

"MAGNA CHARTA."

BY JOHN PARKER, JUN.

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The subject upon which I am to speak to you this evening, although probably not attractive to every one present, is an appropriate one, as we live within a very short distance of the site of the Castle of Alan Basset, one of the great barons who signed Magna Charta. Only the old Grist Mill and the name of Bassetsbury survive to remind us that this powerful lord was once a neighbour, and took, no doubt, an important part in the doings of this ancient borough town in the reign of King John. The lands to the east of the Rye Mead, indeed, are full of antiquarian interest, as centuries before Basset's Castle was reared, in close proximity to the site, stood that interesting Roman villa which a short time back was partly brought to light. But, in addition to our local connection with one who took a prominent part in obtaining the great Charter from John, it must be remembered that the place where the Charter itself was signed, the "Island of Runnemede," we claim to be in our own county. To understand the great results which flowed from the grant of this Charter by the King, we must for a few minutes consider the position of the country in the thirteenth century. The castles that are scattered about Great Britain, with their battlements, their moats, and their strong defences, point out to us the feudal system which then existed. The King was the great feudal chief; the Barons were smaller chieftains, around whose castle each had his band of retainers, and many were the feuds, and struggles, and ravages which were committed between lord and lord. Within the castle, whatever luxury the age then knew might be found; but without the moat and beyond the Baron's towers the retainers and peasants lived in miserable huts and in a low stage of civilization. The Barons were brave soldiers in time of war, and good sportsmen in the short intervals of peace; but they were not bookish men, few

even could write their names. Thus we find that when a great man wished to confirm a great act, he sealed with the crest—the same device which appeared on his helm—generally with a thumb-ring, the document to which his name was attached, and such was the case with those who were named in the great Charter. If there were any of the type of what we now call the middle class, they would be found among the citizens and burgesses of the towns, who betrayed their Saxon origin by their love of liberty, and their veneration for the laws of Edward the Confessor. But learning was chiefly confined to the monasteries; the clergy were not only the ecclesiastics, but the lawyers of the age. The cell of the monk was the only place where books could be transcribed, and scarcely elsewhere could books be found; and though the learning that then existed was, as we may suppose, cramped and fettered, yet we are greatly indebted to the religious orders for passing on to us the stream of knowledge, which would have otherwise stagnated. And whilst on the subject of the characteristics of this age, we can never forget that the most eminent architects in our country flourished in the reigns of the Plantagenets—they were among the great churchmen of the times—we have an opportunity, in the restoration of the early English work of our own parish church, of admiring the taste and beauty displayed by the architects of this period. The barbaric grandeur of the Norman was gradually being superseded by the pointed arch, the graceful early English style. Almost every cathedral of the land is an evidence of the energy of the architects of the times of which we speak, and is a monument worthy in other respects of a better age.

Let us for a moment consider the language of the times. At Court and among the Norman Barons, Norman-French was still spoken, and this badge of the conquests of William did not cease to exist till Normandy was lost to the English kings. All legal documents were in Latin; of course English was spoken by the common people. It was, indeed, still the language of the nation; but for half-a-century it ceased to be literary, till one Layamon, in the year 1200, wrote a poem, "To tell the noble deeds of England," of more than thirty thousand lines, in which it is said that less than fifty Norman words are to be found. We can scarcely conceive of the condition of

things as they then existed, when the speech of the King, the written law, and the very prayers of the Church, were in a tongue not understood by the people.

Having thus spoken of the times in which the great Charter was signed, let us now turn our eyes to King John. It is a mistake to describe him as altogether impotent, although it is correct to speak of him as mean and cruel. After referring to various historians, I am inclined to think that the following summary of his character by Dean Hook, in his "Lives of the Archbishops," is exceedingly correct. He says: "His frivolity and caprice rendered it impossible to say beforehand what, under any state of circumstances, he might determine to do. His inconsistency of temper would at one time hurry him into deeds of tyranny; at another time degrade him into acts of indescribable meanness. He feared not to stain his hands in a nephew's blood, and yet he licked the dust before a sub-deacon of Rome. Nevertheless, we find in him no want of animal courage, no want even of mental vigour, when at any time he was compelled to rouse himself from the filth and sloth of his self-indulgence." From the time of William of Normandy, the Kings had treated England as a conquered country. They were for the most part rude men and mighty hunters, and to gratify their favourite recreation whole districts were depopulated to extend the vast tracts of forest that then existed. Much misery, it may well be believed, ensued from these acts of selfish tyranny. To give an idea of the severity of the forest laws, Matthew of Westminster remarks of William I., "that if men disabled a wild beast they were dispossessed and imprisoned;" and in another place, "if it were a stag, a buck, or a boar, they were deprived of their eyes." John rather increased than diminished the severity of these forest laws, making the penalties attaching to the destroying a beast, and even the "winged creation," as severe as taking away the life of a human being. His oppressions had become intolerable, heavy burdens were inflicted on the transmission of property, money was unjustly extorted from the subject, and misgovernment had produced discontent and distrust. Through his refusal to accept the Pope's nominee, Stephen Langton, of whom we shall have more to say presently, as Archbishop of Canterbury, Innocent put the land under an interdict,

