

## **Preamble:**

John, by the grace of God, king of England, lord of Ireland, duke of Normandy and Aquitaine, and count of Anjou, to the archbishop, bishops, abbots, earls, barons, justiciaries, foresters, sheriffs, stewards, servants, and to all his bailiffs and liege subjects, greetings. Know that, having regard to God and for the salvation of our soul, and those of all our ancestors and heirs, and unto the honor of God and the advancement of his holy Church and for the rectifying of our realm, we have granted as underwritten by advice of our venerable fathers, Stephen, archbishop of Canterbury, primate of all England and cardinal of the holy Roman Church, Henry, archbishop of Dublin, William of London, Peter of Winchester, Jocelyn of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, Benedict of Rochester, bishops; of Master Pandulf, subdeacon and member of the household of our lord the Pope, of brother Aymeric (master of the Knights of the Temple in England), and of the illustrious men William Marshal, earl of Pembroke, William, earl of Salisbury, William, earl of Warenne, William, earl of Arundel, Alan of Galloway (constable of Scotland), Waren Fitz Gerold, Peter Fitz Herbert, Hubert De Burgh (seneschal of Poitou), Hugh de Neville, Matthew Fitz Herbert, Thomas Basset, Alan Basset, Philip d'Aubigny, Robert of Roppesley, John Marshal, John Fitz Hugh, and others, our liegemen.

1. In the first place we have granted to God, and by this our present charter confirmed for us and our heirs forever that the English Church shall be free, and shall have her rights entire, and her liberties inviolate; and we will that it be thus observed; which is apparent from this that the freedom of elections, which is reckoned most important and very essential to the English Church, we, of our pure and unconstrained will, did grant, and did by our charter confirm and did obtain the ratification of the same from our lord, Pope Innocent III, before the quarrel arose between us and our barons: and this we will observe, and our will is that it be observed in good faith by our heirs forever. We have also granted to all freemen of our kingdom, for us and our heirs forever, all the underwritten liberties, to be had and held by them and their heirs, of us and our heirs forever.

2. If any of our earls or barons, or others holding of us in chief by military service shall have died, and at the time of his death his heir shall be full of age and owe "relief", he shall have his inheritance by the old relief, to wit, the heir or heirs of an earl, for the whole barony of an earl by L100; the heir or heirs of a baron, L100 for a whole barony; the heir or heirs of a knight, 100s, at most, and whoever owes less let him give less, according to the ancient custom of fees.

3. If, however, the heir of any one of the aforesaid has been under age and in wardship, let him have his inheritance without relief and without fine when he comes of age.

4. The guardian of the land of an heir who is thus under age, shall take from the land of the heir nothing but reasonable produce, reasonable customs, and reasonable services, and that without destruction or waste of men or goods; and if we have committed the wardship of the lands of any such minor to the sheriff, or to any other who is responsible to us for its issues, and he has made destruction or waster of what he holds in wardship, we will take of him amends, and the land shall be committed to two lawful and discreet men of that fee, who shall be responsible for the issues to us or to him to whom we shall assign them; and if we have given or sold the wardship of any such land to anyone and he has therein made destruction or waste, he shall lose that wardship, and it shall be transferred to two lawful and discreet men of that fief, who shall be responsible to us in like manner as aforesaid.

5. The guardian, moreover, so long as he has the wardship of the land, shall keep up the houses, parks, fishponds, stanks, mills, and other things pertaining to the land, out of the issues of the same land; and he shall restore to the heir, when he has come to full age, all his land, stocked with ploughs and wainage, according as the season of husbandry shall require, and the issues of the land can reasonable bear.

6. Heirs shall be married without disparagement, yet so that before the marriage takes place the nearest in blood to that heir shall have notice.

7. A widow, after the death of her husband, shall forthwith and without difficulty have her marriage portion and inheritance; nor shall she give anything for her dower, or for her marriage portion, or for the inheritance which her husband and she held on the day of the death of that husband; and she may remain in the house of her husband for forty days after his death, within which time her dower shall be assigned to her.

8. No widow shall be compelled to marry, so long as she prefers to live without a husband; provided always that she gives security not to marry without our consent, if she holds of us, or without the consent of the lord of whom she holds, if she holds of another.

9. Neither we nor our bailiffs will seize any land or rent for any debt, as long as the chattels of the debtor are sufficient to repay the debt; nor shall the sureties of the debtor be distrained so long as the principal debtor is able to satisfy the debt; and if the principal debtor shall fail to pay the debt, having nothing wherewith to pay it, then the sureties shall answer for the debt; and let them have the lands and rents of the debtor, if they desire them, until they are indemnified for the debt which they have paid for him, unless the principal debtor can show proof that he is discharged thereof as against the said sureties.

10. If one who has borrowed from the Jews any sum, great or small, die before that loan be repaid, the debt shall not bear interest while the heir is under age, of whomsoever he may hold; and if the debt fall into our hands, we will not take anything except the principal sum contained in the bond.

11. And if anyone die indebted to the Jews, his wife shall have her dower and pay nothing of that debt; and if any children of the deceased are left under age, necessaries shall be provided for them in keeping with the holding of the deceased; and out of the residue the debt shall be paid, reserving, however, service due to feudal lords; in like manner let it be done touching debts due to others than Jews.

12. No scutage not aid shall be imposed on our kingdom, unless by common counsel of our kingdom, except for ransoming our person, for making our eldest son a knight, and for once marrying our eldest daughter; and for these there shall not be levied more than a reasonable aid. In like manner it shall be done concerning aids from the city of London.

13. And the city of London shall have all it ancient liberties and free customs, as well by land as by water; furthermore, we decree and grant that all other cities, boroughs, towns, and ports shall have all their liberties and free customs.

14. And for obtaining the common counsel of the kingdom anent the assessing of an aid (except in the three cases aforesaid) or of a scutage, we will cause to be summoned the archbishops, bishops, abbots, earls, and greater barons, severally by our letters; and we will moreover cause to be summoned generally, through our sheriffs and bailiffs, and others who hold of us in chief, for a fixed date, namely, after the expiry of at least forty days, and at a fixed place; and in all letters of

such summons we will specify the reason of the summons. And when the summons has thus been made, the business shall proceed on the day appointed, according to the counsel of such as are present, although not all who were summoned have come.

