

RESEARCH NOTE

IMPERIAL ACTS OF CONSTITUTIONAL SIGNIFICANCE IN SOUTH AUSTRALIA

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In June 2015 the world, including Australia, will celebrate the 800th anniversary of the conclusion of Magna Carta 1215. It is the purpose of this note to make available the text of this agreement and several other important English constitutional enactments that still apply in South Australia. We have not included three Imperial Acts of importance as they are generally well known and easily available: the *Constitution of the Commonwealth of Australia Act 1900* (UK); the *Statute of Westminster 1931* (UK) and the *Australia Act 1986* (UK).

Unlike three eastern States¹ that have Imperial Acts Application legislation,² South Australia does not have such an Act. The interstate legislation identifies which Imperial Acts apply and which parts of these Acts apply; in the case of the Victorian statute the text of the relevant provisions is helpfully included. South Australia lacks these advantages. This poses the question of how lawyers and judges in this State are to ascertain which Imperial Acts still apply here. There were a series of important reports by the Law Reform Committee of South Australia in the 1980s that identified and

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¹ *Imperial Acts Application Act 1969* (NSW); *Imperial Acts Application Act 1980* (Vic); *Imperial Acts Application Act 1984* (Qld).

² The term Imperial seems now to be rather old fashioned but it had the advantage of covering both English Acts, ie those enacted before the union with Scotland in 1707, and British Acts enacted after that date.

recommended which Imperial Acts should be retained, though nothing came of this.³

As a settled colony the settlers who arrived in South Australia, even if they were from other parts of the United Kingdom or even if they came from outside the British Empire, enjoyed, in principle,⁴ the benefits of the English common law and English and British statutes at the time of settlement.⁵ South Australia, along with Tasmania and Western Australia employs a reception date system to identify the cut off date by which Imperial Acts apply. The rule is that any British or English statute in existence on the 28th of December 1836 was automatically part of the law of South Australia.⁶

This principle was subject to two limitations. The first was that such Acts only applied provided that the Imperial enactment was suitable to the circumstances of the colony or State.⁷ This means that the Supreme Court could decide that specific provisions in an Imperial Act do not apply here and this has happened in respect of

³ They were the 61st Report (1980); the 65th Report (1981); the 78th Report (1984); the 79th Report (1984); the 96th Report (1985); and the 102nd Report (1986).

⁴ In practice this actually depended upon the existence of a court. The Supreme Court of South Australia was constituted by the *Supreme Court Act No 5 of 1837* s VII (passed 31 May 1837) but it began its first sitting earlier by special commission on 13 May 1837, <<http://www.sabar.org.au/assets/Presidents-Speeches--Press-Releases/150th-Anniversary-of-1st-Sitting-of-Court.pdf>> (accessed 12 December 2014).

⁵ William Blackstone, 1 *Commentaries on the Laws of England* (1979 reprint) 107; *Brown v Mannix* [1828] NSWSupC 86; *Cooper v Stuart* (1889) 14 App Cas 286, 291(PC).

⁶ A rule was set out in the *Adoption of Laws Act No 2 of 1843* (SA) s 1; the *Language of Acts Act No 9 of 1872* s 3; and now in the *Acts Interpretation Act 1915* (SA) s 48, and discussed in *State Government Insurance Commission v Trigwell* (1979) 142 CLR 617, 634-635 (Mason J). The establishment of the Province of South Australia was proclaimed at Glenelg on 28 December 1836: *South Australian Gazette and Colonial Register*, 3 June 1837, 1.

⁷ *Delohery v Permanent Trustee Co of NSW* (1904) 1 CLR 283, 310-311; *Winterbottom v Vardon & Sons Ltd* [1921] SASR 364, 369 (Poole J).

other Imperial statutes in other jurisdictions in Australia.⁸ The second limitation is that the South Australian Parliament may exclude such Acts or parts of such Acts from operation in South Australia if it sees fit. In the case of the Acts transcribed here, this has not happened even though changes in these Acts have been made in Britain. Despite the passage of the *Australia Acts 1986* (UK and Cth) s 1 that terminated British legislative authority to pass statutes for South Australia, that Act did not remove previous Imperial Acts from applying in South Australia, nor did it assist in identifying those applicable Acts.

The last point to note is that despite their fame and the praise heaped upon them, these statutes do not enjoy some special constitutional status; rather they are ordinary statutes. They do not override Australian legislation, they are not immune from alteration or removal by an Australian legislature, nor may they be used to invalidate conflicting Australian legislation.⁹

The texts here employ certain modernisations not found in the originals. First, our texts employ modern spelling not the uncertain orthography of the period before the settling of these matters in the late eighteenth century. Second, we have adopted standard short titles since the originals did not use them and most of the short titles were created by the *Short Titles Act 1896* (UK) (59 and 56 Vict c 14). Third, readers can track the changes in these statutes made by the British parliament in the *Chronological Table of the Statutes*, Vo1 (2003).

⁸ For a good discussion see *Jolly v Smith* (1899) 1 Tas LR 143, 149, 154-156 (FC). The important paper by Alex Castles, 'The Reception and Status of English Law in Australia' (1963) 2(1) *Adelaide Law Review* 1, 1-32, remains relevant here; Peter M McDermott, 'Imperial Statutes in Australia and New Zealand', (1990) 2 *Bond LR* 162, 162-171.

⁹ See *Chia Gee v Martin* (1905) 3 CLR 649, 653 (Griffith CJ); *Re Cusack* (1985) 60 ALJR 302, 304 (Wilson J); *R v Boyd* (1995) 81 A Crim R 260, 267 (NSW CCA) (Gleeson CJ).

I MAGNA CARTA 1215¹⁰

JOHN, by the grace of God King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Count of Anjou, to his archbishops, bishops, abbots, earls, barons, justices, foresters, sheriffs, stewards, servants, and to all his officials and loyal subjects, Greeting.

KNOW THAT BEFORE GOD, for the health of our soul and those of our ancestors and heirs, to the honour of God, the exaltation of the holy Church, and the better ordering of our kingdom, at the advice of our reverend fathers Stephen, archbishop of Canterbury, primate of all England, and cardinal of the holy Roman Church, Henry archbishop of Dublin, William bishop of London, Peter bishop of Winchester, Jocelin bishop of Bath and Glastonbury, Hugh bishop of Lincoln, Walter Bishop of Worcester, William bishop of Coventry, Benedict bishop of Rochester, Master Pandulf subdeacon and member of the papal household, Brother Aymeric master of the knighthood of the Temple in England, William Marshal earl of Pembroke, William earl of Salisbury, William earl of Warren, William earl of Arundel, Alan de Galloway constable of Scotland, Warin Fitz Gerald, Peter Fitz Herbert, Hubert de Burgh seneschal of Poitou, Hugh de Neville, Matthew Fitz Herbert, Thomas Basset, Alan Basset, Philip Daubeney, Robert de Roppeley, John Marshal, John Fitz Hugh, and other loyal subjects:

¹⁰ This document did not have status as legislation and was annulled by Pope Innocent III on 24 August 1215. It was then re-issued in 1216 and 1217 but again neither Charter had statutory status. It is reproduced here because of its fame and because it provided the foundation for many of the chapters in the statutory versions of 1225 and 1297. For an important collection of the various versions as well as the articles of the Barons that preceded 1215 see Harry Rothwell (Ed), 3 *English Historical Documents* (1975) 310-496. This version was obtained from the British and Irish Legal Information Institute (BAILII), <http://www.bailii.org/uk/legis/num_act/1215/magna__carta.html>. Note that in the original Charter the chapters, as they are traditionally known, were not numbered (the numbers were added by William Blackstone in his edition of the Latin original published in 1759) and the text reads continuously. As it is often reproduced, the chapter numbers are included for greater understanding and clarity. Also note that the text has been formatted according to Journal guidelines.

- 1 FIRST, THAT WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity.

TO ALL FREE MEN OF OUR KINGDOM we have also granted, for us and our heirs forever, all the liberties written out below, to have and to keep for them and their heirs, of us and our heirs:

- 2 If any earl, baron, or other person that holds lands directly of the Crown, for military service, shall die, and at his death his heir shall be of full age and owe a 'relief', the heir shall have his inheritance on payment of the ancient scale of 'relief'. That is to say, the heir or heirs of an earl shall pay £100 for the entire earl's barony, the heir or heirs of a knight 100s at most for the entire knight's 'fee', and any man that owes less shall pay less, in accordance with the ancient usage of 'fees'.
- 3 But if the heir of such a person is under age and a ward, when he comes of age he shall have his inheritance without 'relief' or fine.
- 4 The guardian of the land of an heir who is under age shall take from it only reasonable revenues, customary dues, and feudal services. He shall do this without destruction or damage to men or property. If we have given the guardianship of the land to a sheriff, or to any person answerable to us for the revenues, and he commits destruction or damage, we will exact compensation from him, and the land shall be entrusted to two worthy and prudent men of the same 'fee', who shall be answerable to us for the revenues, or to the person to whom we have assigned them.

If we have given or sold to anyone the guardianship of such land, and he causes destruction or damage, he shall lose the guardianship of it, and it shall be handed over to two worthy and prudent men of the same 'fee', who shall be similarly answerable to us.

- 5 For so long as a guardian has guardianship of such land, he shall maintain the houses, parks, fish preserves, ponds, mills, and everything else pertaining to it, from the revenues of the land itself. When the heir comes of age, he shall restore the whole land to him, stocked with plough teams and such implements of husbandry as the season demands and the revenues from the land can reasonably bear.
- 6 Heirs may be given in marriage, but not to someone of lower social standing. Before a marriage takes place, it shall be made known to the heir's next-of-kin.
- 7 At her husband's death, a widow may have her marriage portion and inheritance at once and without trouble. She shall pay nothing for her dower, marriage portion, or any inheritance that she and her husband held jointly on the day of his death. She may remain in her husband's house for forty days after his death, and within this period her dower shall be assigned to her.
- 8 No widow shall be compelled to marry, so long as she wishes to remain without a husband. But she must give security that she will not marry without royal consent, if she holds her lands of the Crown, or without the consent of whatever other lord she may hold them of.
- 9 Neither we nor our officials will seize any land or rent in payment of a debt, so long as the debtor has movable goods sufficient to discharge the debt. A debtor's sureties shall not be distrained upon so long as the debtor himself can discharge his debt. If, for lack of means, the debtor is unable to discharge his debt, his sureties shall be answerable for it. If they so desire, they may have the debtor's lands and rents until they have received satisfaction for the debt that they paid for him, unless the debtor can show that he has settled his obligations to them.

- 10 If anyone who has borrowed a sum of money from Jews dies before the debt has been repaid, his heir shall pay no interest on the debt for so long as he remains under age, irrespective of whom he holds his lands. If such a debt falls into the hands of the Crown, it will take nothing except the principal sum specified in the bond.
- 11 If a man dies owing money to Jews, his wife may have her dower and pay nothing towards the debt from it. If he leaves children that are under age, their needs may also be provided for on a scale appropriate to the size of his holding of lands. The debt is to be paid out of the residue, reserving the service due to his feudal lords. Debts owed to persons other than Jews are to be dealt with similarly.
- 12 No 'scutage' or 'aid' may be levied in our kingdom without its general consent, unless it is for the ransom of our person, to make our eldest son a knight, and (once) to marry our eldest daughter. For these purposes only a reasonable 'aid' may be levied. 'Aids' from the city of London are to be treated similarly.
- 13 The city of London shall enjoy all its ancient liberties and free customs, both by land and by water. We also will and grant that all other cities, boroughs, towns, and ports shall enjoy all their liberties and free customs.
- 14 To obtain the general consent of the realm for the assessment of an 'aid' - except in the three cases specified above - or a 'scutage', we will cause the archbishops, bishops, abbots, earls, and greater barons to be summoned individually by letter. To those who hold lands directly of us we will cause a general summons to be issued, through the sheriffs and other officials, to come together on a fixed day (of which at least forty days notice shall be given) and at a fixed place. In all letters of summons, the cause of the summons will be stated. When a summons has been issued, the business appointed for the day shall go forward in accordance with the resolution of those

present, even if not all those who were summoned have appeared.