the churches were closed, the bells ceased to sound, and the sacraments were refused. Then, at another period of his reign, probably to obtain the Pope's influence on his side against his Barons, John actually resigned England and Ireland to the Chair of St. Peter, and agreed to hold these dominions as feudatory of the Church of Rome by the annual payment of a thousand marks. England, too, was constantly embroiled in wars with Philip of France, with the vain hope on the part of John to regain his lost possessions in Normandy, and when he could not rally his own soldiers, he would constantly bring mercenaries to his aid. The few instances thus related will prepare us to understand that if there was any spirit in the land it would now be manifested. We cannot do better than to quote Shakespeare's words in summing up the evils of this reign:—

“The life, the right, and truth of all this realm
Is fled to heaven; and England now is left
To tug and scramble, and to part by th' teeth
The unowed interest of proud-swellng state.
Now, for the bare-picked bone of majesty
Doth doggéd war bristle his angry crest,
And snarleth in the gentle eyes of peace.
Now powers from home, and discontents at home
Meet in one line, and vast confusion waits
(As doth a raven on a sick-fallen beast)
The imminent decay of wrested pomp.
Now happy he whose cloak and cincture can
Hold out this tempest.”

A difficulty naturally arises how it came to pass that the Barons, who were Norman by race, and had received their lands through the grace and favour of the Norman Kings, were on the side of liberty, that they gradually gave up their native French language, and that the English language eventually regained its dominancy among the upper as well as the lower classes. The explanation is this: the Kings had encroached on the privileges of the Barons, their estates were constantly plundered, they listened, therefore, willingly to the traditions of the citizens of the ancient towns where freedom still lurked, who told of true Saxon liberty and the just laws of the Confessor. They felt there was a common cause between themselves and the English; hence it was that they threw off every vestige of their origin, gradually assumed the ancient tongue of the nation, and espoused the cause of the people.

It is not my purpose to repeat the history of the events which preceded the memorable meeting at Runnemedede, but a few preliminary remarks appear necessary. The first thing that naturally would excite our curiosity would be as to the persons who figured in this great transaction, the prime movers of so important a work. The chosen leader of the movement was Robert Fitz-Walter, a man of high character, and styled the "Marshal of the Army of God and of Holy Church;" but though chosen for his exalted qualities, he had not the sagacity of the general who could carry out so delicate an undertaking. It required not a mere brave and determined knight, but a man of education—a lawyer—to carry through so difficult a task. Education, as I have said, was then chiefly confined to the clergy, and to a Churchman we must look at this crisis. The true leader and adviser in framing and obtaining from John the Charter was Stephen Langton, one of the most remarkable men of his age. An Englishman by birth, but educated in France, he was a man of varied talents. He was a poet (a miracle play in Norman-French is attributed to him), an historian, and wrote the Life of Richard I.; but his chief literary pursuits were in Biblical lore. He wrote commentaries on most of the books of the Old Testament, and on the Epistles of St. Paul. His works are to be found in the libraries of Oxford and Cambridge, and in the British Museum. Dean Hook, with reference to him, gives the following quotation from an old chronicler: "In XI yere of Henry deied Steven Langdon, Bishop of Cauntirbury, that was a grete clerk in his dayes in making of many bokes, specially upon Scripture, for his work upon the XII Prophetys have I seyn."* It is believed of him that he divided the whole Bible into chapters. Although Langton owed his elevation to the see of Canterbury to the Pope, and was a cardinal of the Church of Rome, he nevertheless acted independently when his country's liberties were at stake—he was a patriot as well as an ecclesiastic. After the submission of the King to Innocent, they both, King and Pope, concerted against the Barons; but, notwithstanding this, the Archbishop would not absolve the King from the excommunication that had been long in-

* "Capgrave Chronicles," p. 152.

flicted on him till he took a special oath, prepared by Langton, that he would renew the good laws of his ancestors, and specially those of King Edward. This oath was administered with great pomp at the venerable Cathedral of Winchester, in the presence of a vast body of prelates and people.

The historian Rapin seems to doubt the sincerity of Langton,* because he appeared to affect to perform the office of mediator between the King and the Barons. It is true that he came with the King and a few lords to meet the Barons at Runnemede, but this one would imagine was a mere incident; and it must be remembered that he was in a high and very responsible position, to whose voice the King would at all events listen with respect. Hume, however, who would at no time unduly praise an ecclesiastic, I find speaks of him thus in the part he took in obtaining the Charter: "But nothing forwarded this confederacy so much as the concurrence of Langton, a man whose memory, though he was obtruded on the nation by a palpable encroachment of the see of Rome, ought always to be respected by the English." The monument of Langton's patriotism must be the Charter itself, of which undoubtedly he was the author.