**15.** We will not for the future grant to anyone license to take an aid from his own free tenants, except to ransom his person, to make his eldest son a knight, and once to marry his eldest daughter; and on each of these occasions there shall be levied only a reasonable aid.

**16.** No one shall be distrained for performance of greater service for a knight's fee, or for any other free tenement, than is due therefrom.

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

**18.** Inquests of novel disseisin, of mort d'ancestor, and of darrein presentment shall not be held elsewhere than in their own county courts, and that in manner following; We, or, if we should be out of the realm, our chief justiciar, will send two justiciaries through every county four times a year, who shall alone with four knights of the county chosen by the county, hold the said assizes in the county court, on the day and in the place of meeting of that court.

**19.** And if any of the said assizes cannot be taken on the day of the county court, let there remain of the knights and freeholders, who were present at the county court on that day, as many as may be required for the efficient making of judgments, according as the business be more or less.

**20.** A freeman shall not be amerced for a slight offense, except in accordance with the degree of the offense; and for a grave offense he shall be amerced in accordance with the gravity of the offense, yet saving always his "contentment"; and a merchant in the same way, saving his "merchandise"; and a villein shall be amerced in the same way, saving his "wainage" if they have fallen into our mercy: and none of the aforesaid ameracements shall be imposed except by the oath of honest men of the neighborhood.

**21.** Earls and barons shall not be amerced except through their peers, and only in accordance with the degree of the offense.

**22.** A clerk shall not be amerced in respect of his lay holding except after the manner of the others aforesaid; further, he shall not be amerced in accordance with the extent of his ecclesiastical benefice.

**23.** No village or individual shall be compelled to make bridges at river banks, except those who from of old were legally bound to do so.

**24.** No sheriff, constable, coroners, or others of our bailiffs, shall hold pleas of our Crown.

**25.** All counties, hundred, wapentakes, and trithings (except our demesne manors) shall remain at the old rents, and without any additional payment.

**26.** If anyone holding of us a lay fief shall die, and our sheriff or bailiff shall exhibit our letters patent of summons for a debt which the deceased owed us, it shall be lawful for our sheriff or bailiff to attach and enroll the chattels of the deceased, found upon the lay fief, to the value of that debt, at the sight of law worthy men, provided always that nothing whatever be thence removed until the debt which is evident shall be fully paid to us; and the residue shall be left to the executors to fulfill

the will of the deceased; and if there be nothing due from him to us, all the chattels shall go to the deceased, saving to his wife and children their reasonable shares.

27. If any freeman shall die intestate, his chattels shall be distributed by the hands of his nearest kinsfolk and friends, under supervision of the Church, saving to every one the debts which the deceased owed to him.

28. No constable or other bailiff of ours shall take corn or other provisions from anyone without immediately tendering money therefor, unless he can have postponement thereof by permission of the seller.

29. No constable shall compel any knight to give money in lieu of castle-guard, when he is willing to perform it in his own person, or (if he himself cannot do it from any reasonable cause) then by another responsible man. Further, if we have led or sent him upon military service, he shall be relieved from guard in proportion to the time during which he has been on service because of us.

30. No sheriff or bailiff of ours, or other person, shall take the horses or carts of any freeman for transport duty, against the will of the said freeman.

31. Neither we nor our bailiffs shall take, for our castles or for any other work of ours, wood which is not ours, against the will of the owner of that wood.

32. We will not retain beyond one year and one day, the lands those who have been convicted of felony, and the lands shall thereafter be handed over to the lords of the fiefs.

33. All kydells for the future shall be removed altogether from Thames and Medway, and throughout all England, except upon the seashore.

34. The writ which is called praecipe shall not for the future be issued to anyone, regarding any tenement whereby a freeman may lose his court.

35. Let there be one measure of wine throughout our whole realm; and one measure of ale; and one measure of corn, to wit, "the London quarter"; and one width of cloth (whether dyed, or russet, or "halberget"), to wit, two ells within the selvedges; of weights also let it be as of measures.

36. Nothing in future shall be given or taken for awrit of inquisition of life or limbs, but freely it shall be granted, and never denied.

37. If anyone holds of us by fee-farm, either by socage or by burage, or of any other land by knight's service, we will not (by reason of that fee-farm, socage, or burage), have the wardship of the heir, or of such land of his as if of the fief of that other; nor shall we have wardship of that fee-farm, socage, or burage, unless such fee-farm owes knight's service. We will not by reason of any small serjeancy which anyone may hold of us by the service of rendering to us knives, arrows, or the like, have wardship of his heir or of the land which he holds of another lord by knight's service.

38. No bailiff for the future shall, upon his own unsupported complaint, put anyone to his "law", without credible witnesses brought for this purposes.

39. No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.

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

**41.** All merchants shall have safe and secure exit from England, and entry to England, with the right to tarry there and to move about as well by land as by water, for buying and selling by the ancient and right customs, quit from all evil tolls, except (in time of war) such merchants as are of the land at war with us. And if such are found in our land at the beginning of the war, they shall be detained, without injury to their bodies or goods, until information be received by us, or by our chief justiciar, how the merchants of our land found in the land at war with us are treated; and if our men are safe there, the others shall be safe in our land.

**42.** It shall be lawful in future for anyone (excepting always those imprisoned or outlawed in accordance with the law of the kingdom, and natives of any country at war with us, and merchants, who shall be treated as if above provided) to leave our kingdom and to return, safe and secure by land and water, except for a short period in time of war, on grounds of public policy- reserving always the allegiance due to us.

**43.** If anyone holding of some escheat (such as the honor of Wallingford, Nottingham, Boulogne, Lancaster, or of other escheats which are in our hands and are baronies) shall die, his heir shall give no other relief, and perform no other service to us than he would have done to the baron if that barony had been in the baron's hand; and we shall hold it in the same manner in which the baron held it.

**44.** Men who dwell without the forest need not henceforth come before our justiciaries of the forest upon a general summons, unless they are in plea, or sureties of one or more, who are attached for the forest.