- 15 In future we will allow no one to levy an 'aid' from his free men, except to ransom his person, to make his eldest son a knight, and (once) to marry his eldest daughter. For these purposes only a reasonable 'aid' may be levied.
- 16 No man shall be forced to perform more service for a knight's 'fee', or other free holding of land, than is due from it.
- 17 Ordinary lawsuits shall not follow the royal court around, but shall be held in a fixed place.
- 18 Inquests of *novel disseisin*, *mort d'ancestor*, and *darrein presentment* shall be taken only in their proper county court. We ourselves, or in our absence abroad our chief justice, will send two justices to each county four times a year, and these justices, with four knights of the county elected by the county itself, shall hold the assizes in the county court, on the day and in the place where the court meets.
- 19 If any assizes cannot be taken on the day of the county court, as many knights and freeholders shall afterwards remain behind, of those who have attended the court, as will suffice for the administration of justice, having regard to the volume of business to be done.
- 20 For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood. In the same way, a merchant shall be spared his merchandise, and a husbandman the implements of his husbandry, if they fall upon the mercy of a royal court. None of these fines shall be imposed except by the assessment on oath of reputable men of the neighbourhood.
- 21 Earls and barons shall be fined only by their equals, and in proportion to the gravity of their offence.

- 22 A fine imposed upon the lay property of a clerk in holy orders shall be assessed upon the same principles, without reference to the value of his ecclesiastical benefice.
- 23 No town or person shall be forced to build bridges over rivers except those with an ancient obligation to do so.
- 24 No sheriff, constable, coroners, or other royal officials are to hold lawsuits that should be held by the royal justices.
- 25 Every county, hundred, wapentake, and tithing shall remain at its ancient rent, without increase, except the royal demesne manors.
- 26 If at the death of a man who holds a lay 'fee' of the Crown, a sheriff or royal official produces royal letters patent of summons for a debt due to the Crown, it shall be lawful for them to seize and list movable goods found in the lay 'fee' of the dead man to the value of the debt, as assessed by worthy men. Nothing shall be removed until the whole debt is paid, when the residue shall be given over to the executors to carry out the dead man's will. If no debt is due to the Crown, all the movable goods shall be regarded as the property of the dead man, except the reasonable shares of his wife and children.
- 27 If a free man dies intestate, his movable goods are to be distributed by his next-of-kin and friends, under the supervision of the Church. The rights of his debtors are to be preserved.
- 28 No constable or other royal official shall take corn or other movable goods from any man without immediate payment, unless the seller voluntarily offers postponement of this.
- 29 No constable may compel a knight to pay money for castle-guard if the knight is willing to undertake the guard in person, or with reasonable excuse to supply some other fit man to do it. A knight taken or sent on military service shall be excused from castle-guard for the period of this service.

- 30 No sheriff, royal official, or other person shall take horses or carts for transport from any free man, without his consent.
- 31 Neither we nor any royal official will take wood for our castle, or for any other purpose, without the consent of the owner.
- 32 We will not keep the lands of people convicted of felony in our hand for longer than a year and a day, after which they shall be returned to the lords of the 'fees' concerned.
- 33 All fish-weirs shall be removed from the Thames, the Medway, and throughout the whole of England, except on the sea coast.
- 34 The writ called *precipe* shall not in future be issued to anyone in respect of any holding of land, if a free man could thereby be deprived of the right of trial in his own lord's court.
- 35 There shall be standard measures of wine, ale, and corn (the London quarter), throughout the kingdom. There shall also be a standard width of dyed cloth, russett, and haberject, namely two ells within the selvedges. Weights are to be standardised similarly.
- 36 In future nothing shall be paid or accepted for the issue of a writ of inquisition of life or limbs. It shall be given gratis, and not refused.
- 37 If a man holds land of the Crown by 'fee-farm', 'socage', or 'burgage', and also holds land of someone else for knight's service, we will not have guardianship of his heir, nor of the land that belongs to the other person's 'fee', by virtue of the 'fee-farm', 'socage', or 'burgage', unless the 'fee-farm' owes knight's service. We will not have the guardianship of a man's heir, or of land that he holds of someone else, by reason of any small property that he may hold of the Crown for a service of knives, arrows, or the like.
- 38 In future no official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.

- 39 No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.
- 40 To no one will we sell, to no one deny or delay right or justice.
- 41 All merchants may enter or leave England unharmed and without fear, and may stay or travel within it, by land or water, for purposes of trade, free from all illegal exactions, in accordance with ancient and lawful customs. This, however, does not apply in time of war to merchants from a country that is at war with us. Any such merchants found in our country at the outbreak of war shall be detained without injury to their persons or property, until we or our chief justice have discovered how our own merchants are being treated in the country at war with us. If our own merchants are safe they shall be safe too.
- 42 In future it shall be lawful for any man to leave and return to our kingdom unharmed and without fear, by land or water, preserving his allegiance to us, except in time of war, for some short period, for the common benefit of the realm. People that have been imprisoned or outlawed in accordance with the law of the land, people from a country that is at war with us, and merchants – who shall be dealt with as stated above – are excepted from this provision.
- 43 If a man holds lands of any ‘escheat’ such as the ‘honour’ of Wallingford, Nottingham, Boulogne, Lancaster, or of other ‘escheats’ in our hand that are baronies, at his death his heir shall give us only the ‘relief’ and service that he would have made to the baron, had the barony been in the baron's hand. We will hold the ‘escheat’ in the same manner as the baron held it.
- 44 People who live outside the forest need not in future appear before the royal justices of the forest in answer to general summonses, unless they are actually involved in proceedings or

are sureties for someone who has been seized for a forest offence.

- 45 We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well.
- 46 All barons who have founded abbeys, and have charters of English kings or ancient tenure as evidence of this, may have guardianship of them when there is no abbot, as is their due.
- 47 All forests that have been created in our reign shall at once be disafforested. River-banks that have been enclosed in our reign shall be treated similarly.
- 48 All evil customs relating to forests and warrens, foresters, warreners, sheriffs and their servants, or river-banks and their wardens, are at once to be investigated in every county by twelve sworn knights of the county, and within forty days of their enquiry the evil customs are to be abolished completely and irrevocably. But we, or our chief justice if we are not in England, are first to be informed.
- 49 We will at once return all hostages and charters delivered up to us by Englishmen as security for peace or for loyal service.
- 50 We will remove completely from their offices the kinsmen of Gerard de Athée, and in future they shall hold no offices in England. The people in question are Engelard de Cigogné, Peter, Guy, and Andrew de Chanceaux, Guy de Cigogné, Geoffrey de Martigny and his brothers, Philip Marc and his brothers, with Geoffrey his nephew, and all their followers.
- 51 As soon as peace is restored, we will remove from the kingdom all the foreign knights, bowmen, their attendants, and the mercenaries that have come to it, to its harm, with horses and arms.
- 52 To any man whom we have deprived or dispossessed of lands, castles, liberties, or rights, without the lawful judgment of his

equals, we will at once restore these. In cases of dispute the matter shall be resolved by the judgment of the twenty-five barons referred to below in the clause for securing the peace (§ 61). In cases, however, where a man was deprived or dispossessed of something without the lawful judgment of his equals by our father King Henry or our brother King Richard, and it remains in our hands or is held by others under our warranty, we shall have respite for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. On our return from the Crusade, or if we abandon it, we will at once render justice in full.

- 53 We shall have similar respite in rendering justice in connection with forests that are to be disafforested, or to remain forests, when these were first a-forested by our father Henry or our brother Richard; with the guardianship of lands in another person's 'fee', when we have hitherto had this by virtue of a 'fee' held of us for knight's service by a third party; and with abbeys founded in another person's 'fee', in which the lord of the 'fee' claims to own a right. On our return from the Crusade, or if we abandon it, we will at once do full justice to complaints about these matters.
- 54 No one shall be arrested or imprisoned on the appeal of a woman for the death of any person except her husband.
- 55 All fines that have been given to us unjustly and against the law of the land, and all fines that we have exacted unjustly, shall be entirely remitted or the matter decided by a majority judgment of the twenty-five barons referred to below in the clause for securing the peace (§ 61) together with Stephen, archbishop of Canterbury, if he can be present, and such others as he wishes to bring with him. If the archbishop cannot be present, proceedings shall continue without him, provided that if any of the twenty-five barons has been involved in a similar suit himself, his judgment shall be set aside, and someone else chosen and sworn in his place, as a substitute for the single occasion, by the rest of the twenty-five.

- 56 If we have deprived or dispossessed any Welshmen of lands, liberties, or anything else in England or in Wales, without the lawful judgment of their equals, these are at once to be returned to them. A dispute on this point shall be determined in the Marches by the judgment of equals. English law shall apply to holdings of land in England, Welsh law to those in Wales, and the law of the Marches to those in the Marches. The Welsh shall treat us and ours in the same way.
- 57 In cases where a Welshman was deprived or dispossessed of anything, without the lawful judgment of his equals, by our father King Henry or our brother King Richard, and it remains in our hands or is held by others under our warranty, we shall have respite for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. But on our return from the Crusade, or if we abandon it, we will at once do full justice according to the laws of Wales and the said regions.
- 58 We will at once return the son of Llywelyn, all Welsh hostages, and the charters delivered to us as security for the peace.
- 59 With regard to the return of the sisters and hostages of Alexander, king of Scotland, his liberties and his rights, we will treat him in the same way as our other barons of England, unless it appears from the charters that we hold from his father William, formerly king of Scotland, that he should be treated otherwise. This matter shall be resolved by the judgment of his equals in our court.
- 60 All these customs and liberties that we have granted shall be observed in our kingdom in so far as concerns our own relations with our subjects. Let all men of our kingdom, whether clergy or laymen, observe them similarly in their relations with their own men.
- 61 SINCE WE HAVE GRANTED ALL THESE THINGS for God, for the better ordering of our kingdom, and to allay the discord that has arisen between us and our barons, and since we desire

that they shall be enjoyed in their entirety, with lasting strength, forever, we give and grant to the barons the following security:

The barons shall elect twenty-five of their number to keep, and cause to be observed with all their might, the peace and liberties granted and confirmed to them by this charter.

If we, our chief justice, our officials, or any of our servants offend in any respect against any man, or transgress any of the articles of the peace or of this security, and the offence is made known to four of the said twenty-five barons, they shall come to us - or in our absence from the kingdom to the chief justice - to declare it and claim immediate redress. If we, or in our absence abroad the chief justice, make no redress within forty days, reckoning from the day on which the offence was declared to us or to him, the four barons shall refer the matter to the rest of the twenty-five barons, who may distrain upon and assail us in every way possible, with the support of the whole community of the land, by seizing our castles, lands, possessions, or anything else saving only our own person and those of the queen and our children, until they have secured such redress as they have determined upon. Having secured the redress, they may then resume their normal obedience to us.

Any man who so desires may take an oath to obey the commands of the twenty-five barons for the achievement of these ends, and to join with them in assailing us to the utmost of his power. We give public and free permission to take this oath to any man who so desires, and at no time will we prohibit any man from taking it. Indeed, we will compel any of our subjects who are unwilling to take it to swear it at our command.

If one of the twenty-five barons dies or leaves the country, or is prevented in any other way from discharging his duties, the rest of them shall choose another baron in his place, at their discretion, who shall be duly sworn in as they were.

In the event of disagreement among the twenty-five barons on any matter referred to them for decision, the verdict of the majority present shall have the same validity as a unanimous

verdict of the whole twenty-five, whether these were all present or some of those summoned were unwilling or unable to appear.

The twenty-five barons shall swear to obey all the above articles faithfully, and shall cause them to be obeyed by others to the best of their power.