Hidden in the obscurity of a monastery, the Charter of the first Henry was found. It was a precedent for Langton, and with lawyers there is nothing like a precedent. This Charter was framed in accordance with the laws of the Confessor. It was read with all solemnity at one of the meetings of the Barons. The first Council was held at St. Albans on the 4th of August, 1213, at which the Barons enjoined the Sheriffs, the Rangers of the Forests, and other the King's officers to abstain from extortion, and acts of violence and oppression. At St. Edmondsbury, on the plea of devotion at the feast of the Saxon saint, the Barons mustered in large force. It was there that Langton's burning eloquence, as he descanted on the tyranny of the King and the wrongs of their country, inflamed the Barons to the highest pitch, and there they took a solemn oath before the high altar that they would withdraw their allegiance from the King unless he granted their just demands. In the Abbey

* See "Rapin's History," vol. i., book 8, p. 276.

grounds at Bury St. Edmunds the following inscription may be seen :—

“Near this spot, Cardinal Langton and the Barons swore at St. Edmund's altar that they would obtain from King John the ratification of Magna Charta.

“Where the rude buttress totters to its fall,
And ivy mantles o'er the crumbling wall;
Where e'en the skilful eye can scarcely trace
The once high altar's lonely resting place.
Let patriotic fancy muse awhile
Around the ruins of this ancient pile.
Six weary centuries have passed away,
Palace and abbey moulder in decay;
Cold death enshrouds the learned and the brave,
Langton—Fitzwalter, slumber in the grave.
But still we read in deathless records how
The high-soul'd priest confirmed the baron's vow,
And freedom unforgetful still recites
This second birthplace of our native rights.”

It was not without great determination and evidences of strength that John at length yielded, and in the summer of 1215 met the Barons at the great conference at Runnemede. An assembly of the first in the land, venerable prelates and true knights—it might be called the first meeting of the House of Lords—must have been an imposing spectacle. John could muster but few on his side, but his disaffected subjects were many and determined. A few days, and the issue was settled; in fact, John signed the Charter with a suspicious haste, seeing that he had exclaimed but a short time before, “Why do they not demand my crown at once?” and then, with an oath, “No liberties will I grant to those whose object is to make me their slave.”

Having thus given a few of the historical facts that preceded the signing of the Charter, let us now very briefly allude to the Charter itself. My Lord Coke, one of the soundest but driest of lawyers, surprises us with this amusing attempt at facetiousness. In his “Second Institutes” he says: “King Alexander was called Alexander Magnus, not in respect of the largeness of his body, for he was a little man, but in respect of the greatness of his heroical spirit, of whom it might be truly said—

“*Mens tamen in parvo corpore magna fuit.*”

So as of this great Charter it may be truly said that it is

magnum in parvo.” * A reference to the original Charter at the British Museum, or a *fac-simile* of it—a beautiful specimen of caligraphy for those times—will convince us of the correctness as well as triteness of Coke’s remarks.

There were preliminary articles, but the Charter itself was divided into seventy-nine sections. My object is merely to call attention to a few of its more prominent provisions. The first words of the Charter are, “The Church of England shall be free.” There were two attacks against which Churchmen desired to guard themselves—the one was the aggression of the Bishop of Rome, the other the interference of the King. In these corrupt times it was frequently the case that rich benefices in England were conferred by the Pope on Italian favourites, to the prejudice of the meritorious native clergy. There were English prelates who strongly resisted these usurpations of the See of Rome. Langton, we shall have gathered, was one of them, and without enumerating a list of others, I may mention Archbishop Chichele, who, in the reign of Henry VI., refused to consecrate a Bishop of Ely who was nominated by Pope Eugenius IV. It had been well for the liberties of the Gallican and other Churches under the jurisdiction of the Papal power, if their Bishops had shown the like independence during the recent Œcumenical Council, which decreed the dogma of Papal infallibility. This first article of the Charter was the first step toward the enactment of the statutes of *Præmunire*; that is, the introducing a foreign power into this land, an offence which was punishable long before the Reformation by imprisonment at the King’s pleasure during life; and the thirty-seventh of our Articles of Religion was merely the final assertion of our independence, where it uses those memorable words, “the Bishop of Rome hath no jurisdiction in this realm of England.” But the other formidable foe to the liberties of the Church was the King. It was his practice to issue a royal *congé d’elire* to the chapters of the cathedrals, recommending some favoured person to a vacant bishopric. History tells us that many of the prelates of those days were far better soldiers than divines, and it can be easily

* “Second Institutes.” The Proem.

understood that an irreligious King like John would fix his choice for a bishop rather on one who would serve his own purposes, than on one who would faithfully fill the sacred office. It was the object of this article of the Charter that the Church should freely choose its own bishops. It may occur to some that in these very days (a practice revived at the Reformation) the Royal *congé d'elire* is still issued with the recommendation to the chapters; but it must be remembered that it is issued by a Constitutional Monarch, the temporal head of the National Church, and that the Bishop is really selected by the Prime Minister of the day, who is the chosen of the people, and who, for the most part, reflects the wishes of the nation in the choice he makes. This mode of selection is acquiesced in by both clergy and laity, not because it is altogether theoretically correct, but because practically it works well.