**45.** We will appoint as justices, constables, sheriffs, or bailiffs only such as know the law of the realm and mean to observe it well.

**46.** All barons who have founded abbeys, concerning which they hold charters from the kings of England, or of which they have long continued possession, shall have the wardship of them, when vacant, as they ought to have.

**47.** All forests that have been made such in our time shall forthwith be disafforsted; and a similar course shall be followed with regard to river banks that have been placed "in defense" by us in our time.

**48.** All evil customs connected with forests and warrens, foresters and warreners, sheriffs and their officers, river banks and their wardens, shall immediately be inquired into in each county by twelve sworn knights of the same county chosen by the honest men of the same county, and shall, within forty days of the said inquest, be utterly abolished, so as never to be restored, provided always that we previously have intimation thereof, or our justiciar, if we should not be in England.

**49.** We will immediately restore all hostages and charters delivered to us by Englishmen, as sureties of the peace of faithful service.

**50.** We will entirely remove from their bailiwicks, the relations of Gerard of Athee (so that in future they shall have no bailiwick in England); namely, Engelard of Cigogne, Peter, Guy, and Andrew of Chanceaux, Guy of Cigogne, Geoffrey of Martigny with his brothers, Philip Mark with his brothers and his nephew Geoffrey, and the whole brood of the same.

**51.** As soon as peace is restored, we will banish from the kingdom all foreign born knights, crossbowmen, serjeants, and mercenary soldiers who have come with horses and arms to the kingdom's hurt.

**52.** If anyone has been dispossessed or removed by us, without the legal judgment of his peers, from his lands, castles, franchises, or from his right, we will immediately restore them to him; and if a dispute arise over this, then let it be decided by the five and twenty barons of whom mention is made below in the clause for securing the peace. Moreover, for all those possessions, from which anyone has, without the lawful judgment of his peers, been disseised or removed, by our father, King Henry, or by our brother, King Richard, and which we retain in our hand (or which as possessed by others, to whom we are bound to warrant them) we shall have respite until the usual term of crusaders; excepting those things about which a plea has been raised, or an inquest made by our order, before our taking of the cross; but as soon as we return from the expedition, we will immediately grant full justice therein.

**53.** We shall have, moreover, the same respite and in the same manner in rendering justice concerning the disafforestation or retention of those forests which Henry our father and Richard our brother afforested, and concerning the wardship of lands which are of the fief of another (namely, such wardships as we have hitherto had by reason of a fief which anyone held of us by knight's service), and concerning abbeys founded on other fiefs than our own, in which the lord of the fee claims to have right; and when we have returned, or if we desist from our expedition, we will immediately grant full justice to all who complain of such things.

**54.** No one shall be arrested or imprisoned upon the appeal of a woman, for the death of any other than her husband.

**55.** All fines made with us unjustly and against the law of the land, and all amercements, imposed unjustly and against the law of the land, shall be entirely remitted, or else it shall be done concerning them according to the decision of the five and twenty barons whom mention is made below in the clause for securing the peace, or according to the judgment of the majority of the same, along with the aforesaid Stephen, archbishop of Canterbury, if he can be present, and such others as he may wish to bring with him for this purpose, and if he cannot be present the business shall nevertheless proceed without him, provided always that if any one or more of the aforesaid five and twenty barons are in a similar suit, they shall be removed as far as concerns this particular judgment, others being substituted in their places after having been selected by the rest of the same five and twenty for this purpose only, and after having been sworn.

**56.** If we have disseised or removed Welshmen from lands or liberties, or other things, without the legal judgment of their peers in England or in Wales, they shall be immediately restored to them; and if a dispute arise over this, then let it be decided in the marches by the judgment of their peers; for the tenements in England according to the law of England, for tenements in Wales according to the law of Wales, and for tenements in the marches according to the law of the marches. Welshmen shall do the same to us and ours.

**57.** Further, for all those possessions from which any Welshman has, without the lawful judgment of his peers, been disseised or removed by King Henry our father, or King Richard our brother, and which we retain in our hand (or which are possessed by others, and which we ought to warrant), we will have respite until the usual term of crusaders; excepting those things about which a plea has been raised or an inquest made by our order before we took the cross; but as soon as we return (or if perchance we desist from our expedition), we will immediately grant full justice in accordance with the laws of the Welsh and in relation to the foresaid regions.

**58.** We will immediately give up the son of Llywelyn and all the hostages of Wales, and the charters delivered to us as security for the peace.

**59.** We will do towards Alexander, king of Scots, concerning the return of his sisters and his hostages, and concerning his franchises, and his right, in the same manner as we shall do towards our other barons of England, unless it ought to be otherwise according to the charters which we hold from William his father, formerly king of Scots; and this shall be according to the judgment of his peers in our court.

**60.** Moreover, all these aforesaid customs and liberties, the observances of which we have granted in our kingdom as far as pertains to us towards our men, shall be observed by all of our kingdom, as well clergy as laymen, as far as pertains to them towards their men.