We will not seek to procure from anyone, either by our own efforts or those of a third party, anything by which any part of these concessions or liberties might be revoked or diminished. Should such a thing be procured, it shall be null and void and we will at no time make use of it, either ourselves or through a third party.

- 62 We have remitted and pardoned fully to all men any ill-will, hurt, or grudges that have arisen between us and our subjects, whether clergy or laymen, since the beginning of the dispute. We have in addition remitted fully, and for our own part have also pardoned, to all clergy and laymen any offences committed as a result of the said dispute between Easter in the sixteenth year of our reign (i.e. 1215) and the restoration of peace.

In addition we have caused letters patent to be made for the barons, bearing witness to this security and to the concessions set out above, over the seals of Stephen archbishop of Canterbury, Henry archbishop of Dublin, the other bishops named above, and Master Pandulf.

- 63 IT IS ACCORDINGLY OUR WISH AND COMMAND that the English Church shall be free, and that men in our kingdom shall have and keep all these liberties, rights, and concessions, well and peaceably in their fullness and entirety for them and their heirs, of us and our heirs, in all things and all places for ever.

Both we and the barons have sworn that all this shall be observed in good faith and without deceit. Witness the abovementioned people and many others.

Given by our hand in the meadow that is called Runnymede, between Windsor and Staines, on the fifteenth day of June in the seventeenth year of our reign (i.e. 1215: the new regnal year began on 28 May).

II MAGNA CARTA 1225¹¹

9 Hen III c 1

HENRY, by the Grace of God, King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Earl of Anjou, to the archbishops, bishops, abbots, priors, earls, barons, sheriffs, governors, officers, and all bailiffs, and his faithful subjects, who see this present Charter, Greeting.

Know ye, that in the presence of God, and for the salvation of our own soul, and of the souls of our ancestors, and of our successors, to the exaltation of the Holy Church, and the amendment of our kingdom, that we spontaneously and of our own free will, do give and grant to the archbishops, bishops, abbots, priors, earls, barons, and all of our kingdom, these under-written liberties to be held in our realm of England for ever.

- 1 In the first place we grant unto God, and by this our present Charter we have confirmed for us, and for our heirs for ever, that the English Church shall be free, and shall have her whole rights and her liberties inviolable. We have also granted to all the free-men of our kingdom, for us and for our heirs for ever, all the under-written liberties to be had and held by them and by their heirs, of us and of our heirs.

¹¹ This version was translated from the original, preserved in the Archives of Durham Cathedral by Richard Thomson, 1829. The text was obtained from <http://www.bsswebsite.me.uk/History/MagnaCarta/magnacarta-1225.htm>. Note that in the Charter itself the clauses are not numbered and the text reads continuously. As it is often reproduced, the numbers are included for greater understanding and clarity. Also note that the text has been formatted according to Journal guidelines.

- 2 If any of our earls or barons, or others who hold of us in chief by military service, shall die, and at his death his heir shall be of full age, and shall owe a relief, he shall have his inheritance by the ancient relief; that is to say, the heir or heirs of an earl, a whole earl's barony for one hundred pounds: the heir or heirs of a baron, a whole barony, for one hundred pounds; the heir or heirs of a knight, a whole knight's fee, for one hundred shillings at the most: and he who owes less, shall give less, according to the ancient customs of fees. But if the heir of any such be under age, his lord shall not have the wardship of him nor of his land, before he shall have received his homage, and afterward such heir shall be in ward; and when he shall come to age, that is to say, to twenty and one years, he shall have his inheritance without relief and without fine: yet so, that if he made a knight, whilst he is under age, his lands shall nevertheless remain in custody of his lord, until the term aforesaid.
- 3 The warden of the land of such an heir who shall be under age, shall not take from the lands of the heir any but reasonable issues, and reasonable customs, and reasonable services, and that without destruction and waste of the men or goods. And if we commit the custody of any such lands to a sheriff, or to any other person who is bound to us for the issues of them, and he shall make destruction or waste upon the ward-lands, we will recover damages from him, and the lands shall be committed to two lawful and discreet men of the same fee, who shall answer for the issues to us, or to him to whom we have assigned them: and if we shall give or sell to any one the custody of any such lands, and he shall make destruction or waste upon them, he shall lose the custody; and it shall be committed to two lawful and discreet men of the same fee, who shall answer to us in like manner as it is said before.
- 4 But the warden, as long as he hath the custody of the lands, shall keep up and maintain the houses, parks, warrens, ponds, mills, and other things belonging to them, out of their issues; and shall restore to the heir, when he comes of full age, his whole estate, provided with carriages and all other things, at the least such as he received it. All these things shall be observed in the custodies

of vacant archbishoprics, bishoprics, abbeys, priories, churches and dignities, which appertain to us; excepting that these wardships are not to be sold.

- 5 Heirs shall be married without disparagement.
- 6 A widow, after the death of her husband, shall immediately, and without difficulty, have her freedom of marriage and her inheritance; nor shall she give any thing for her dower, or for her freedom of marriage, or for her inheritance, which her husband and she held at the day of his death; and she may remain in the principal messuage of her husband, for forty days after her husband's death, within which time her dower shall be assigned; unless it shall have been assigned before, or excepting his house shall be a castle; and if she depart from the castle, there shall be provided for her a complete house in which she may decently dwell, until her dower shall be assigned to her as aforesaid: and she shall have her reasonable estover within a common term. And for her dower, shall be assigned to her the third part of all the lands of her husband, which were his during his life, except she were endowed with less at the church door.
- 7 No widow shall be compelled to marry, whilst she is willing to live without a husband; but yet she shall give security that she will not marry, without our consent, if she hold of us, or without the consent of her lord if she hold of another.
- 8 Neither we nor our bailiffs, will seize any land or rent for any debt, whilst the chattels of the debtor present sufficient for the payment of the debt, and the debtor shall be ready to make satisfaction: nor shall the sureties of the debtor be distrained, whilst the principal debtor is able to pay the debt; and if the principal debtor fail in payment of the debt, not having wherewith to discharge it, or will not discharge it when he is able, then the sureties shall answer for the debt; and if they be willing, they shall have the lands and rents of the debtor, until satisfaction be made to them for the debt which they had before paid for him, unless the principal debtor can show himself acquitted thereof against the said sureties.

- 9 The City of London shall have all its ancient liberties, and its free customs, as well by land as by water. Furthermore, we will and grant that all other cities, and burghs, and towns, and the barons of the Cinque Ports, and all ports, should have all their liberties and free customs.
- 10 None shall be distrained to do more service for a knight's fee, nor for any other free tenement, than what is due from thence.
- 11 Common Pleas shall not follow our court, but shall be held in a fixed place.
- 12 Assizes upon the writs of 'novel disseisin', and of 'mort d'ancestre', shall not be taken but in their proper counties, and in this manner: – we, or our Chief Justiciary, if we should be out of the kingdom, will send justiciaries into every county, once in the year; who, with the knights of each county, shall hold in the county, the aforesaid assizes. And those things, which at the coming of the aforesaid justiciaries being sent to take the said assizes, cannot be determined, shall be ended by them in some other place in their circuit; and those things which for difficulty of some of the articles cannot be determined by them, shall be determined by our justiciaries of the Bench, and there shall be ended.
- 13 Assizes of 'darrein presentment' shall always be taken before our justiciaries of the Bench, and there shall be determined.
- 14 A free-man shall not be amerced for a small offence, but only according to the degree of the offence; and for a great delinquency, according to the magnitude of the delinquency, saving his contenment: and a merchant in the same manner, saving his merchandise, and a villain, if he belong to another, shall be amerced after the same manner, saving to him his wainage, if he shall fall into our mercy; and none of the aforesaid ameracements shall be assessed, but by the oath of honest and lawful men of the neighbourhood. Earls and barons shall not be amerced but by their peers, and that only according to the degree of their delinquency. No ecclesiastical person shall be amerced according to the quantity of his ecclesiastical

benefice, but according to the quantity of his lay fee, and the extent of his crime.

- 15 Neither a town nor any person shall be distrained to build bridges or embankments, excepting those which anciently, and of right, are bound to do it.
- 16 No embankments shall from henceforth be defended, but such as were in defence in the time of King Henry our grandfather; by the same places, and the same bounds as they were accustomed to be in his time.
- 17 No sheriff, constable, coroners, nor other of our bailiffs, shall hold pleas of our crown.
- 18 If anyone holding of us a lay fee dies, and the sheriff or our bailiff shall show our letters-patent of summons concerning the debt, which the deceased owed to us, it shall be lawful for the sheriff, or for our bailiff to attach and register all the goods and chattels of the deceased found on that lay fee, to the amount of that debt by the view of lawful men. So that nothing shall be removed from thence until our debt be paid to us; and the rest shall be left to the executors to fulfil the will of the deceased; and if nothing be owing to us by him, all the chattels shall fall to the deceased, saving to his wife and children their reasonable shares.
- 19 No constable, nor his bailiff, shall take the corn or other goods of any one, who is not of that town where his castle is, without instantly paying money for them, unless he can obtain a respite from the free will of the seller; but if he be of that town wherein the castle is, he shall give him the price within forty days.
- 20 No constable shall distrain any knight to give him money for castle-guard, if he be willing to perform it in his own person, or by another able man, if he cannot perform it himself, for a reasonable cause: and if we do lead or send him into the army, he shall be excused from castle-guard, according to the time that he shall be with us in the army, on account of the fee for which he hath done service in the host.

- 21 No sheriff nor bailiff of ours, nor of any other person, shall take the horses or carts of any, for the purpose of carriage, without paying according to the rate anciently appointed; that is to say, for a cart with two horses, ten-pence by the day, and for a cart with three horses, fourteen-pence by the day. No demesne cart of any ecclesiastical person, or knight, or of any lord, shall be taken by the aforesaid bailiffs. Neither we, nor our bailiffs, nor those of another, shall take another man's wood, for our castles or for other uses, unless by the consent of him to whom the wood belongs.
- 22 We will not retain the lands of those who have been convicted of felony, excepting for one year and one day, and then they shall be given up to the lord of the fee concerned.
- 23 All kydells for the future, shall be quite removed out of the Thames and the Medway, and through all England, excepting upon the sea coast.
- 24 The writ which is called 'præcipe', for the future shall not be granted to any one of any tenement, by which a free-man loses his court.
- 25 There shall be one measure of wine throughout all our kingdom, and one measure of ale, and one measure of corn, namely the quarter of London; and one breadth of dyed cloth, and of russets, and of halberjects, namely, two ells within the selvedges. Also it shall be the same with weights as with measures.
- 26 Nothing shall for the future be given or taken for a writ of inquisition, nor taken of him that requests inquisition of life or limb; but it shall be given without charge, and not denied.
- 27 If any man holds of us by fee-farm, or socage, or by burgage, and holds land of another by military service, we will not have the guardianship of his heir, nor of his lands, which are of the fee of another, on account of that fee-farm, or socage, or burgage; nor will we have the custody of the fee-farm, socage,

or burgage, unless the fee-farm owe military service. We will not have the custody of the man's heir, nor of the lands of anyone, which he holds of another by military service, on account of any petty-sergeantry which he holds of us by the service of giving us daggers, or arrows, or the like.

- 28 No bailiff, for the future, shall put any man to his open law, nor to an oath, upon his own simple affirmation, without faithful witnesses produced for that purpose.
- 29 No free-man shall be taken, or imprisoned, or dispossessed, of his free tenement, or liberties, or free customs, or be outlawed, or exiled, or in any way destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the laws of the land. To none will we sell, to none will we deny, to none will we delay right or justice.
- 30 All merchants, unless they hare before been publicly prohibited, shall have safety and security in going out of England, and in coming into England, and in staying and in travelling through England, as well by land as by water, to buy and sell, without any unjust exactions, according to ancient and right customs, excepting in the time of war, and if they be of a country at war against us: and if such are found in our land at the beginning of a war, they shall be apprehended, without injury of their bodies or goods, until it be known to us, or to our Chief Justiciary, how the merchants of our country are treated who are found in the country at war against us: and if ours be in safety there, the others shall be in safety in our land.
- 31 If any man holds lands of any escheat, as of the honour of Wallingford, Boulogne, Nottingham, Lancaster, or of other escheats which are in our hand, and are baronies, and shall die, his heir shall not give any other relief, nor do any other service to us, than he should have done to the baron, if those lands had been in the hands of the baron; and we will hold it in the same manner that the baron held it. Neither will we have, by occasion of any barony or escheat, any escheat, or the custody of any of

our men, unless he who held the barony or escheat, held otherwise of us in chief.