The earlier part of the Charter is occupied with directions with regard to the succession to property, and those whose interests are connected therewith. Restrictions are imposed as to the amount the King is to claim for what are termed *reliefs* from the heir. The limit of the claim is only a proof of the exorbitant demands which must have been made, as for an earldom the sum of £100 has to be paid by the heir—a large sum indeed considering the then value of money. There were also humane provisions with regard to seizures for payment of debts, and restrictions were made on the interest which could be claimed by the Jew money-lender. The City of London was to retain its ancient liberties and free customs, “as well by land as by water.” If the Norman kings could wrench the liberties from the rural population, it must be remembered that the citizens of London had been ever held in a certain degree of respect, that London was at this time a city of commerce, and that the Thames was the secret of its wealth. This retention of the ancient liberties and customs was also extended to “all other cities and boroughs, towns and ports.” We come now, however, to a very interesting provision in the Charter, which will show that the Barons had the welfare of the whole nation at heart, and were determined that justice should be promptly administered. The provision which I allude to is this, “Common pleas shall not follow

our court, but be holden in some certain place.”* Common Pleas was the court which was intended to decide all controversies between subject and subject, just as the King’s Bench was the court to correct all crimes and misdemeanours, and the Court of Exchequer to adjust and recover the King’s revenue.† But originally these courts were embraced in one, the *Aula Regia*, and would follow the King’s person wherever he might go; so that if the King moved (and John was a very restless monarch) from London to York, and thence to Exeter, the unfortunate plaintiff would have to track his steps if he intended to prosecute his claim. Imagine this state of things! One can only say that, for the infirm and aged, the idea of a court of justice must have been merely a term of mockery. The name of King’s Bench implies that the King himself sat in court, but it should be understood that in moving from place to place he took with him some great officers of state, who had seats in the *Aula Regia*—the King’s court—and who were men “learned in the law.” But, as Blackstone says, “this great universal court being bound to follow the King’s household in all his progresses and expeditions, the trial of common causes therein was found very burdensome to the subject.” I am reminded here of the fact that the religious houses were bound to furnish strong pack-horses, free of charge, to carry the records and legal documents from place to place as the King moved his quarters. We cannot fully realize the boon which we enjoy of having justice at our doors, until we understand the difficulties of travelling to the King’s Court in the thirteenth century. The roads were then in a fearful state; carriages could seldom be used, especially in winter; travelling was chiefly on horseback, through bridleways and thick forests often infested with robbers, so that travellers, for protection and “good cheer,” frequently journeyed in companies. We shall remember that the pilgrims to Canterbury were always represented as equestrians. The goods and traffic of the country were chiefly carried by pack-horses, and to give an instance of the difficulty of getting from place to place, it is related that, in 1381, a King’s herald, with every advantage of safe conduct and equipment, was not

* Sec. 22.

† Blac. Comm., 22nd ed., vol. iii., p. 48, by Stewart.

expected to perform the journey from London to Berwick in less than forty days. The perils, too, of the way were many indeed, as a rider might have to leave his horse smothered in a bog or drowned in the ford. "Even so late as the reign of Henry VIII. the streets of our metropolis are described as being many of them very foul and full of pits and sloughs, very perilous as well for the king's subjects on horseback as on foot."* Sufficient I think has now been said to show the great inconvenience that arose from not having the courts of law at some fixed locality. It is even mentioned by Fabian that the records, when sent back from Shrewsbury in the reign of Edward I., received much damage from the rain.† The great advantage to the suitors was eventually gained when the courts were permanently fixed through the instrumentality of the Charter at the ancient Palace of Westminster. The glorious Hall, built in the reign of Richard II., is still the rendezvous of the lawyers. Soon, as we are aware, the courts will be removed to the buildings in the Strand, now in the course of erection; but the ancient Hall of Westminster will ever be remembered as the spot where justice was administered, as it will remain part of the Houses of Parliament, where the laws continue to be made. The judges, soon after the signing of the Charter, were regularly appointed, were exalted to the dignity of knights, then esteemed a higher rank than now, with all appliances to uphold their dignity, and with fixed salaries.