**61.** Since, moreover, for God and the amendment of our kingdom and for the better allaying of the quarrel that has arisen between us and our barons, we have granted all these concessions, desirous that they should enjoy them in complete and firm endurance forever, we give and grant to them the underwritten security, namely, that the barons choose five and twenty barons of the kingdom, whomsoever they will, who shall be bound with all their might, to observe and hold, and cause to be observed, the peace and liberties we have granted and confirmed to them by this our present Charter, so that if we, or our justiciar, or our bailiffs or any one of our officers, shall in anything be at fault towards anyone, or shall have broken any one of the articles of this peace or of this security, and the offense be notified to four barons of the foresaid five and twenty, the said four barons shall repair to us (or our justiciar, if we are out of the realm) and, laying the transgression before us, petition to have that transgression redressed without delay. And if we shall not have corrected the transgression (or, in the event of our being out of the realm, if our justiciar shall not have corrected it) within forty days, reckoning from the time it has been intimated to us (or to our justiciar, if we should be out of the realm), the four barons aforesaid shall refer that matter to the rest of the five and twenty barons, and those five and twenty barons shall, together with the community of the whole realm, distrain and distress us in all possible ways, namely, by seizing our castles, lands, possessions, and in any other way they can, until redress has been obtained as they deem fit, saving harmless our own person, and the persons of our queen and children; and when redress has been obtained, they shall resume their old relations towards us. And let whoever in the country desires it, swear to obey the orders of the said five and twenty barons for the execution of all the aforesaid matters, and along with them, to molest us to the utmost of his power; and we publicly and freely grant leave to everyone who wishes to swear, and we shall never forbid anyone to swear. All those, moreover, in the land who of themselves and of their own accord are unwilling to swear to the twenty five to help them in constraining and molesting us, we shall by our command compel the same to swear to the effect foresaid. And if any one of the five and twenty barons shall have died or departed from the land, or be incapacitated in any other manner which would prevent the foresaid provisions being carried out, those of the said twenty five barons who are left shall choose another in his place according to their own judgment, and he shall be sworn in the same way as the others. Further, in all matters, the execution of which is entrusted, to these twenty five barons, if perchance these twenty five are present and disagree about anything, or if some of them, after being summoned, are unwilling or unable to be present, that which the majority of those present ordain or command shall be held as fixed and established, exactly as if the whole twenty five had concurred in this; and the said twenty five shall swear that they will faithfully observe all that is aforesaid, and cause it to be observed with all their might. And we shall procure nothing from anyone, directly or indirectly, whereby any part of these concessions and liberties might be revoked or diminished; and if any such things has been procured, let it be void and null, and we shall never use it personally or by another.

**62.** And all the will, hatreds, and bitterness that have arisen between us and our men, clergy and lay, from the date of the quarrel, we have completely remitted and pardoned to everyone. Moreover, all trespasses occasioned by the said quarrel, from Easter in the sixteenth year of our reign till the restoration of peace, we have fully remitted to all, both clergy and laymen, and completely forgiven, as far as pertains to us. And on this head, we have caused to be made for them letters testimonial patent of the lord Stephen, archbishop of Canterbury, of the lord Henry, archbishop of Dublin, of the bishops aforesaid, and of Master Pandulf as touching this security and the concessions aforesaid.

**63.** Wherefore we will and firmly order that the English Church be free, and that the men in our kingdom have and hold all the aforesaid liberties, rights, and concessions, well and peaceably, freely and quietly, fully and wholly, for themselves and their heirs, of us and our heirs, in all respects and in all places forever, as is aforesaid. An oath, moreover, has been taken, as well on our part as on the part of the barons, that all these conditions aforesaid shall be kept in good faith and without evil intent. Given under our hand - the above named and many others being witnesses - in the meadow which is called Runnymede, between Windsor and Staines, on the fifteenth day of June, in the seventeenth year of our reign.



## 2 Provisions of Oxford (1258)\*

[↪ 📖 III, 2]

### Henry III: Letters Agreeing to Reform (1258)

The king to all, etc. You are to know that, through an oath given on our behalf by Robert Waleran, we have granted to the nobles and magnates of our kingdom that, by twelve faithful men of our council already elected and by twelve other faithful men of ours elected on the part of those nobles, who are to convene at Oxford one month after the feast of Pentecost next, the state of our kingdom shall be ordered, rectified, and reformed according to what they shall think best to enact for the honour of God and our faith and the good of our kingdom. And if, perchance, any of those elected on our part are absent, those who are present shall be permitted to substitute others in place of the absentees; and the same shall be done [with regard to those elected] on the part of the aforesaid nobles and faithful men of ours. And whatever is ordained in this matter by the twenty-four elected by both sides and sworn to the undertaking, or by the majority of them, we will inviolably observe, wishing and henceforth straitly enjoining that their ordinance be inviolably observed by all. And whatever security those men, or the majority of them, may provide for the observance of this matter we will fully grant and cause to be granted. We also attest that Edward, our first-born son, through an oath personally taken, has by his letters granted that he will faithfully and inviolably observe, and will cause ever to be observed, all that has been expressed and granted above, so far as in him lies.

Furthermore, the said earls and barons have promised that, on the completion of the business noted above, they will strive in good faith to see that a common aid is rendered to us by the community of our kingdom. In testimony whereof, etc ... Given at Westminster, May 2.

### The Provisions of Oxford (1258)

...  
Thus swore the community of England at Oxford

...  
The twelve on the king's side have chosen from the twelve on the side of the community the earl Roger Marshal and Hugh le Bigot. And the party of the community has chosen from the twelve who are on the side of the king the earl of Warwick and John Mansel. And these four have power to elect the council of the king; and when they have made the election, they shall designate those [elected] to the twenty-four. And that shall hold on which the majority of these [four] agree.

These are the twelve who have been elected by the barons, on behalf of the whole community of the land, to consider common needs along with the king's council at the three annual parliaments

...  
These are the twenty-four appointed by the community to consider aid for the king ... And if any one of these cannot or will not be

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\* *Fonte: Sources of English Constitutional History*, edited and translated by C. STEPHENSON, F.G. MARCHAM, New York, Evanston and London, Harper & Row Publishers, 1937, [http://www.constitution.org/sech/sech\\_047.htm](http://www.constitution.org/sech/sech_047.htm).

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present, those who are present shall have power to elect another in his place.

Concerning the state of Holy Church: – It should be remembered that the state of Holy Church is to be amended by the twenty-four chosen to reform the state of the kingdom of England – at what time and place they think best, according to the powers that they hold by writ of the king of England.

Concerning the chief justice: – [It has been decided] furthermore that a chief justice – or two [chief justices] – shall be appointed; also what power he shall have; and that he shall be [in office] for only one year, so that at the end of the year he shall render account of his term before the king and the royal council and before the man who is to follow him [in office].

Concerning the treasurer and the exchequer: – The same [has been decided] with regard to the treasurer; so that he shall render account at the end of the year. And according to the ordinance of the said twenty-four, other good men are to be appointed to the exchequer, whither all the issues of the land are to come, and not elsewhere. And let that be amended which seems in need of amendment.