- 32 No free-man shall, from henceforth, give or sell any more of his land, so that of the residue of his lands, the Lord of the fee may have the service due to him which belongeth to the fee.
- 33 All patrons of abbeys, which are held by Charters of Advowson from the kings of England, or by ancient tenure or possession of the same, shall have the custody of them when they become vacant, as they ought to have, and such as it hath been declared above.
- 34 No man shall be apprehended or imprisoned on the appeal of a woman, for the death of any other man than her husband.
- 35 No County Court shall, from henceforth, be holden but from month to month; and where a greater term hath been used, it shall be greater. Neither shall any sheriff or his bailiff, keep his turn in the hundred but twice in the year; and no where but in due and accustomed place; that is to say, once after Easter, and again after the Feast of Saint Michael. And the view of frank-pledge shall be likewise at Saint Michael's term, without occasion; so that every man may have his liberties, which he had and was accustomed to have, in the time of King Henry our grandfather, or which he hath since procured him. Also the view of frank-pledge shall be so done, that our peace may be kept, and that the tything may be wholly kept, as it hath been accustomed; and that the sheriff seek no occasions, and that he be content with so much as the sheriff was wont to have for his view-making, in the time of King Henry our grandfather.
- 36 It shall not from henceforth, be lawful for any to give his lands to any religious house, and to take the same land again to hold of the same house. Nor shall it be lawful to any religious house to take the lands of any, and to lease the same to him from whom they were received. Therefore, if any from henceforth do give his land to any religious house, and thereupon be convict, his gift shall be utterly void, and the land shall accrue to the lord of the fee.

- 37 Scutage from henceforth shall be taken as it was accustomed to be taken in the time of King Henry our grandfather. Saving to the archbishops, bishops, abbots, priors, Templars, Hospitallers, earls, barons, and all others, as well ecclesiastical as secular persons, the liberties and free customs which they have formerly had.

Also all those customs and liberties aforesaid, which we have granted to be held in our kingdom, for so much of it as belongs to us, all our subjects, as well clergy as laity, shall observe towards their tenants as far as concerns them.

And for this our grant and gift of these liberties, and of the others contained in our Charter of Liberties of our forest, the archbishops, bishops, abbots, priors, earls, barons, knights, free tenants, and all others of our kingdom, have given unto us the fifteenth part of all their moveables. And we have granted to them for us and our heirs, that neither we nor our heirs shall procure or do any thing, whereby the Liberties in this Charter contained shall be infringed or broken; and if any thing shall be procured by any person contrary to the premises, it shall be had of no force nor effect.

These being witnesses, the Lord Stephen Archbishop of Canterbury, Eustace of London, Joceline of Bath, Peter of Winchester, Hugh of Lincoln, Richard of Salisbury, Benedict of Rochester, William of Worcester, John of Ely, Hugh of Hereford, Ralph of Chichester, William of Exeter, for the Bishops: the Abbot of Saint Edmund's, the Abbot of Saint Albans, the Abbot of Battle Abbey, the Abbot of Saint Augustine's Canterbury, the Abbot of Evesham, the Abbot of Westminster, the Abbot of Peterborough, the Abbot of Reading, the Abbot of Abingdon, the Abbot of Malmsbury, the Abbot of Winchcomb, the Abbot of Hyde, the Abbot of Chertsey, the Abbot of Sherburn, the Abbot of Cerne, the Abbot of Abbotsbury, the Abbot of Middleton, the Abbot of Selby, the Abbot of Whitby, the Abbot of Cirencester, Hubert de Burgh, the Kings Justiciary, Ranulph Earl of Chester and Lincoln, William Earl of Salisbury, William Earl of Warren, Gilbert de Clare, Earl of Gloucester and Hertford, William de Ferrers, Earl of Derby, William de Mandeville, Earl of Essex, Hugh le Bigod, Earl of Norfolk, William Earl of Albemarle, Humphrey Earl of Hereford, John Constable of Chester,

Robert de Ros, Robert Fitz Walter, Robert de Vieuxpont, William de Brewer, Richard de Montfichet, Peter Fitz-Herbert, Matthew Fitz-Herbert, William de Albinac, Robert Gresley, Reginald de Briose, John de Monmouth, John Fitz Alan, Hugh de Mortimer, Walter de Beauchamp, William de Saint John, Peter de Mauley, Brian de Lisle, Thomas de Muleton, Richard de Argenton, Wilfred de Neville, William Mauduit, John de Baalun.

Given at Westminster, the eleventh day of February, in the ninth year of our reign.

III MAGNA CARTA 1297¹²

25 Edw 1 c 9

Edward by the grace of God King of England, Lord of Ireland and Duke of Aquitaine sends greetings to all to whom the present letters come. We have inspected the great charter of the Lord Henry, late King of England, our father, concerning the liberties of England in these words:

Henry by the grace of God King of England, Lord of Ireland, Duke of Normandy and Aquitaine and Count of Anjou sends greetings to his archbishops, bishops, abbots, priors, earls, barons, sheriffs, reeves, ministers and all his bailiffs and faithful men inspecting the present charter. Know that we, at the prompting of God and for the health of our soul and the souls of our ancestors and successors, for the glory of holy Church and the improvement of our realm, freely and out of our good will have given and granted to the archbishops, bishops, abbots, priors, earls, barons and all of our realm these liberties written below to hold in our realm of England in perpetuity.

¹² This version is obtained from the National Archives and Records Administration, Washington, translated by Professor Nicholas Vincent, <http://www.archives.gov/exhibits/featured_documents/magna_carta/translation.html>. Note that of the 37 chapters in this statute only three remain part of English law: chapters 1, 2 and 29, and only chapter 29 has been retained by the Imperial Acts Application Acts mentioned above.

- 1 In the first place we grant to God and confirm by this our present charter for ourselves and our heirs in perpetuity that the English Church is to be free and to have all its rights fully and its liberties entirely. We furthermore grant and give to all the free men of our realm for ourselves and our heirs in perpetuity the liberties written below to have and to hold to them and their heirs from us and our heirs in perpetuity.
- 2 If any of our earls or barons, or anyone else holding from us in chief by military service should die, and should his heir at the time be of full age and owe relief, the heir is to have his inheritance for the ancient relief, namely the heir or heirs of an earl for a whole earldom £100, the heir or heirs of a baron for a whole barony 100 marks, the heir or heirs of a knight for a whole knight's fee 100 shillings at most, and he who owes less will give less, according to the ancient custom of (knights') fees.
- 3 If, however, the heir of such a person is under age, his lord is not to have custody of him or his land until he has taken homage from the heir, and after such an heir has been in custody, when he comes of age, namely at twenty-one years old, he is to have his inheritance without relief and without fine, saving that if, whilst under age, he is made a knight, his land will nonetheless remain in the custody of his lords until the aforesaid term.
- 4 The keeper of the land of such an heir who is under age is only to take reasonable sums issuing from the heir's land and reasonable customs and reasonable services, and this without destruction or waste of men or things. And if we assign custody of any such land to a sheriff or to anyone else who should answer to us for the issues, and such a person should commit destruction or waste, we will take amends from him and the land will be assigned to two law-worthy and discreet men of that fee who will answer to us or to the person to whom we assign such land for the land's issues. And if we give or sell to anyone custody of any such land and that person commits destruction or waste, he is to lose custody and the land is to be assigned to two law-worthy and discreet men of that fee who similarly will answer to us as is aforesaid.

- 5 The keeper, for as long as he has the custody of the land of such (an heir), is to maintain the houses, parks, fishponds, ponds, mills and other things pertaining to that land from the issues of the same land, and he will restore to the heir, when the heir comes to full age, all his land stocked with ploughs and all other things in at least the same condition as when he received it. All these things are to be observed in the custodies of archbishoprics, bishoprics, abbeys, priories, churches and vacant offices which pertain to us, save that such custodies ought not to be sold.
- 6 Heirs are to be married without disparagement.
- 7 A widow, after the death of her husband, is immediately and without any difficulty to have her marriage portion and her inheritance, nor is she to pay anything for her dower or her marriage portion or for her inheritance which her husband and she held on the day of her husband's death, and she shall remain in the chief dwelling place of her husband for forty days after her husband's death, within which time dower will be assigned her if it has not already been assigned, unless that house is a castle, and if it is a castle which she leaves, then a suitable house will immediately be provided for her in which she may properly dwell until her dower is assigned to her in accordance with what is aforesaid, and in the meantime she is to have her reasonable necessities (estoverium) from the common property. As dower she will be assigned the third part of all the lands of her husband which were his during his lifetime, save when she was dowered with less at the church door. No widow shall be distrained to marry for so long as she wishes to live without a husband, provided that she gives surety that she will not marry without our assent if she holds of us, or without the assent of her lord, if she holds of another.
- 8 Neither we nor our bailiffs will seize any land or rent for any debt, as long as the existing chattels of the debtor suffice for the payment of the debt and as long as the debtor is ready to pay the debt, nor will the debtor's guarantors be distrained for so long as the principal debtor is able to pay the debt; and should the

principal debtor default in his payment of the debt, not having the means to repay it, or should he refuse to pay it despite being able to do so, the guarantors will answer for the debt and, if they wish, they are to have the lands and rents of the debtor until they are repaid the debt that previously they paid on behalf of the debtor, unless the principal debtor can show that he is quit in respect to these guarantors.

- 9 The city of London is to have all its ancient liberties and customs. Moreover we wish and grant that all other cities and boroughs and vills and the barons of the Cinque Ports and all ports are to have all their liberties and free customs.
- 10 No-one is to be distrained to do more service for a knight's fee or for any other free tenement than is due from it.
- 11 Common pleas are not to follow our court but are to be held in a certain fixed place.
- 12 Recognisances of novel disseisin and of mort d'ancestor are not to be taken save in their particular counties and in the following way. We or, should we be outside the realm, our chief justiciar, will send our justices once a year to each county, so that, together with the knights of the counties, that may take the aforesaid assizes in the counties; and those assizes which cannot be completed in that visitation of the county by our aforesaid justices assigned to take the said assizes are to be completed elsewhere by the justices in their visitation; and those which cannot be completed by them on account of the difficulty of various articles (of law) are to be referred to our justices of the Bench and completed there.
- 13 Assizes of darrein presentment are always to be taken before our justices of the Bench and are to be completed there.
- 14 A free man is not to be amerced for a small offence save in accordance with the manner of the offence, and for a major offence according to its magnitude, saving his sufficiency (*salvo contenemento suo*), and a merchant likewise, saving his merchandise, and any villein other than one of our own is to be

amerced in the same way, saving his necessity (*salvo waynagio*) should he fall into our mercy, and none of the aforesaid ameracements is to be imposed save by the oath of honest and law-worthy men of the neighbourhood. Earls and barons are not to be amerced save by their peers and only in accordance with the manner of their offence.

- 15 No town or free man is to be distrained to make bridges or bank works save for those that ought to do so of old and by right.
- 16 No bank works of any sort are to be kept up save for those that were in defence in the time of King Henry II our grandfather and in the same places and on the same terms as was customary in his time.
- 17 No sheriff, constable, coroner or any other of our bailiffs is to hold pleas of our crown.
- 18 If anyone holding a lay fee from us should die, and our sheriff or bailiff shows our letters patent containing our summons for a debt that the dead man owed us, our sheriff or bailiff is permitted to attach and enroll all the goods and chattels of the dead man found in lay fee, to the value of the said debt, by view of law-worthy men, so that nothing is to be removed thence until the debt that remains is paid to us, and the remainder is to be released to the executors to discharge the will of the dead man, and if nothing is owed to us from such a person, all the chattels are to pass to the (use of) the dead man, saving to the dead man's wife and her (or their) children their reasonable portion.
- 19 No constable or his bailiff is to take corn or other chattels from anyone who not themselves of a vill where a castle is built, unless the constable or his bailiff immediately offers money in payment of obtains a respite by the wish of the seller. If the person whose corn or chattels are taken is of such a vill, then the constable or his bailiff is to pay the purchase price within forty days.