And here I will quote some interesting extracts from Herbert's "Inns of Court," first as to the dresses of the judges, and then as to their salaries, in the days of the Plantagenets. "Edward III., in the twentieth year of his reign, by precept to the keeper of his great wardrobe, commands him to deliver to William Scott, and the rest of his fellow-justices of his bench there named; as also to John de Stonor, and those with him, justices of the Common Pleas; and likewise to Robert de Sadyngtone, and other the barons of his Exchequer—viz., to each of them for their summer vestments or robes for that present year, half a short cloth and one piece of fine linen silk; and for the winter season another half of a cloth-colour

* "Life of Wycliffe, by Dr. R. Vaughan, pp. 17 to 19.

† Chron., Part ii., p. 124.

curt, with a hood and three pieces of fur of white budg. And for the feast of the nativity of our Lord, half a cloth-colour curt, with a hood of two and thirty bellies of minever, another fur with seven tires of minever, and two furs of silk. In the twenty-first of the same prince, Sir William de Thorpe, then Chief Justice of the King's Bench, with Sir William Basset and Sir Roger de Bankewell, his fellow-justices of that court, were allowed out of the same wardrobe, at the feast of All Saints, for their winter robes, each of them half a cloth-colour curt, three furs of white budg, and one hood of the same budg; and for their liveries at Christmas, each of them half a cloth likewise colour curt, one hood containing thirty-two bellies of minever half pure, one fur of minever containing seven tires and two furs of silk, each of seven tires; and for their summer robes each of them half a cloth-colour curt, with one piece and a half of thin silk.

"In 11 R. 11, Sir Walter de Clopton, Knight, then Chief Justice of the King's Bench, and John Hall, his fellow-justice of the Common Pleas; and William Thyrning, William Kykill, John Wadham, and Richard Sydenham, Justices also of the same court, had for their summer robes the following liveries—viz., each of the chief justices ten ells of green cloth long, and twenty-four ells of green taffeta; and each of the rest ten ells of green cloth long. Ten ells of the like cloth was also at the same time given to John Cassy, Chief Baron of the Exchequer." Now, with reference to the salaries of the judges, "the first yearly salaries paid to the king's justices of his respective courts at Westminster for their support in his service, are in the eleventh year of King Henry III., son of King John, the liberatae rolls before that time being all perished; but then Will. de Insula and R. Duket had each of them ten marks per annum out of the Exchequer. Not long afterwards these fees were increased, for, in 23 Hen. III., William de Culeworth, one of the Justices of the Common Pleas, had £20 per annum fee. In 27 Hen. III., Alexander de Swereford, a Baron of the Exchequer, and it seems Chief, had forty marks per annum; and in 38 Hen. III., John de Wyville, one of the Barons of that court, twenty marks. In 43 Hen. III., Gilbert de Preston, then one of the Justices of the King's Bench, had £40 per annum; and in 44

Hen. III., Roger de Thurkilby, one of the Justices of the Court of Common Pleas, one hundred marks per annum ; but he was, as it appears, then chief justice in that court, though there was a *justiciarius Angliæ* at the same time, for Robert de Briwes, then also a justice in the Court of Common Pleas, had no more than £40 per annum."

In addition to the advantage of fixed and known courts of justice, the regulation that justice should be administered in the counties, "by sending two Justiciaries through every county four times a-year, who, with the four Knights chosen out of every shire by the people, should hold the assizes in the county on the day and time appointed," was a salutary system, and one that commends itself to us in this nineteenth century.

It is striking to observe, in going through the Charter, that villains or rustics, as well as the freemen and merchantmen, are to be cared for and their interests protected. In fining a freeman, his means of livelihood are to be spared, a merchant his merchandise, and a villain his "wainage," meaning his carts and implements of husbandry, so that neither should be utterly ruined ; and as to freemen, the word is saving his "contenementum." Selden, in his "Table-Talk," says that the word *contenementum* signifies the same with countenance ; as used by the country people when intending to receive a person with hospitality, they say, "I will show you the best countenance," so that the meaning of Magna Charta is, a man shall not be so fined but that he may be able to give his neighbours good entertainment.* There is a salutary provision, too, as to the just distribution of the chattels of a freeman dying without a will ; and as an evidence that commerce was not forgotten, that the prosperity of trade was deemed of vast importance, and as a testimony to the comprehensiveness of the Charter, I refer to the following provisions :—

"41. There shall be one measure of wine and one of ale through our whole realm, and one measure of corn, and one breadth of dyed cloth, and the weight shall be as measures."

"48. All merchants shall have secure conduct to go out of England and to come into England, and to stay

* "Barrington on the Ancient Statutes," 5th edit., p. 12.

and abide there, and to pass as well by land as by water, to buy and sell by the ancient and allowed customs, without any evil to it except in time of war, or when they are of any nation at war with us."

These regulations speak for themselves: the uniform weight and measure, and the freedom of merchandise and merchantmen, were felt even in these days essential to the prosperity of any nation.