Concerning the chancellor: – The same [has been decided] with regard to the chancellor; so that he shall render account of his term at the end of the year, and that merely by the king's will he shall seal nothing out of course, but shall do so by [the advice of] the council that surrounds the king.

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③ Statute of Westminster II (1285), CH 24 \*

“whensoever from henceforth it shall happen in the Chancery that there is to be found a writ in one case, but not in another case although involving the same law and requiring the same remedy, the clerks of the Chancery shall agree in framing a writ, or else they shall adjourn the plaintiffs to the next Parliament, or else they shall write down the points upon which they cannot agree and refer them to the next Parliament, and so a writ shall be framed by the consent of the learned in the law; to the end that the court from henceforth shall no longer fail those who seek justice.”

“E ogni volta che in futuro accadrà che si rinvenga presso la Cancelleria un breve per un caso e nessuno per un caso simile, che pure ricada sotto lo stesso diritto e richieda pertanto lo stesso rimedio, consentano i funzionari della Cancelleria alla concessione del breve oppure rinviino i richiedenti alla sessione successiva del Parlamento, scrivano i casi in cui non ritengono di poter consentire e li riferiscano al Parlamento affinché un nuovo breve sia approvato con il consenso dei giurisperiti e non accada più per l'avvenire che la corte possa a lungo mancare del potere di rendere giustizia a coloro che la richiedono”.

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\* Fonte: T.F.T. PLUCKNETT, *A Concise History of the Common Law*, London, Butterworth & Co., 1956, p. 28.

#### 4 Trespass vi et armis: schema classico del writ \*

«Rex vicecomiti S salutem. Si A fecerit te securum de clamore suo prosequendo, tunc pone per vadios et salvos plegios B quod sit coram nobis in octavis Sancti Michaelis ubicumque fuerimus tunc in Anglia (coram Justiciariis nostris apud Westmonasterium in octavis Sancti Michaelis) ostensurus quare vi et armis in ipsum A apud N insultum fecit, et ipsum verberavit, vulneravit et male tractavit, ita quod de vita ejus desperabatur, et alia enormia ei intulit, ad grave damnum ipsius A et contra pacem nostram. Et habeas ibi nomina plegiorum et hoc breve».

«Il re allo sceriffo S: salute! Se A ti avrà assicurato di volere proseguire l'azione, allora ordina a B, che dovrà fornire alla bisogna garanzie e idonei mallevadori, di comparire dinanzi a noi nell'ottava di San Michele in qualsiasi luogo d'Inghilterra noi dovessimo trovarci in quel tempo (ovvero: dinanzi ai nostri giudici, nello stesso torno di tempo, a Westminster) onde spieghi per quale ragione egli abbia fatto oltraggio *vi et armis* al predetto A, presso N, insultandolo, ferendolo e malmenandolo a tal punto da far temere per la sua vita, ed altre enormità ancora inferendogli con grave danno dello stesso A e turbativa della nostra pace. Ed ivi abbia la lista dei mallevadori e questo breve».

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\* Fonte: G. AJANI, P.G. MONATERI, *Casi e materiali di diritto comparato*, Torino, Giappichelli, 2001, p. 160.

5 Il passaggio dal trespass al trespass on the case\*  
[↪ 📄 III, 5]

Proponiamo qui due esempi tratti dagli Year Books, i primi repertori di giurisprudenza inglesi, così denominati perché il principale elemento di identificazione dei casi è costituito dall'anno di regno del sovrano in carica quando i processi riferiti erano stati celebrati. Si tratta di cronache giudiziarie non ufficiali relative principalmente ai casi trattati davanti alla Court of Common Pleas nel periodo compreso tra la fine del XIII secolo ed il 1533, anno in cui cessarono. Le ristampe più rinomate sono quelle delle Rolls Series (abbreviate con R.S.) e delle Selden Society Series (abbreviate con S.S.).

Il primo caso, quindi, è tratto dallo Year Book (Y.B.) relativo al trentaduesimo ed al trentatreesimo anno di regno di Eduardo I (32 & 33 Edw. I) così come riprodotto a p. 259 delle Rolls Series. Il secondo caso, invece, è contenuto nello Year Book (Y.B.) dei casi decisi durante il terzo ed il quarto anno di regno di Edoardo II (3 & 4 Edw. II), e si trova alle pagine 29 e 208 del volume 22 della ristampa curata dalla Selden Society.

Gli autori della raccolta da cui sono tratti i casi qui riprodotti hanno utilizzato il carattere corsivo per designare gli avvocati delle parti e quello maiuscolo per indicare il giudice.

ANON. (1304)

Y.B. 32 & 33 Edw. I, Rolls Series, p. 259.

R. brought his writ against J. and others etc., and said that they came wrongfully with force and arms and cut and carried away the wood of this same R.

*The defendants* pleaded Not guilty.

*The inquest* came and said that they cut his wood, but not with force and arms.

BEREFORD therefore adjudged that [R.] should recover his damages etc., and that the defendants should be taken [and imprisoned] notwithstanding that they did not come with force and arms etc.

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\* Fonte: J.H. BAKER, S.F.C. MILSOM, *Sources of English Legal History*, London, Butterworths, 1986, pp. 297 e 298-299.

## PETSTEDE v MARREYS (1310)

Y.B. 3 & 4 Edw. II, Selden Soc. vol. 22, pp. 29, 208.

[Adam de Petstede and Joan] his wife brought a writ of trespass in the King's Bench against one [William de Marreys and others], and counted that whereas a third part of the beasts in the park of [Glynde] were assigned to this same [Joan] in dower by the assignment of this same [William], the defendants came with force and arms [on such a day and entered the park and hunted in it and took deer] and took and carried away the third part [of those deer] which belonged to the aforesaid [Joan's] dower.

*Claver.* They have counted supposing that we came with force etc. and took etc. the third part of the beasts and supposing [also] that the park is ours; and since the law will not allow that a [plaintiff] should recover damages on the basis that [the defendant] came with force and arms to [the defendant's] own park, [we ask] judgment whether we need answer to such a count.