- 20 No constable is to distraint any knight to give money for castle guard if the knight is willing to do such guard in person or by proxy of any other honest man, should the knight be prevented from doing so by just cause. And if we take or send such a knight into the army, he is to be quit of (castle) guard in accordance with the length of time that we have him in the army for the fee for which he has done service in the army.
- 21 No sheriff or bailiff of ours or of anyone else is to take anyone's horses or carts to make carriage, unless he renders the payment customarily due, namely for a two-horse cart ten pence per day, and for a three-horse cart fourteen pence per day. No demesne cart belonging to any churchman or knight or any other lady (sic) is to be taken by our bailiffs, nor will we or our bailiffs or anyone else take someone else's timber for a castle or any other of our business save by the will of he to whom the timber belongs.
- 22 We shall not hold the lands of those convicted of felony save for a year and a day, whereafter such land is to be restored to the lords of the fees.
- 23 All fish weirs (kidelli) on the Thames and the Medway and throughout England are to be entirely dismantled, save on the sea coast.
- 24 The writ called 'praecipe' is not to be issued to anyone in respect to any free tenement in such a way that a free man might lose his court.
- 25 There is to be a single measure for wine throughout our realm, and a single measure for ale, and a single measure for Corn, that is to say the London quarter, and a single breadth for dyed cloth, russets, and haberjects, that is to say two yards within the lists. And it shall be the same for weights as for measures.
- 26 Henceforth there is to be nothing given for a writ of inquest from the person seeking an inquest of life or member, but such a writ is to be given freely and is not to be denied.

- 27 If any persons hold from us at fee farm or in socage or burgage, and hold land from another by knight service, we are not, by virtue of such a fee farm or socage or burgage, to have custody of the heir or their land which pertains to another's fee, nor are we to have custody of such a fee farm or socage or burgage unless this fee farm owes knight service. We are not to have the custody of an heir or of any land which is held from another by knight service on the pretext of some small serjeanty held from us by service of rendering us knives or arrows or suchlike things.
- 28 No bailiff is henceforth to put any man on his open law or on oath simply by virtue of his spoken word, without reliable witnesses being produced for the same.
- 29 No free man is to be taken or imprisoned or disseised of his free tenement or of his liberties or free customs, or outlawed or exiled or in any way ruined, nor will we go against such a man or send against him save by lawful judgment of his peers or by the law of the land. To no-one will we sell or deny or delay right or justice.
- 30 All merchants, unless they have been previously and publicly forbidden, are to have safe and secure conduct in leaving and coming to England and in staying and going through England both by land and by water to buy and to sell, without any evil exactions, according to the ancient and right customs, save in time of war, and if they should be from a land at war against us and be found in our land at the beginning of the war, they are to be attached without damage to their bodies or goods until it is established by us or our chief justiciar in what way the merchants of our land are treated who at such a time are found in the land that is at war with us, and if our merchants are safe there, the other merchants are to be safe in our land.
- 31 If anyone dies holding of any escheat such as the honour of Wallingford, Boulogne, Nottingham, Lancaster or of other escheats which are in our hands and which are baronies, his heir is not to give any other relief or render any other service to us that would not have been rendered to the baron if the barony

were still held by a baron, and we shall hold such things in the same way as the baron held them, nor, on account of such a barony or escheat, are we to have the escheat or custody of any of our men unless the man who held the barony or the escheat held elsewhere from us in chief.

- 32 No free man is henceforth to give or sell any more of his land to anyone, unless the residue of his land is sufficient to render due service to the lord of the fee as pertains to that fee.
- 33 All patrons of abbeys which have charters of the kings of England over advowson or ancient tenure or possession are to have the custody of such abbeys when they fall vacant just as they ought to have and as is declared above.
- 34 No-one is to be taken or imprisoned on the appeal of woman for the death of anyone save for the death of that woman's husband.
- 35 No county court is to be held save from month to month, and where the greater term used to be held, so will it be in future, nor will any sheriff or his bailiff make his tourn through the hundred save for twice a year and only in the place that is due and customary, namely once after Easter and again after Michaelmas, and the view of frankpledge is to be taken at the Michaelmas term without exception, in such a way that every man is to have his liberties which he had or used to have in the time of King Henry II my grandfather or which he has acquired since. The view of frankpledge is to be taken so that our peace be held and so that the tithing is to be held entire as it used to be, and so that the sheriff does not seek exceptions but remains content with that which the sheriff used to have in taking the view in the time of King Henry our grandfather.
- 36 Nor is it permitted to anyone to give his land to a religious house in such a way that he receives it back from such a house to hold, nor is it permitted to any religious house to accept the land of anyone in such way that the land is restored to the person from whom it was received to hold. If anyone henceforth gives his land in such a way to any religious house and is

convicted of the same, the gift is to be entirely quashed and such land is to revert to the lord of that fee.

- 37 Scutage furthermore is to be taken as it used to be in the time of King Henry our grandfather, and all liberties and free customs shall be preserved to archbishops, bishops, abbots, priors, Templars, Hospitallers, earls, barons and all others, both ecclesiastical and secular persons, just as they formerly had.

All these aforesaid customs and liberties which we have granted to be held in our realm in so far as pertains to us are to be observed by all of our realm, both clergy and laity, in so far as pertains to them in respect to their own men. For this gift and grant of these liberties and of others contained in our charter over the liberties of the forest, the archbishops, bishops, abbots, priors, earls, barons, knights, fee holders and all of our realm have given us a fifteenth part of all their movable goods. Moreover we grant to them for us and our heirs that neither we nor our heirs will seek anything by which the liberties contained in this charter might be infringed or damaged, and should anything be obtained from anyone against this it is to count for nothing and to be held as nothing.

With these witnesses, the Lord Stephen Archbishop of Canterbury, Eustace of London, Joceline of Bath, Peter of Winchester, Hugh of Lincoln, Richard of Salisbury, Benedict of Rochester, William of Worcester, John of Ely, Hugh of Hereford, Ralph of Chichester, William of Exeter, for the Bishops: the Abbot of Saint Edmund's, the Abbot of Saint Albans, the Abbot of Battle Abbey, the Abbot of Saint Augustine's Canterbury, the Abbot of Evesham, the Abbot of Westminster, the Abbot of Peterborough, the Abbot of Reading, the Abbot of Abingdon, the Abbot of Malmsbury, the Abbot of Winchcomb, the Abbot of Hyde, the Abbot of Chertsey, the Abbot of Sherburn, the Abbot of Cerne, the Abbot of Abbotsbury, the Abbot of Middleton, the Abbot of Selby, the Abbot of Whitby, the Abbot of Cirencester, Hubert de Burgh, the Kings Justiciary, Ranulph Earl of Chester and Lincoln, William Earl of Salisbury, William Earl of Warren, Gilbert de Clare, Earl of Gloucester and Hertford, William de Ferrers, Earl of Derby, William de Mandeville, Earl of Essex, Hugh le Bigod, Earl of Norfolk, William Earl of Albemarle, Humphrey Earl of Hereford, John

Constable of Chester, Robert de Ros, Robert Fitz Walter, Robert de Vieuxpont, William de Brewer, Richard de Montfichet, Peter Fitz-Herbert, Matthew Fitz-Herbert, William de Albinac, Robert Gresley, Reginald de Briose, John de Monmouth, John Fitz Alan, Hugh de Mortimer, Walter de Beauchamp, William de Saint John, Peter de Mauley, Brian de Lisle, Thomas de Muleton, Richard de Argenton, Wilfred de Neville, William Mauduit, John de Baalun.

Given at Westminster on the eleventh day of February in the ninth year of our reign.

We, holding these aforesaid gifts and grants to be right and welcome, concede and confirm them for ourselves and our heirs and by the terms of the present (letters) renew them, wishing and granting for ourselves and our heirs that the aforesaid charter is to be firmly and invariably observed in all and each of its articles in perpetuity, including any articles contained in the same charter which by chance have not to date been observed. In testimony of which we have had made these our letters patent. Witnessed by Edward our son, at Westminster on the twelfth day of October in the twenty-fifth year of our reign. (Chancery warranty by Hugh of) Yarmouth.

IV DUE PROCESS OF LAW ACT 1354¹³

28 Edw III c 3

None shall be condemned without due process of law

No person of what estate or condition that the person be, shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought in answer by due process of the law.

¹³ This version of the Act was obtained from the Australian Legal Information Institute (AUSTLII) online database, <http://www.austlii.edu.au/cgi-bin/download.cgi/au/legis/act/consol_act/dpola135428e3c3219>.

V THE PETITION OF RIGHT 1627¹⁴

3 Chas I c 1

HUMBLY shew unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons, in Parliament assembled, That whereas it is declared and enacted by a Statute made in the time of the Reign of King Edward the First, commonly called Statutum de Tallagio non concedendo, that no Tallage or Aid shall be laid or levied by the King or his Heirs in this Realm, without the good Will and Assent of the Archbishops, Bishops, Earls, Barons, Knights, Burgesses and other the Freemen of the Commonalty of this Realm; and by the Authority of Parliament holden in the Five and twentieth Year of the Reign of King Edward the Third, it is declared and enacted, that from thenceforth no Person should be compelled to make any Loans to the King against his Will, because such Loans were against Reason and the Franchise of the Land; and by other Laws of this Realm it is provided, that none should be charged by any Charge or Imposition called a Benevolence, nor by such like Charge; by which the Statutes before mentioned, and other the good Laws and Statutes of this Realm, Your Subjects have inherited this Freedom, that they should not be compelled to contribute to any Tax, Tallage, Aid or other like Charge not set by Common Consent in Parliament.

II Yet nevertheless, of late divers Commissions directed to sundry Commissioners in several Counties, with Instructions, have issued; by means whereof Your People have been in divers Places assembled, and required to lend certain Sums of Money unto Your Majesty, and many of them, upon their Refusal so to do, have had an Oath administered unto them not warrantable by the Laws or Statutes of this Realm; and have been constrained to become bound to make Appearance and give Attendance before

¹⁴ This Act introduced the famous phrase into our law and, although found in the fifth and fourteenth amendments to the United States Constitution, it is referred to in cases (*Marks and Tucker v QBE Insurance(Australia) Ltd* [2007] SASC 255(2)) and in statutes in this State: *Education Act 1972* (SA) s 27(4). This version of the Act was obtained from The National Archives (UK), <<http://www.legislation.gov.uk/aep/Cha1/3/1/contents>>.

Your Privy Council and in other Places; and others of them have been therefore imprisoned, confined, and sundry other Ways molested and disquieted; and divers other Charges have been laid and levied upon Your People in several Counties by Lord Lieutenants, Deputy Lieutenants, Commissioners for Musters, Justices of Peace and others, by Command or Direction from Your Majesty, or Your Privy Council, against the Laws and Free Customs of the Realm.

