly to be doubted.

Chapter 61.—In chapter 61 of the Great Charter of King John is the provision for the election of twenty-five barons out of the whole number in the kingdom, whose duty it was to see that the provisions of the Magna Charta were carried into effect. The manner of redressing their grievances is fully and clearly set out in this chapter. The most remarkable portion of this chapter, however, is that portion of it which grants unto the barons upon the refusal of the king to redress their grievances upon petition, the right to distress and harass the king in all the ways in which they are able; by taking his lands, possessions, and by any other means in their power. The only limitation set upon the barons is that they should save harmless the king, the queen, and the king's children. In other words, they had permission to levy war upon their king, and commit other acts of high treason without, according to John's agreement, being guilty of any wrong.

It is also enacted in this chapter that all of the barons of the realm are to swear to obey the mandates and the actions of these twenty-five.

The names of the Barons who were elected and thus entrusted with the care of the realm, are as follows:

Richard, Earl of Clare; William de Fortibus, Earl of Aumerle; Geoffrey de Mandeville, Earl of Gloucester; Saher de Quincey, Earl of Winchester; Henry de Bohun, Earl of

Hereford; Roger Bigod, Earl of Norfolk; Robert de Vere, Earl of Oxford; William Mareschall, junior; Robert Fitz-Walter; Gilbert de Clare; Eustace de Vescy; William de Hardell, Mayor of London; William de Mowbray; Geoffrey de Say; Roger de Mumbezon; William de Huntingfield; Robert de Ros; John de Lacy; William de Albeniac; Robert de Percy; William Malet; John Fitz-Robert; William de Lanvalay; Hugh Bigod; and Richard de Muntfitchet.

Chapter 62.—This chapter contains a full and complete pardon of every one who was engaged in any acts of hostility toward John by reason of which he was forced to grant the charter.

Chapter 63.—This, the last chapter, provides for the freedom of the church and the observance of good faith, on the part of John of all of the provisions of the Great Charter.

The last three chapters of this charter, the 61st, 62d and 63d, are left out in all the subsequent charters granted either by Henry III. or Edward I. The reason for the omission of these three chapters in all subsequent charters is easily understood. Since neither Henry III. nor Edward I. had themselves done any harm to the barons, nor injured them in any way, they had given the barons no occasion to distrust them; therefore, so far as they were concerned, there was no occasion for such shameful and iniquitous clauses being inserted to bind them.