*Willoughby.* The cause for which we should recover damages is not the coming with force and arms in itself, but the taking and carrying away of our beasts. Although we have made mention of a coming [with force and arms] these are but [formal] words etc. It is not force and arms that give cause [of action] for damages, but the wrong, etc; and so the writ is good enough.

*Hertipole.* Whereas they say that we came [with force and arms] and are supposed to have taken the third part of the beasts, the other two parts [being ours], they are asserting a claim to recover [damages] for a chattel held in common and not severed. [We ask] judgment whether they should be answered on such a writ.

*Willoughby.* The third part [was] assigned to us, and we were seised of taking every kind of profit belonging to the third part. So we ask judgment whether this writ does not lie against him.

*Hertipole.* If you were disturbed and ousted, bring the assize [of novel disseisin] and not a writ of trespass.

BRABAZON. [The plaintiff] is seised of the third part of the profit [in respect of every part and of the whole]; and he cannot be helped by any writ other than this. And then [BRABAZON] adjudged the writ good.

And then [the defendants] pleaded Not guilty. And so, etc.

6 Writ of trespass upon the case: schema classico del writ \*

*«Rex vicecomiti salutem. Si A fecerit te securum de clamore suo prosequendo tunc pone per vadium et salvos plegios X quod sit coram justiciariis nostris (...) ostensurus quare in aqua de Plim, per quam inter Humber et Gaunt navium et batellorum communis est transitus, ex transverso aquae pilos defixit, per quod quaedam navis cum triginta quarteriis brasii ipsius A submersa fuit, et viginti quarteria brasii precii centum s. deperierunt (...). Et habeas ibi nomina plegiorum et hoc breve».*

«Il re allo sceriffo: salute! Se A ti avrà assicurato che è suo intendimento di proseguire l'azione, allora ordina a X, che dovrà fornire alla bisogna garanzia e idonei mallevadori, che si presenti dinanzi ai nostri giudici (...) onde spieghi per quale ragione egli infisse dei pali di traverso il corso del fiume Plim lungo il quale, tra Humber e Gaunt, vi è un frequente e libero passaggio di navi e battelli, motivo questo per cui una certa nave, contenente trenta quarti di malto di proprietà del predetto A, affondò e venti quarti di malto del valore di cento scellini andarono perduti (...). Abbi ivi i nomi dei mallevadori e questo breve».

\* Fonte: G. AJANI, P.G. MONATERI, *Casi e materiali di diritto comparato*, Torino, Giappichelli, 2001, p. 161.

7 The Farrier's case (1372)\*

[↪ 📄 III, 7]

Questo è il caso numero 19 (pl.19) dello Year Book (Y.B.) riguardante il quarantesimo anno di regno di Edoardo III (46 Edw III), trattato nella sessione della SS. Trinità (Trin.) e contenuto nel foglio numero 19 (fo.19).

I curatori della raccolta da cui è tratto questo celebre caso hanno verificato il testo anche su due manoscritti (MS) conservati rispettivamente presso Lincoln's Inn (LI) e lo University College di Oxford (UCO).

### THE FARRIER'S CASE (1372)

Y.B. Trin. 46 Edw. III, fo. 19, pl. 19;  
LI MS. Hale 181, fo. 58; MS. Hale 187, fo. 217v;  
UCO MS. 150, fo. 163.

Trespass was brought against a farrier for injuring a horse with a nail; and the writ said 'to show why, at a certain place, he drove a nail into the quick of the horse's hoof, whereby the plaintiff lost the profit from his horse for a long time'.

*Percy.* He has brought a writ of trespass against us, and does not say 'with force and arms'. We pray judgment of the writ.

FYNCHEDEN [C.J.] He has brought his writ according to his case. (So he thought the writ good.)

*Percy.* The writ should be 'with force and arms', or should say that he drove the nail maliciously; and since there is neither the one nor the other, we pray judgment. Also, he has not supposed in his count that he bailed the horse to us for shoeing, and so it should be presumed otherwise: namely, that if any trespass was done it was against the peace. So we pray judgment.

Then the writ was held good. And the defendant took issue that he shod the horse, without this that he injured it with a nail; ready etc.

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\* Fonte: J.H. BAKER, S.F.C. MILSOM, *Sources of English Legal History*, London, Butterworths, 1986, p. 341.



## 8 Trespass on the case in *assumpsit* \*

Rex vic. sal. &c. *as in Trespass ostensurus:*

quare [e.g.: for misfeasance] cum idem X ad dextrum oculum ipsius A casualiter laesum bene et competenter curandum apud Trumpingtone pro quadam pecuniae summa prae manibus soluta *assumpsisset*, idem X curam suam circa oculum praedictum tam negligenter et improvide apposuit, quod idem A defectu ipsius X visum oculi praedicti totaliter amisit, ad damnum ipsius A viginti librarum ut dicit. Et habeas ibi &c.

quare [e.g.: for non-feasance] cum idem X tres currus pro victualibus ipsius A ad partes transmarinas ducendis pro certa pecunia summa prae manibus soluta infra certum terminum inter eos concordatum facere et fabricare apud Trumpingtone *assumpsisset*, idem X currus praedictos infra terminum praedictum facere et fabricare non curavit per quod A diversa bona et catalla sua ad valentiam centum marcarum, quae in curribus praedictis duci debuissent, pro defectu curruum praedictorum totaliter amisit ad grave damnum ipsius A ut dicit et habeas &c.