- III And where also by the Statute called The Great Charter of the Liberties of England, it is declared and enacted, That no Freeman may be taken or imprisoned, or be disseised of his Freehold or Liberties, or his Free Customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful Judgment of his Peers, or by the Law of the Land.
- IV And in the Eight and twentieth Year of the Reign of King Edward the Third, it was declared and enacted by Authority of Parliament, That no Man of what Estate or Condition that he be, should be put out of his Land or Tenements, nor taken, nor imprisoned, nor disinherited, nor put to Death, without being brought to answer by due Process of Law.
- V Nevertheless against the Tenor of the said Statutes, and other the good Laws and Statutes of Your Realm to that End provided, divers of Your Subjects have of late been imprisoned without any Cause shewed; and when for their Deliverance they were brought before your Justices by Your Majesty's Writs of Habeas Corpus, there to undergo and receive as the Court should order, and their Keepers commanded to certify the Causes of their Detainer, no Cause was certified, but that they were detained by Your Majesty's special Command, signified by the Lords of Your Privy Council, and yet were returned back to several Prisons, without being charged with any Thing to which they might make Answer according to the Law.
- VI And whereas of late great Companies of Soldiers and Mariners have been dispersed into divers Counties of the Realm, and the Inhabitants against their Wills have been compelled to receive them into their Houses, and there to suffer them to sojourn,

against the Laws and Customs of this Realm, and to the great Grievance and Vexation of the People:

VII And whereas also by Authority of Parliament, in the Five and twentieth Year of the Reign of King Edward the Third, it is declared and enacted, That no Man should be forejudged of Life or Limb against the Form of the Great Charter and the Law of the Land; and by the said Great Charter and other the Laws and Statutes of this Your Realm, no Man ought to be adjudged to Death but by the Laws established in this Your Realm, either by the Customs of the same Realm, or by Acts of Parliament: And whereas no Offender of what Kind so ever is exempted from the Proceedings to be used, and Punishments to be inflicted by the Laws and Statutes of this Your Realm: Nevertheless of late times divers Commissions under Your Majesty's Great Seal have issued forth, by which certain Persons have been assigned and appointed Commissioners, with Power and Authority to proceed within the Land, according to the Justice of Martial Law, against such Soldiers or Mariners, or other dissolute Persons joining with them, as should commit any Murder, Robbery, Felony, Mutiny or other Outrage or Misdemeanour whatsoever, and by such summary Course and Order as is agreeable to Martial Law, and as is used in Armies in time of War, to proceed to the Trial and Condemnation of such Offenders, and them to cause to be executed and put to Death according to the Law Martial:

IIX By pretext whereof some of Your Majesty's Subjects have been by some of the said Commissioners put to Death, when and where, if by the Laws and Statutes of the Land they had deserved Death, by the same Laws and Statutes also they might, and by no other ought to have been judged and executed:

IX And also sundry grievous Offenders, by colour thereof claiming an Exemption, have escaped the Punishments due to them by the Laws and Statutes of this Your Realm, by reason that divers of your Officers and Ministers of Justice have unjustly refused or forborn to proceed against such Offenders according to the same Laws and Statutes, upon Pretence that the said Offenders were punishable only by Martial Law, and by Authority of such

Commissions as aforesaid: Which Commissions, and all other of like Nature, are wholly and directly contrary to the said Laws and Statutes of this Your Realm:'

- X They do therefore humbly pray Your most excellent Majesty, That no Man hereafter be compelled to make or yield any Gift, Loan, Benevolence, Tax or such like Charge, without Common Consent by Act of Parliament; and that none be called to make Answer, or take such Oath, or to give Attendance, or be confined, or otherwise molested or disquieted concerning the same, or for Refusal thereof; and that no Freeman, in any such Manner as is before mentioned, be imprisoned or detained; and that Your Majesty would be pleased to remove the said Soldiers and Mariners; and that Your People may not be so burthened in time to come; and that the aforesaid Commissions for proceeding by Martial Law, may be revoked and annulled; and that hereafter no Commissions of like Nature may issue forth to any Person or Persons whatsoever to be executed as aforesaid, lest by colour of them any of Your Majesty's Subjects be destroyed, or put to Death contrary to the Laws and Franchise of the Land.
- XI All which they most humbly pray of Your most excellent Majesty as their Rights and Liberties according to the Laws and Statutes of this Realm; and that Your Majesty would also vouchsafe to declare, that the Awards, Doings and Proceedings, to the Prejudice of Your People in any of the Premises shall not be drawn hereafter into Consequence or Example; and that Your Majesty would be also graciously pleased, for the further Comfort and Safety of Your People, to declare Your Royal Will and Pleasure, that in the Things aforesaid all your Officers and Ministers shall serve You according to the Laws and Statutes of this Realm, as they tender the Honour of Your Majesty, and the Prosperity of this Kingdom.

VI HABEAS CORPUS ACT 1679¹⁵

31 Chas II c 2

An act for the better securing the liberty of the subject, and for prevention of imprisonments beyond the seas.

Whereas great delays have been used by sheriffs, gaolers and other officers, to whose custody, any of the King's subjects have been committed for criminal or supposed criminal matters, in making returns of writs of habeas corpus to them directed, by standing out an alias and pluries habeas corpus, and sometimes more, and by other shifts to avoid their yielding obedience to such writs, contrary to their duty and the known laws of the land, whereby many of the King's subjects have been and hereafter may be long detained in prison, in such cases where by law they areailable, to their great charges and vexation. For the prevention whereof, and the more speedy relief of all persons imprisoned for any such criminal or supposed criminal matters; be it enacted by the King'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 thereof. That whensoever any person or persons shall bring any *Habeas Corpus* directed unto any sheriff or sheriffs, gaoler, minister or other person whatsoever, for any person in his or their custody, and the said writ shall be served upon the said officer, or left at the gaol or prison with any of the under-officers, under-keepers or deputy of the said officers or keepers, that the said officer or officers, his or their under-officers, under-keepers or deputies, shall within three days after the service thereof as aforesaid (unless the commitment aforesaid were for treason or felony, plainly and specially expressed in the warrant of commitment) upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the judge or court that awarded

¹⁵ Note that there is no South Australia legislation on Habeas Corpus and in 2006 the term was removed from the rules of court where the expression Actions in Defence of Liberty was employed instead: *Rules of Court 2006* (SA) rr 196-198A. This version of the Act was obtained from The National Archives (UK), <<http://www.legislation.gov.uk/aep/Cha2/31/2>>.

the same, and endorsed upon the said writ, not exceeding twelve pence per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the court or judge to which he shall be brought according to the true intent of this present act, and that he will not make any escape by the way, make return of such writ; and bring or cause to be brought the body of the party so committed or restrained, unto or before the lord chancellor, or lord keeper of the great seal of *England* for the time being, or the judges or barons of the said court from which the said writ shall issue, or unto and before such other person or persons before whom the said writ is made returnable, according to the command thereof; and shall then likewise certify the true causes of his detainer or imprisonment, unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places where such court or person is or shall be residing; and if beyond the distance of twenty miles, and not above one hundred miles, then within the space of ten days, and if beyond the distance of one hundred miles, then within the space of twenty days, after such delivery aforesaid, and not longer.

II And to the intent that no sheriff, gaoler or other officer may pretend ignorance of the import of such writ. Such that all such writs shall be marked in this manner, *Per statutum tricesimo primo Caroli secundi Regis*, and shall be signed by the person that awards the same. And if any person or persons shall be or stand committed or detained as aforesaid, for any crime, unless for felony or treason plainly expressed in the warrant of commitment, in the vacation-time, and out of term, it shall and may be lawful to and for the person or persons so committed or detained (other than persons convict or in execution of legal process) or any one on his or their behalf, to appeal or complain to the lord chancellor or lord keeper, or any one of his Majesty's justices, either of the one bench or of the other, or the barons of the exchequer of the degree of the coif and the said lord chancellor, lord keeper, justices or barons or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made that such copy or copies were denied to be given by such person or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorized and required, upon request made

in writing by such person or persons, or any on his, her, or their behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant an *habeas corpus* under the seal of such court whereof he shall then be one of the judges to be directed to the officer or officers in whose custody the party so committed or detained shall be, returnable *immediate* before the said lord chancellor or lord keeper or such justice, baron or any other justice or baron of the degree of the coif of any of the said courts and upon service thereof as aforesaid, the officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or their deputy in whose custody the party is so committed or detained, shall within the times respectively before limited, bring such prisoner or prisoners before the said lord chancellor or lord keeper, or such justices, barons or one of them, before whom the said writ is made returnable, and in case of his absence before any other of them, with the return of such writ, and the true causes of the commitment and detainer and thereupon within two days after the party shall be brought before them, the said lord chancellor or lord keeper, or such justice or baron before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties, in any sum according to their discretions, having regard to the quality of the prisoner and nature of the offense, for his or their appearance in the court of the King's bench the term following, or at the next assizes, sessions or general gaol-delivery of and for such county, city or place where the commitment was, or where the offense was committed, or in such other court where the said offense is properly cognizable, as the case shall require, and then shall certify the said writ with the return thereof, and the said recognizance or recognizances unto the said court where such appearance is to be made, unless it shall appear unto the said lord chancellor or lord keeper or justice or justices, or baron or barons, that the party so committed is detained upon a legal process, order or warrant, out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said justices or barons, or some justice or justices of the peace, for such matters or offenses for the which by the law the prisoner is not bailable.

- III Provided always if any person shall have willfully neglected by the space of two whole terms after his imprisonment to pray a Habeas Corpus for his enlargement such person so willfully neglecting shall not have any Habeas Corpus to be granted in vacation time in pursuance of this Act.
- IV And if any officer or officers his or their under-officer or under-officers under-keeper or under-keepers or deputy shall neglect or refuse to make the returns aforesaid or to bring the body or bodies of the prisoner or prisoners according to the command of the said writ within the respective times aforesaid, or upon demand made by the prisoner or person in his behalf shall refuse to deliver or within the space of six hours after demand shall not deliver to the person so demanding a true copy of the warrant or warrants of commitment and detainer of such prisoner, which he and they are hereby required to deliver accordingly all and every the head gaolers and keepers of such prisons and such other person in whose custody the prisoner shall be detained shall for the first offence forfeit to the prisoner or party grieved the sum of one hundred pounds and for the second offence the sum of two hundred pounds and shall and is hereby made incapable to hold or execute his said office, the said penalties to be recovered by the prisoner or party grieved his executors or administrators against such offender his executors or administrators by any action or information in any of the Kings Courts at Westminster wherein no injunction or stay of prosecution by *non vault ulterior prosequi* or otherwise shall be admitted or allowed and any recovery or judgment at the suite of any party grieved shall be a sufficient conviction for the first offence and any after recovery or judgment at the suite of a party grieved for any offence after the first judgment shall be a sufficient conviction to bring the officers or person within the said penalty for the second offence.
- V And for the prevention of unjust vexation by reiterated commitments for the same offence no person or persons which shall be delivered or set at large upon any Habeas Corpus shall at any time hereafter be again imprisoned or committed for the same offence by any person or persons whatsoever other then by

the legal order and process of such Court wherein he or they shall be bound to appear or other Court having Jurisdiction of the Cause and if any other person or persons shall knowingly contrary to this Act recommit or imprison or knowingly procure or cause to be recommitted or imprisoned for the same offence or pretended offence any person or persons delivered or set at large as aforesaid or be knowingly aiding or assisting therein then he or they shall forfeit to the prisoner or party grieved the sum of five hundred pounds. Any colourable pretence or variation in the warrant or warrants of commitment notwithstanding to be recovered as aforesaid.

VI Provided always, and be it further enacted, that if any person or persons shall be committed for high treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court the first week of the term, or first day of the sessions of oyer and terminer or general gaol-delivery, to be brought to his trial, shall not be indicted some time in the next term, sessions of oyer and terminer or general gaol-delivery, after such commitment; it shall and may be lawful to and for the judges of the court of King's bench and justices of oyer and terminer or general gaol-delivery, and they are hereby required, upon motion to them made in open court the last day of the term, sessions or gaol-delivery, either by the prisoner or any one in his behalf, to set at liberty the prisoner upon bail, unless it appear to the judges and justices upon oath made, that the witnesses for the King could not be produced the same term, sessions or general gaol-delivery; (2) and if any person or persons committed as aforesaid, upon his prayer or petition in open court the first week of the term or first day of the sessions of oyer and terminer and general gaol-delivery, to be brought to his trial, shall not be indicted and tried the second term, sessions of oyer and terminer or general gaol-delivery, after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment.¹⁶

¹⁶ This section was repealed by the *Courts Act 1971* (UK) c 23, sch 11, pt IV.