It is not my purpose, as I have before intimated, to go *seriatim* through the articles of this weighty deed, but to confine myself to those points in the Charter which seem to be as the great corner-stones of the edifice of our Constitution, which was then being gradually reared. I come, therefore, now to another most important clause: it is as follows:—

"46. No freeman shall be taken or imprisoned, etc., nor will we pass upon him or commit him to prison, unless by the legal judgment of his peers or by the law of the land."

In this enactment we shall at once recognise one of the greatest safeguards of our liberties, viz., trial by jury; but before we further dwell on that subject, let me for a few moments direct your attention to the different modes of trial in this country in its early history, which are to be gleaned from our legal text-books. The historian Tacitus records that the ancient Germans were extremely addicted to divination; hence it was that from our Saxon ancestors we trace much superstition in our laws and customs. It was not till the reign of George I. that people were discouraged from resorting to the sovereign to be cured, through the efficacy of his sacred person by his touch, from the disease commonly called the king's evil. This vulgar credulity had, in the reign of Charles II., risen to such a height, that in fourteen years 92,107 persons were touched, and, according to Wiseman, the king's physician, they were nearly all cured! Queen Anne officially announced in the "London Gazette," March 12th, 1712, her royal intention to touch publicly for the cure of the evil. The practice commenced in the reign of Edward the Confessor, 1058.*

I am here reminded of a tradition in my own family

* Haydn's "Dictionary of Dates."

connected with the ancient village of Bledlow. The village appears to have been greatly plagued by a witch. At one of the farm-homesteads the parish priest had been called in, the ceremony of exorcism had been gone through, and the sacred horse-shoe had been nailed over the door, but all to no purpose, for the rustics on a frosty morning had loaded up their waggon, and were driving it on the road to market, when on the way, near a pond, the waggon upset its contents into the water. The driver and his companion, instead of reproaching themselves with their negligence, or remembering that the brisk morning had made their horses skittish, exclaimed, in uncomplimentary terms, "We haven't laid her!" meaning the village witch, to whom they attributed their present calamity. But even to this day in neglected districts, as we find from our daily papers, the belief in witchcraft has not yet died out.

The trial by *ordeal* was decidedly of Saxon origin; it was of two sorts, *fire* ordeal and *water* ordeal. The former was the enviable privilege of those in high rank, the latter was confined to the common people. But, singularly enough, the ordeal might be gone through by deputy, but the principal was to answer for the success of the trial. Fire ordeal was performed either by taking up in the hand unhurt a piece of red-hot iron of one, two, or three pounds weight, or else by walking barefoot and blindfold over nine red-hot ploughshares laid lengthwise at unequal distances; and if the person escaped being hurt he was adjudged innocent, but if it happened otherwise, as without collusion it usually did, he was then condemned as guilty. Water ordeal was performed either by plunging the bare arm up to the elbow in boiling water and escaping unhurt, or by casting the person suspected into a river or pond of cold water; and if he floated therein without any action of swimming, it was deemed an evidence of his guilt, but if he sunk he was acquitted.* One scarcely knows which to commiserate the most, the successful or unsuccessful party in the trial by ordeal. So late as the reign of King John there were grants to the bishops and clergy to use *judicium ferri, aquæ et ignis*. The next species of

* Blac. Comm., Stewart's ed., vol. iv., p. 398.

trial, and of Saxon origin, was by *corsned*, being a piece of cheese or bread of about an ounce in weight, which was consecrated with a form of exorcism, desiring the Almighty that it might cause convulsions and paleness if the man was really guilty, but might turn to health and nourishment if he was innocent.* The next species was of Norman origin, and was in force much later than the two former. This was the trial "by *battel*"—duel or single combat, as Blackstone says, another presumptuous appeal to Providence. The same author gives us the form and manner of this trial, from whom I now quote in an abbreviated and more simple form. The accused pleaded *not guilty*, and threw down his glove, and declared he would defend the same by his body; the accuser took up the glove, and replied that he was ready to make good the appeal body for body. And thereupon the accused, taking the Bible in his right hand and in his left the right hand of his antagonist, swore that he was not guilty, and would defend by his body as the court should award. To which the accuser replied, holding the Bible and his antagonist's hand in the same manner as the other, asserting that the accused had perjured himself and had committed the crime, which he the accuser would prove by his body. The battle was then to be fought with the same weapons, viz., batons. If the accused was so far vanquished that he could not or would not fight any longer, he was adjudged to be hanged immediately; and then, as well as if he were killed in battle, Providence was deemed to have determined in favour of the truth, and his blood was attainted. But if he killed the accuser, or could maintain the fight from sunrise till the stars appeared in the evening, he was acquitted; so also, if the accuser became recreant, and pronounced the horrible word of *craven*, he lost his freedom and became infamous, and the accused was acquitted. "The last trial by *battel* waged in the Court of Common Pleas at Westminster (though there was afterwards one in the Court of Chivalry in 1631, and another in the County Palatine of Durham in 1638) was in the thirteenth year of Queen Elizabeth, 1571, and was held in Tothill Fields, Westminster, not without a great deal of disturbance, as Sir Henry Spel-

* Blac. Comm. Stewart's ed., vol. iv., p. 401.

man, who was an eye-witness, tells us.”* It strikes me that this system of trial by battel occasioned the common saying, that “the weakest goes to the wall.”