“Il Re allo Sceriffo: salve! Se A ti assicura di voler proseguire nella sua azione, allora ordina a X di fornire idonei mallevadori e garanzie e di comparire in quel certo giorno di fronte ai nostri giudici a Westminster per spiegare – perché il detto X, avendo accettato di curare bene e con competenza l’occhio destro che A si era casualmente leso in cambio di una certa somma ricevuta anticipatamente, ha curato detto occhio con tale negligenza e disattenzione che A, per colpa di X, ha perso completamente la vista da quell’occhio sostenendo così di aver subito un danno di venti sterline. E

The King to the sheriff greeting &c. *as in Trespass to show:*

wherefore whereas he the s<sup>d</sup> X undertook well and competently to cure the right eye of the s<sup>d</sup> A, which was accidentally injured, for a certain sum of money beforehand received, he the same X so negligently and carelessly applied his cure to the said eye, that the said A by the fault of him the said X totally lost the sight of the said eye, to the damage of him the said A of twenty pounds, as he said, and have there &c.

wherefore whereas he the said X undertook to make and build three carriages for conveying victuals of him the said A to parts beyond the sea for a certain sum of money beforehand received, within a certain term between them agreed; the said X did not take care to make and build the carriages afores<sup>d</sup> within the term afores<sup>d</sup> within the term afores<sup>d</sup>, by which he the s<sup>d</sup> A hath wholly lost divers his goods and chattels, to the value of one hundred marks, which ought to have been conveyed in the carriages aforesaid, for want thereof to the great damage of him the said A as it is said: and have there &c.

abbi colà l’elenco dei mallevadori e questo breve.

– Perché il detto X, avendo accettato di costruire tre carri per trasportare le merci di A in certe terre di oltremare entro un certo termine per una certa somma di denaro ricevuta anticipatamente, non si è curato di costruire i carri entro il termine, sicché il predetto A ha perduto diversi beni, per un valore di cento marchi, che avrebbero dovuto essere trasportati nei carri, per la mancanza degli stessi con grave danno dello stesso A come sostiene. E abbi colà l’elenco dei mallevadori e questo breve”.

\* Fonte: G. AJANI, P.G. MONATERI, *Casi e materiali di sistemi giuridici comparati*, Torino, Giappichelli, 1998, p. 130.

## 9 Bill

«*Edw des Noru cauis, tit quod sic monaste tistae pr super hi nostra, e. curia no: hoc subp omittas. rium, ter simo sep*

\* *Fo*  
p. 165.

## 9 Bill of subpoena \*

*«Edwardus etc. dilecto sibi Ricardo Ssynk des Norwyco, salutem. Quibusdam certis de causis, tibi praecipimus firmiter injungentes, quod sic coram consilio nostro apud Westmonasterium, die Mercuri proximo post quindenam nativitatibus Sancti Johannis Baptistae proximo futurum: ad respondendum super hiis quae tibi objicientur ex parte nostra, et ad faciendum et recipiendum quod curia nostra consideraverit in hac parte. Et hoc subpoena centum librarum nullatenus omittas. Teste meipso apud Westmonasterium, tercio die Julii, anno regni nostri tricesimo septimo».*

«Edoardo ecc. saluta il suo diletto Riccardo Ssynk di Norwik. Per alcuni precisi motivi ti ingiungiamo categoricamente di presentarti dinnanzi al nostro Consiglio a Westminster, mercoledì prossimo dopo la quindicina della natività di San Giovanni Battista p.v., per rispondere su quegli addebiti che ti saranno contestati da parte nostra e per accettare ed eseguire quanto la nostra Curia avrà deliberato in materia. E in nessun modo ti sottrarrai a ciò, sotto pena di cento libbre. Redatto in mia presenza, in Westminster, il 3 luglio, nel trentasettesimo anno del nostro regno».

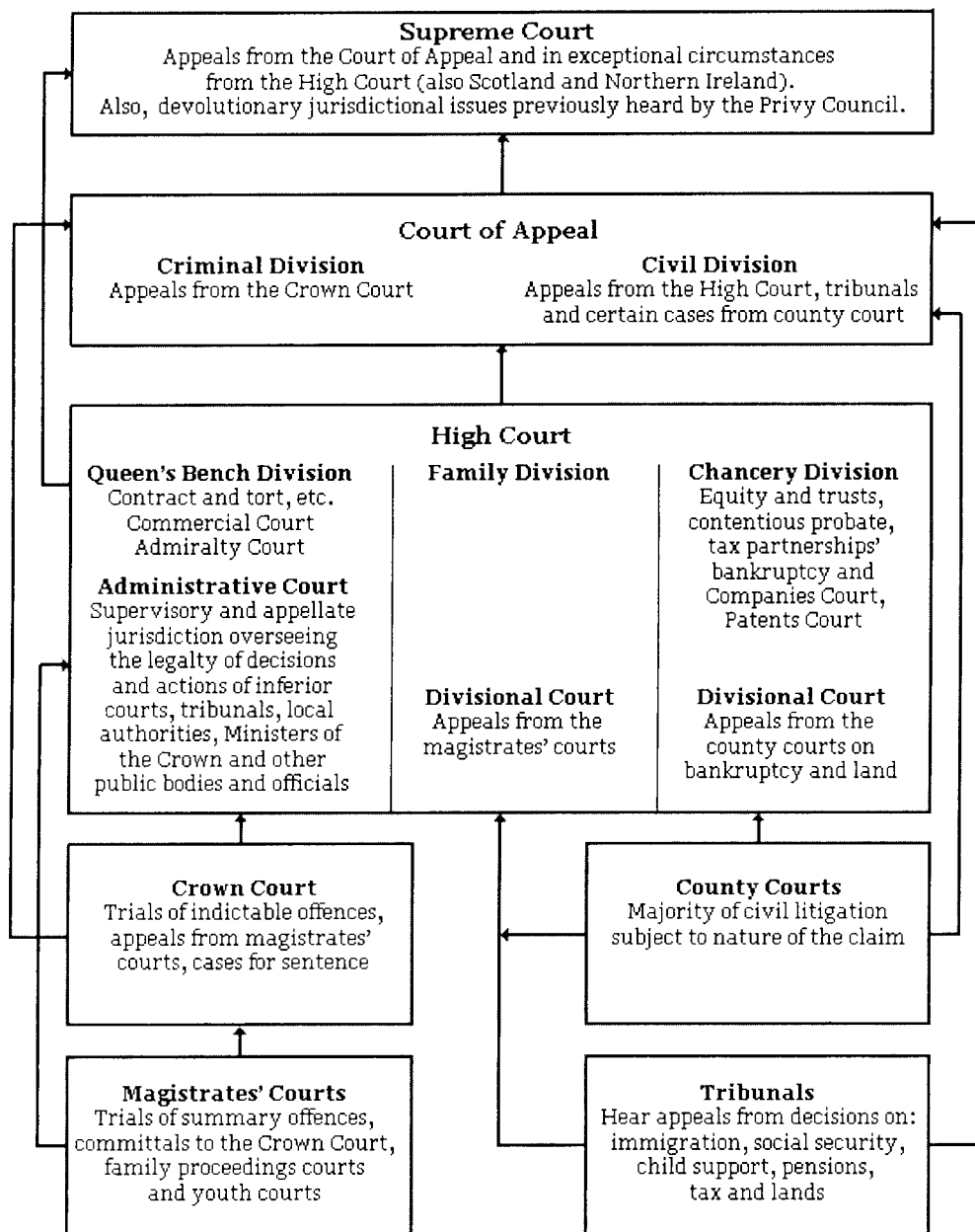
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\* Fonte: G. AJANI, P.G. MONATERI, *Casi e materiali di diritto comparato*, Torino, Giappichelli, 2001, p. 165.