- VII Provided always that nothing in this Act shall extend to discharge out of prison any person charged in debt or other action or with process in any civil cause but that after he shall be discharged of his imprisonment for such his criminal offence he shall be kept in custody according to law for such other suite.
- VIII Provided always that if any person or persons subject of this realm shall be committed to any prison or in custody of any officer or officers whatsoever for any criminal or supposed criminal matter. That the said person shall not be removed from the said prison and custody into the custody of any other officer or officers unless it be by Habeas Corpus or some other legal writ or where the prisoner is delivered to the constable or other inferior officer to carry such prisoner to some common gaol or where any person is sent by order of any judge of the Crown Court or justice of the peace to any common work-house or house of correction or where the prisoner is removed from one prison or place to another within the same County in order to his or her trial or discharge in due course of law or in case of sudden fire or infection or other necessity and if any person or persons shall after such commitment aforesaid make out and sign or countersign any warrant or warrants for such removal aforesaid contrary to this Act as well he that makes or signs or countersigns such warrant or warrants as the officer or officers that obey or execute the same shall suffer and incur the pains and forfeitures in this Act before-mentioned both for the first and second offence respectively to be recovered in manner aforesaid by the party grieved.
- IX Provided also that it shall and may be lawful to and for any prisoner and prisoners as aforesaid to move and obtain his or their Habeas Corpus as well out of the High Court of Chauncery or Court of Exchequer as out of the Courts of Kings Bench or Common Pleas of either of them And if any judge or judges baron or barons for the time being of the degree or the coif of any of the Courts aforesaid in the vacation time upon view of the copy or copies of the warrant or warrants of commitment or detainer or upon oath made that such copy or copies were denied as aforesaid shall deny any writ of Habeas Corpus by this Act required to be granted being moved for as aforesaid they

shall severally forfeit to the prisoner or party grieved the sum of five hundred pounds to be recovered in manner aforesaid.

- X And an Habeas Corpus according to the true intent and meaning of this Act may be directed and run into any County Palatine, the Cinque Ports or other privileged places within the Kingdom of England, dominion of Wales, or town of Berwick upon Tweed and the islands of Jersey or Guernsey any law or usage to the contrary notwithstanding.
- XI And for preventing illegal imprisonments in prisons beyond the seas no subject of this realm that now is or hereafter shall be an inhabitant or resident of this kingdom of England, dominion of Wales or town of Berwick upon Tweed shall or may be sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier or into any parts Garrisons Islands or places beyond the seas which are or at any time hereafter shall be within or without the dominions of His Majesty, his heirs or successors and that every such imprisonment is hereby enacted and adjudged to be illegal and that if any of the said subjects now is or hereafter shall be so imprisoned every such person and persons so imprisoned shall and may for every such imprisonment maintain by virtue of this Act an action or actions of false imprisonment in any of His Majesty's Courts of record against the person or persons by whom he or she shall be so committed detained imprisoned sent prisoner or transported contrary to the true meaning of this Act and against all or any person or persons that shall frame contrive write seal or countersign any warrant or writing for such commitment, detainer imprisonment or transportation or shall be advising, aiding or assisting in the same or any of them and the plaintiff in every such action shall have judgment to recover his costs besides damages which damages so to be given shall not be less then five hundred pounds in which action no delay, stay or stop of proceeding by rule, order or command nor no injunction whatsoever shall be allowed excepting such rule of the Court wherein the action shall depend made in open court as shall be thought in justice necessary for special cause to be expressed in the said rule and the person or persons who shall knowingly frame contrive write seal or countersign any warrant for such commitment, detainer or transportation or shall so

commit, detain, imprison or transport any person or persons contrary to this Act or be any ways advising, aiding or assisting therein being lawfully convicted thereof shall be disabled from thenceforth to bear any office of trust or profit within the said realm of England, dominion of Wales or town of Berwick upon Tweed or any of the islands, territories or dominions thereunto belonging and be liable to imprisonment for life and be incapable of any pardon from the King, his heirs or successors of the said disabilities or any of them.

XII Provided always, That nothing in this act shall extend to give benefit to any person who shall by contract in writing agree with any merchant or owner of any plantation, or other person whatsoever, to be transported to any parts beyond the seas, and receive earnest upon such agreement, although that afterwards such person shall renounce such contract.¹⁷

XIII Provided always, and be it enacted, That if any person or persons lawfully convicted of any felony, shall in open court pray to be transported beyond the seas, and the court shall think fit to leave him or them in prison for that purpose, such person or persons may be transported into any parts beyond the seas, this act or any thing therein contained to the contrary notwithstanding.¹⁸

XIV Provided also, and be it enacted, That nothing herein contained shall be deemed, construed or taken, to extend to the imprisonment of any person before the first day of June one thousand six hundred seventy and nine, or to any thing advised, procured, or otherwise done, relating to such imprisonment; any thing herein contained to the contrary notwithstanding.

XV Provided also that if any person or persons at any time resident in this realm shall have committed any capital offence in Scotland or Ireland or any of the islands or foreign plantations of the King, his heirs or successors where he or she ought to be tried for such offence such person or persons may be sent to

¹⁷ This section was repealed by *Statute Law Revision Act 1948* c 62.

¹⁸ This section was repealed by *Statute Law Revision Act 1863* c 125.

such place there to receive such trial in such manner as the same might have been used before the making of this Act Any thing herein contained to the contrary notwithstanding.

XVI Provided also that no person or persons shall be sued impleaded, molested or troubled for any offence against this Act unless the party offending be sued or impleaded for the same within two years at the most after such time wherein the offence shall be committed in case the party grieved shall not be then in prison and if he shall be in prison then within the space of two years after the decease of the person imprisoned or his or her delivery out of prison which shall first happen.

XVII And to the intent no person may avoid his trial at the assizes or general gaol-delivery, by procuring his removal before the assizes, at such time as he cannot be brought back to receive his trial there; (2) be it enacted, That after the assizes proclaimed for that county where the prisoner is detained, no person shall be removed from the common gaol upon any habeas corpus granted in pursuance of this act, but upon any such habeas corpus shall be brought before the judge of assize in open court, who is thereupon to do what to justice shall appertain.¹⁹

XVIII Provided nevertheless, That after the assizes are ended, any person or persons detained, may have his or her habeas corpus according to the direction and intention of this act.²⁰

XIX And be it also enacted by the authority aforesaid, That if any information, suit or action shall be brought or exhibited against any person or persons for any offence committed or to be committed against the form of this law, it shall be lawful for such defendants to plead the general issue, that they are not guilty, or that they owe nothing, and to give such special matter in evidence to the jury that shall try the same, which matter being pleaded had been good and sufficient matter in law to have discharged the said defendant or defendants against the

¹⁹ This section was repealed by *Courts Act 1971* (UK) c 23, sch 11, pt IV.

²⁰ This section was repealed by *Public Authorities Protection Act 1893* c 61.

said information, suit or action, and the said matter shall be then as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth or alleged the same matter in bar or discharge of such information suit or action.²¹

XX And because many times persons charged with petty treason or felony, or as accessories thereunto, are committed upon suspicion only, whereupon they areailable, or not, according as the circumstances making out that suspicion are more or less weighty, which are best known to the justices of peace that committed the persons, and have the examinations before them, or to other justices of the peace in the county; (2) be it therefore enacted, That where any person shall appear to be committed by any judge or justice of the peace and charged as accessory before the fact, to any petty treason or felony, or upon suspicion thereof, or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and specially expressed in the warrant of commitment, that such person shall not be removed or bailed by virtue of this act, or in any other manner than they might have been before the making of this act.

²¹ This section was repealed by *Criminal Law Act 1967* (UK) c 58, sch 3, pt III.

VII ENGLISH BILL OF RIGHTS 1689²²

1 Will & Mar Sess 2 c 2

*An Act Declaring the Rights and Liberties of the
Subject and Settling the Succession of the Crown*

I Whereas the Lords Spiritual and Temporal and Commons assembled at Westminster, lawfully, fully and freely representing all the estates of the people of this realm, did upon the thirteenth day of February in the year of our Lord one thousand six hundred eighty-eight present unto their Majesties, then called and known by the names and style of William and Mary, prince and princess of Orange, being present in their proper persons, a certain declaration in writing made by the said Lords and Commons in the words following, viz:

Whereas the late King James the Second, by the assistance of divers evil counsellors, judges and ministers employed by him, did endeavour to subvert and extirpate the Protestant religion and the laws and liberties of this kingdom;

By assuming and exercising a power of dispensing with and suspending of laws and the execution of laws without consent of Parliament;

²² Article 9 on parliamentary freedom of speech is often before the courts: *Wright and Advertiser Newspapers Ltd v Lewis* (1990) 53 SASR 416, 423 (King CJ); *Rann v Olsen* (2000) 76 SASR 450, 459 [45] (Doyle CJ); *Hanna v Sibbons* (2010) 108 SASR 182, 195 [55] (Vanstone J); *Easling v Rankine* [2014] SADC 40 [27] (Muecke Chief Judge). Other articles concerning cruel and unusual punishment (*Fricker v Dawes* (1992) 57 SASR 494, 504 (Mullighan J)), the absence of any power in the executive to suspend or dispense with the laws without the consent of Parliament (*R v Schaefer, Schiworski & Brown* [2004] SADC 185 [253]); and the prohibition on levying any tax without parliamentary consent (*Commissioner of Stamps (South Australia) v Telegraph Investment Company Pty Ltd* (1995) 184 CLR 453, 466 (McHugh and Gummow JJ) have also been discussed in cases in recent decades. This version was obtained from The National Archives (UK), <<http://www.legislation.gov.uk/aep/WillandMarSess2/1/2>>.

By committing and prosecuting divers worthy prelates for humbly petitioning to be excused from concurring to the said assumed power;

By issuing and causing to be executed a commission under the great seal for erecting a court called the Court of Commissioners for Ecclesiastical Causes;

By levying money for and to the use of the Crown by pretence of prerogative for other time and in other manner than the same was granted by Parliament;

By raising and keeping a standing army within this kingdom in time of peace without consent of Parliament, and quartering soldiers contrary to law;

By causing several good subjects being Protestants to be disarmed at the same time when papists were both armed and employed contrary to law;

By violating the freedom of election of members to serve in Parliament;

By prosecutions in the Court of King's Bench for matters and causes cognizable only in Parliament, and by divers other arbitrary and illegal courses;

And whereas of late years partial corrupt and unqualified persons have been returned and served on juries in trials, and particularly divers jurors in trials for high treason which were not freeholders;

And excessive bail hath been required of persons committed in criminal cases to elude the benefit of the laws made for the liberty of the subjects;

And excessive fines have been imposed;

And illegal and cruel punishments inflicted;

And several grants and promises made of fines and forfeitures before any conviction or judgment against the persons upon whom the same were to be levied;

All which are utterly and directly contrary to the known laws and statutes and freedom of this realm;

And whereas the said late King James the Second having abdicated the government and the throne being thereby vacant, his Highness the prince of Orange (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power) did (by the advice of the Lords Spiritual and Temporal and divers principal persons of the Commons) cause letters to be written to the Lords Spiritual and Temporal being Protestants, and other letters to the several counties, cities, universities, boroughs and cinque ports, for the choosing of such persons to represent them as were of right to be sent to Parliament, to meet and sit at Westminster upon the two and twentieth day of January in this year one thousand six hundred eighty and eight [old style date], in order to such an establishment as that their religion, laws and liberties might not again be in danger of being subverted, upon which letters elections having been accordingly made;

And thereupon the said Lords Spiritual and Temporal and Commons, pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid, do in the first place (as their ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties

- 1 Declare that the pretended power of suspending the laws or the execution of laws by regal authority without consent of Parliament is illegal;
- 2 That the pretended power of dispensing with laws or the execution of laws by regal authority, as it hath been assumed and exercised of late, is illegal;

- 3 That the commission for erecting the late Court of Commissioners for Ecclesiastical Causes, and all other commissions and courts of like nature, are illegal and pernicious;
- 4 That levying money for or to the use of the Crown by pretence of prerogative, without grant of Parliament, for longer time, or in other manner than the same is or shall be granted, is illegal;
- 5 That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal;
- 6 That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law;
- 7 That the subjects which are Protestants may have arms for their defence suitable to their conditions and as allowed by law;
- 8 That election of members of Parliament ought to be free;
- 9 That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament;
- 10 That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted;
- 11 That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders;
- 12 That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void;
- 13 And that for redress of all grievances, and for the amending, strengthening and preserving of the laws, Parliaments ought to be held frequently.