I need not say that these species of trials have long since been abolished, giving place to *trial by jury*, the principles of which were enunciated, as we have seen, in Magna Charta. This mode of trial has been a great safeguard. Twelve peers or equals intervening between the Crown and the subject on his trial have secured him, at all events, from an arbitrary sentence. The character of King John, exercising the office of judge himself in the Aula Regia, or leaving justice to be administered by his own nominees, would suffice to convince us that the subject would fare badly indeed if the cause in which he was interested was one in which the King or his justices had an adverse leaning. There is a great deal of obscurity as to the origin of trial by jury. Some affirm that it was in use in the days of our King Alfred, but that it was adopted on the Continent prior to the granting of the great Charter there appears no doubt. The effect of the principle of this mode of trial must be to bring a sense of the importance of maintaining even-handed justice among all classes of the community, and of the responsibility which thereby devolves on the subject. Trial by jury does undoubtedly find its principle is strained in countries where prejudices occasioned by evil influences are dominant, but among a free and enlightened people it must ever be regarded as a cherished safeguard of liberty and law.

But there is an all-important addendum to the clause which conferred the great boon of trial by jury; it is this:—

“47. We will sell, or deny, or defer right or justice to no man.”

A few instances of the corruption of the times on which we are dwelling will suffice to convince us of the importance of the latter clause. The county of Norfolk (always represented as a litigious county, insomuch that the number of attorneys allowed to practice in it is reduced by a statute of Henry VI. to eight) payed an annual composition at the Exchequer that they might *be fairly dealt with*.† The saying was—

* Blac. Comm., Stewart's edit., vol. iii., p. 383.

† Madox's Hist. Excheq., p. 205.

“Norfolk full of *wyles*,
Suffolk full of *styles*.”

It was usual to pay fines anciently for delaying or expediting process. In some cases the parties litigant offered part of what they were to recover to the Crown. The Dean of London paid twenty marks to the King, that he might assist him against the Bishop in a lawsuit. William Sticteville presented to King John three thousand marks for giving judgment with relation to a certain barony which he claimed.* So late as the reign of Charles II., it is asserted that he (the King), in appeals to the House of Lords, used to go about whilst the cause was hearing, and solicit particular lords for appellant or respondent. Barrington, who is a very accomplished commentator on the ancient statutes, in his frequent classical allusions, and as an evidence that bribes were of early origin, refers to Hesiod, who had a troublesome lawsuit with his brother Perseus, and in inveighing against the practice of bribing, he calls the Bœotian judges more than once *δωροφάγοι*, or *devourers of presents*. Happily this disgraceful practice, against which the Barons had set their faces, has long since passed away; and if, for now a long succession of years, we desire to know where integrity, uprightness, and impartiality in the administration of justice can be found, we can point, with pride and perfect truth, to the character of our English judges. The following words from the Charter, which I think it appropriate here to give, are weighty, as regards the appointment of efficient administrators of the law:—

“53. We will not make any justiciaries, constables, sheriffs, or bailiffs but such as are knowing in the laws of the realm, and are disposed duly to observe it.”

The Charter deals much with the regulations of feudal tenures, but on these it is not my purpose to dwell; that which affects our own age is that alone upon which I have chiefly directed your attention. I just notice a very significant enactment embraced in these words:—

“55. All woods that have been taken into the forests in our own time shall forthwith be laid out again.”

But I have already said enough to show the hatred in which the forest laws must have been held.

* Barrington's Anc. Stats., p. 23.

John's wars, as I have mentioned, were carried on frequently, with the sole object of recovering his lost possessions in Normandy. His English subjects, consequently, had but little sympathy with his designs, and it was with difficulty that he could rally them round his standard. England, therefore, was inundated with foreigners, hirelings of the King, the refuse of the Continent, who sought their livelihood by indiscriminate bloodshed. We can imagine that they were unwelcome visitors, and the necessity of the following enactment speaks for itself:—

“59. As soon as peace is restored, we will send out of the kingdom all foreign soldiers, crossbowmen and stipendiaries, who are come with horses and arms to the injury of our people.”

To five-and-twenty barons was the task assigned of redressing the many grievances and the gross injustice to which the people had been subjected.

These oppressions are enumerated with great care in the Charter. Castles, rights, and liberties are to be restored to the dispossessed; all unjust and illegal fines shall be forgiven; and the boon which was to be conferred on his English subjects is to be extended by the King, where particular acts of oppression occur to the Welsh, and to Alexander, the injured King of Scots. Not satisfied with mere words and the signature of the Charter by the King, a security was taken from him that, if the King proved faithless to his pledges, the five-and-twenty barons might seize his castles and lands till the grievance was redressed, with this proviso, “saving harmless our own person, and the persons of our queen and children.” And in carrying out the Charter, all were to have free liberty to take an oath to obey the order of the five-and-twenty barons.