10 Tavola sull'organizzazione delle corti in Inghilterra \*



JUDICIARY OF ENGLAND AND WALES



\* Fonte: [http://www.judiciary.gov.uk/keyfacts/judiciary\\_organisation\\_chart/chart.htm](http://www.judiciary.gov.uk/keyfacts/judiciary_organisation_chart/chart.htm).

## 11 Constitutional Reform Act 2005

[📄 III, 11]

Si riportano qui il fontespizio ufficiale\* della legge e le prime pagine riassuntive delle Explanatory Notes\*\* ufficiali della legge stessa.

ELIZABETH II

c. 4



# Constitutional Reform Act 2005

## 2005 CHAPTER 4

An Act to make provision for modifying the office of Lord Chancellor, and to make provision relating to the functions of that office; to establish a Supreme Court of the United Kingdom, and to abolish the appellate jurisdiction of the House of Lords; to make provision about the jurisdiction of the Judicial Committee of the Privy Council and the judicial functions of the President of the Council; to make other provision about the judiciary, their appointment and discipline; and for connected purposes. [24th March 2005]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: —

\* Fonte: Constitutional Reform Act 2005, London, The Stationery Office, 2005.

\*\* Fonte: [http://www.opsi.gov.uk/acts/acts2005/en/ukpgaen\\_20050004\\_en\\_1](http://www.opsi.gov.uk/acts/acts2005/en/ukpgaen_20050004_en_1).

## EXPLANATORY NOTES

### INTRODUCTION

1. These explanatory notes relate to the Constitutional Reform Act 2005 which received Royal Assent on 24 March 2005. They have been prepared by the Department for Constitutional Affairs in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### OVERVIEW

3. The Constitutional Reform Act modifies the office of Lord Chancellor and makes changes to the way in which some of the functions vested in that office are to be exercised. The Act also creates the Supreme Court of the United Kingdom and abolishes the appellate jurisdiction of the House of Lords. It creates the Judicial Appointments Commission to select people for judicial appointments in England and Wales, and provides for judicial discipline in England and Wales. The Act modifies the jurisdiction of the Judicial Committee of the Privy Council and removes the right of the Lord President of the Council to sit judicially.
4. The explanatory notes are divided into parts reflecting the structure of the Act. In relation to each Part, there is a summary and background section. Commentary on particular sections is then set out in number order, with the commentary on the various schedules included with the section to which they relate.

\* \* \*

6. The Act is divided into 7 parts:

#### **Part 1: The Rule of Law**

- Part 1: provides that the Act does not adversely affect the Rule of Law or the Lord Chancellor's role in relation to that principle.

#### **Part 2: Arrangements to modify the office of Lord Chancellor**

- Part 2: Makes provision for modifying the office of Lord Chancellor so that the office-holder is no longer a judge nor exercises any judicial functions. It also sets out the qualifications for appointment to the office of Lord Chancellor. This Part also deals with functions relating to the judiciary and courts so that they are appropriately shared between the reformed ministerial office of Lord Chancellor and the Lord Chief Justice (and/or other senior members of the judiciary as appropriate). It also provides a guarantee of continued judicial independence. There are provisions in relation to the Speakership of the House of Lords. There are also provisions for the modification, abolition or transfer of other existing functions of the Lord Chancellor and provision that certain functions cannot be transferred from the Lord Chancellor to other Ministers by a Transfer of Functions Order under the Ministers of the Crown Act 1975.

**Part 3: The Supreme Court**

- Part 3: Makes provisions for a Supreme Court to replace the existing system of Law Lords operating as a committee of the House of Lords. It provides for the appointment of judges to the new Court, the Court's jurisdiction, its procedures, resources (including accommodation) and other matters.

**Part 4: Judicial appointments and discipline**

- Part 4: Makes provision for a Judicial Appointments Commission to be responsible for recruiting and selecting judges for the Courts of England and Wales and members of certain tribunals, and makes special arrangements for the appointment of the Lord Chief Justice and other Heads of Division and of the Lords Justices of Appeal. It provides for the Commission to report to the Lord Chancellor on who has been selected, and for the Lord Chancellor to make the appointment or the recommendation for appointment to The Queen. It also makes provision for a Judicial Appointments and Conduct Ombudsman, and for judicial discipline.

**Part 5: Judicial appointments and removals: Northern Ireland**

- Part 5 makes provision about the supply of information to the existing Northern Ireland Judicial Appointments Commission, creates a Northern Ireland Judicial Appointments Ombudsman, and provides a mechanism for the removal of judicial office holders in Northern Ireland. By virtue of section 147(2), Part 5 extends only to Northern Ireland.

**Part 6: Other provisions relating to the judiciary**

- Part 6: Makes provision regarding Parliamentary disqualification of certain judges; and makes amendments about the Judicial Committee of the Privy Council.

**Part 7: General**

- Part 7: Restricts the disclosure of confidential information obtained under certain provisions of the Act; makes provision about the interpretation of certain expressions used in the Act, including "enactment" and "subordinate legislation"; confers power to make supplementary provision by order; sets out the procedure for making orders and regulations under the Act; makes minor and consequential amendments and repeals and revocations; and makes provision about the extent, commencement and short title of the Act.