In reviewing this memorable document, we shall, I think, have come to the conclusion that the foundation of great principles, which Englishmen cherish, was being securely laid. We shall perceive by what sure and gradual steps our constitution grew to that completeness which now occasions the envy and wonder of Continental statesmen. That liberty, descending from the King to the barons and upper classes, was being conferred on the mercantile community, and on the citizens and burgesses

of our towns; and that though scant justice was being dealt out to the peasants, yet their names are not forgotten, and that they only needed more enlightenment to assert their rights and their position in the great Commonwealth. We have seen that we are indebted to the barons for a free national church; for the establishment of fixed courts of law, to which the suitors could resort, without difficulty; for the periodical dispensing of justice in the provinces by the judges of the land; for the equitable distribution of the estates of those dying without a will; for the encouragement of commerce and the freedom of the merchant; for trial by jury and purity in administering the law; and, finally, for the restraining within due bounds the prerogatives of the Crown, and the informal creation of the second estate in the realm—the House of Lords. Such results as these can well explain the veneration with which every Englishman versed in the history of his country regards the Charter of liberties.

It only remains to tell its history for a short period after its signing at Runnymede. It was published throughout the whole country, and sworn to at every hundred-mote and town-mote, by order from the King. After the signing of the Charter, it is said that John burst into a fury, “flinging himself on the floor, and gnawing sticks and straw in his impotent rage; but the rage soon passed into the subtle policy of which he was master. Before daybreak he had ridden from Windsor, and he lingered for months along the southern shore—the Cinque Ports and the Isle of Wight—waiting for news of the aid he had solicited from Rome and the Continent.”* Innocent still looked upon himself as the feudal lord of England; he therefore treated the acts of the barons with disdain. He issued a bull, in which he annulled the whole Charter as unjust in itself, as obtained by compulsion, and as derogatory to the dignity of the apostolic see. He prohibited both King and barons from carrying it out, he absolved all who had taken any oaths in connection with it, and excommunicated any one who should maintain the legality of the Charter. Langton refused to obey the Pope in publishing the sentence of excommunication against the barons,

* Green's “History of English People,” p. 125.

though he was cited to Rome, and was suspended on account of his disobedience.* But all classes of the people adhered to the defence of their liberties, and John could only depend for his authority on the hateful assistance of foreign mercenaries. He died, we know, in the midst of the struggle of a civil war. His youthful son Henry, a child of ten years old, after his coronation solemnly accepted the great Charter, being under the guidance of William, the Earl Mareschal, who was devoted to the liberties of his country. Langton survived many years the death of John; as he had been the author, so was he the faithful upholder, of that document which was to secure his countrymen their legitimate rights. It is recorded of him that he demanded a fresh confirmation of the Charter in the Parliament then sitting at Oxford. One of the King's councillors, William Brewer, protested that it had been extorted by force, and was without legal validity. "If you loved the King, William," replied the Archbishop, "you would not throw a stumbling-block in the way of the peace of the nation." The King was cowed by the Archbishop's wrath, and at once promised the observance of the Charter.† But this reign is only a prolonged and weary history of the conflict of King and Pope against the liberties of this country; of the struggles of the barons to maintain what had already been gained by them; of their weaknesses, dissensions, and vacillations. Henry, however, was a very different man to his father; if he had none of his energy and statesmanship, he was, although weak and superstitious, entirely devoid of his lust, cruelty, and irreligion. The great Abbey of Westminster, erected by him on the site of Edward the Confessor's Church, "is a monument of his artistic taste. He was a patron and friend of artists and men of letters, and himself skilled in the gay science of the troubadour."‡ But his grand mistake appears to have been his desire to regain Normandy, and his willingness to yield to foreigners and their influence which pervaded his court. He repeatedly swore to observe the Charter, and as often broke his promise. However, the basis of our liberties was laid down, and the superstructure—the system of administration—remained to be reared. There was un-

* Hume's "History of England," vol. ii., page 94.

† Green's Hist., page 138.

‡ Ib., page 139.

doubtedly, in the midst of turbulence and war, much groping in the dark, but progress was surely making. Parliaments were called together, and this reign records the first summons of two burgesses from every borough to sit with the knights of the shire, the barons, and bishops in the great national assembly. We have only as yet heard the voice of the barons in the cause of liberty; henceforward, though yet but feeble and intermittent, we hear the voices of the representatives of the people. The cause was a national one, espoused by a free race, whose love for law has not been exceeded by their love for liberty, and the cause of the people has happily been now for many a long year in full accord with and faithfully respected by the Throne.