And they do claim, demand and insist upon all and singular the premises as their undoubted rights and liberties, and that no declarations, judgments, doings or proceedings to the prejudice of the people in any of the said premises ought in any wise to be drawn hereafter into consequence or example; to which demand of their rights they are particularly encouraged by the declaration of his Highness the prince of Orange as being the only means for obtaining a full redress and remedy therein. Having therefore an entire confidence that his said Highness the prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights which they have here asserted, and from all other attempts upon their religion, rights and liberties, the said Lords Spiritual and Temporal and Commons assembled at Westminster do resolve that William and Mary, prince and princess of Orange, be and be declared king and queen of England, France and Ireland and the dominions thereunto belonging, to hold the crown and royal dignity of the said kingdoms and dominions to them, the said prince and princess, during their lives and the life of the survivor to them, and that the sole and full exercise of the regal power be only in and executed by the said prince of Orange in the names of the said prince and princess during their joint lives, and after their deceases the said crown and royal dignity of the same kingdoms and dominions to be to the heirs of the body of the said princess, and for default of such issue to the Princess Anne of Denmark and the heirs of her body, and for default of such issue to the heirs of the body of the said prince of Orange. And the Lords Spiritual and Temporal and Commons do pray the said prince and princess to accept the same accordingly.

And that the oaths hereafter mentioned be taken by all persons of whom the oaths have allegiance and supremacy might be required by law, instead of them; and that the said oaths of allegiance and supremacy be abrogated.

I, A.B., do sincerely promise and swear that I will be faithful and bear true allegiance to their Majesties King William and Queen Mary. So help me God.

I, A.B., do swear that I do from my heart abhor, detest and abjure as impious and heretical this damnable doctrine and position, that princes excommunicated or deprived by the Pope or any authority of the see of Rome may be deposed or murdered by their subjects or any other whatsoever. And I do declare that no foreign prince, person, prelate, state or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm. So help me God.

Upon which their said Majesties did accept the crown and royal dignity of the kingdoms of England, France and Ireland, and the dominions thereunto belonging, according to the resolution and desire of the said Lords and Commons contained in the said declaration. And thereupon their Majesties were pleased that the said Lords Spiritual and Temporal and Commons, being the two Houses of Parliament, should continue to sit, and with their Majesties' royal concurrence make effectual provision for the settlement of the religion, laws and liberties of this kingdom, so that the same for the future might not be in danger again of being subverted, to which the said Lords Spiritual and Temporal and Commons did agree, and proceed to act accordingly. Now in pursuance of the premises the said Lords Spiritual and Temporal and Commons in Parliament assembled, for the ratifying, confirming and establishing the said declaration and the articles, clauses, matters and things therein contained by the force of law made in due form by authority of Parliament, do pray that it may be declared and enacted that all and singular the rights and liberties asserted and claimed in the said declaration are the true, ancient and indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, adjudged, deemed and taken to be; and that all and every the particulars aforesaid shall be firmly and strictly holden and observed as they are expressed in the said declaration, and all officers and ministers whatsoever shall serve their Majesties and their successors according to the same in all time to come. And the said Lords Spiritual and Temporal and Commons, seriously considering how it hath pleased Almighty God in his marvellous providence and merciful goodness to this nation to provide and preserve their said Majesties' royal persons most happily to

reign over us upon the throne of their ancestors, for which they render unto him from the bottom of their hearts their humblest thanks and praises, do truly, firmly, assuredly and in the sincerity of their hearts think, and do hereby recognize, acknowledge and declare, that King James the Second having abdicated the government, and their Majesties having accepted the crown and royal dignity as aforesaid, their said Majesties did become, were, are and of right ought to be by the laws of this realm our sovereign liege lord and lady, king and queen of England, France and Ireland and the dominions thereunto belonging, in and to whose princely persons the royal state, crown and dignity of the said realms with all honours, styles, titles, regalities, prerogatives, powers, jurisdictions and authorities to the same belonging and appertaining are most fully, rightfully and entirely invested and incorporated, united and annexed. And for preventing all questions and divisions in this realm by reason of any pretended titles to the crown, and for preserving a certainty in the succession thereof, in and upon which the unity, peace, tranquility and safety of this nation doth under God wholly consist and depend, the said Lords Spiritual and Temporal and Commons do beseech their Majesties that it may be enacted, established and declared, that the crown and regal government of the said kingdoms and dominions, with all and singular the premises thereunto belonging and appertaining, shall be and continue to their said Majesties and the survivor of them during their lives and the life of the survivor of them, and that the entire, perfect and full exercise of the regal power and government be only in and executed by his Majesty in the names of both their Majesties during their joint lives; and after their deceases the said crown and premises shall be and remain to the heirs of the body of her Majesty, and for default of such issue to her Royal Highness the Princess Anne of Denmark and the heirs of the body of his said Majesty; and thereunto the said Lords Spiritual and Temporal and Commons do in the name of all the people aforesaid most humbly and faithfully submit themselves, their heirs and posterities for ever, and do faithfully promise that they will stand to, maintain and defend their said Majesties, and also the limitation and succession of the crown herein specified and contained, to the utmost of their powers with their lives and estates against all persons whatsoever that

shall attempt anything to the contrary. And whereas it hath been found by experience that it is inconsistent with the safety and welfare of this Protestant kingdom to be governed by a popish prince, or by any king or queen marrying a papist, the said Lords Spiritual and Temporal and Commons do further pray that it may be enacted, that all and every person and persons that is, are or shall be reconciled to or shall hold communion with the see or Church of Rome, or shall profess the popish religion, or shall marry a papist, shall be excluded and be for ever incapable to inherit, possess or enjoy the crown and government of this realm and Ireland and the dominions thereunto belonging or any part of the same, or to have, use or exercise any regal power, authority or jurisdiction within the same; and in all and every such case or cases the people of these realms shall be and are hereby absolved of their allegiance; and the said crown and government shall from time to time descend to and be enjoyed by such person or persons being Protestants as should have inherited and enjoyed the same in case the said person or persons so reconciled, holding communion or professing or marrying as aforesaid were naturally dead; and that every king and queen of this realm who at any time hereafter shall come to and succeed in the imperial crown of this kingdom shall on the first day of the meeting of the first Parliament next after his or her coming to the crown, sitting in his or her throne in the House of Peers in the presence of the Lords and Commons therein assembled, or at his or her coronation before such person or persons who shall administer the coronation oath to him or her at the time of his or her taking the said oath (which shall first happen), make, subscribe and audibly repeat the declaration mentioned in the statute made in the thirtieth year of the reign of King Charles the Second entitled, An Act for the more effectual preserving the king's person and government by disabling papists from sitting in either House of Parliament. But if it shall happen that such king or queen upon his or her succession to the crown of this realm shall be under the age of twelve years, then every such king or queen shall make, subscribe and audibly repeat the same declaration at his or her coronation or the first day of the meeting of the first Parliament as aforesaid which shall first happen after such king or queen shall have attained the said age of twelve years. All which their Majesties are

contented and pleased shall be declared, enacted and established by authority of this present Parliament, and shall stand, remain and be the law of this realm for ever; and the same are by their said Majesties, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in Parliament assembled and by the authority of the same, declared, enacted and established accordingly.

- II And be it further declared and enacted by the authority aforesaid that from and after this present session of Parliament no dispensation by *non obstante* of or to any statute or any part thereof shall be allowed but that the same shall be held void and of no effect, except a dispensation be allowed of in such statute and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of Parliament.²³
- III Provided that no charter or grant or pardon granted before the three and twentieth day of October in the year of our Lord one thousand six hundred eighty nine shall be any ways impeached or invalidated by this Act but that the same shall be and remain of the same force and effect in law and no other then if this Act had never been made.²⁴

VIII ACT OF SETTLEMENT 1700²⁵

12 & 13 Will III c 2

Whereas in the first year of the reign of Your Majesty, and of our late most gracious sovereign lady Queen Mary (of blessed memory), an Act of Parliament was made, entitled, “An Act for

²³ This section was repealed by *Statute Law Revision Act 1948* (UK) c 62, sch 1.

²⁴ This section was repealed by *Statute Law Revision Act 1867* (UK) c 59.

²⁵ This is the foundation of the principle that judges hold office during good behaviour. It was not adopted in nineteenth century Australia, but is routinely referred to as the foundation of the principle found in both the *Constitution Act 1934* (SA) s 74 and the Commonwealth Constitution s 72.

declaring the rights and liberties of the subject, and for settling the succession of the crown,” wherein it was (amongst other things) enacted, established, and declared that the crown and regal government of the Kingdoms of England, France, and Ireland, and the dominions thereunto belonging, should be and continue to Your Majesty and the said late Queen, during the joint lives of Your Majesty and the said Queen, and to the survivor: and that after the decease of Your Majesty and of the said Queen, the said Crown and regal government should be and remain to the heirs of the body of the said late Queen; and for default of such issue, to Her Royal Highness the Princess Anne of Denmark, and the heirs of her body; and for default of such issue to the heirs of the body of Your Majesty. And it was thereby further enacted, that all and every person and persons that then were, or afterwards should be reconciled to, or shall hold communion with the see or Church of Rome, or should profess the popish religion, or marry a papist, should be excluded, and are by that Act made for ever incapable to inherit, possess, or enjoy the Crown and government of this realm, and Ireland, and the dominions thereunto belonging, or any part of the same, or to have, use, or exercise any regal power, authority, or jurisdiction within the same: and in all and every such case and cases the people of these realms shall be and are thereby absolved of their allegiance: and that the said Crown and government shall from time to time descend to and be enjoyed by such person or persons, being Protestants, as should have inherited and enjoyed the same, in case the said person or persons, so reconciled, holding communion, professing or marrying, as aforesaid, were naturally dead.

After the making of which statute, and the settlement therein contained, your majesty’s good subjects, who were restored to the full and free possession and enjoyment of their religion, rights, and liberties, by the providence of God giving success to your majesty’s just undertakings and unwearied endeavours for that purpose, had no greater temporal felicity to hope or wish for, that to see a royal progeny descending from Your Majesty,

to whom (under God) they owe their tranquility, and whose ancestors have for many years been principal assertors of the reformed religion and the liberties of Europe, and from our said most gracious sovereign lady, whose memory will always be precious to the subjects of these realms: and it having since pleased Almighty God to take away our said sovereign Lady, and also the most hopeful Prince William, Duke of Gloucester (the only surviving issue of Her Royal Highness the Princess Anne of Denmark) to the unspeakable grief and sorrow of Your Majesty and your said good subjects, who under such losses being sensibly put in mind, that it standeth wholly in the pleasure of Almighty God to prolong the lives of Your Majesty and of Her Royal Highness, and to grant to Your Majesty, or to Her Royal Highness, such issue as may be inheritable to the Crown and regal government aforesaid, by the respective limitations in the said recited act contained, do constantly implore the divine mercy for those blessings: and Your Majesty's said subjects having daily experience of your royal care and concern for the present and future welfare of these Kingdoms, and particularly recommending from your throne a further provision to be made for the succession of the Crown in the Protestant line, for the happiness of the nation, and the security of our religion; and it being absolutely necessary for the safety, peace, and quiet of this realm, to obviate all doubts and contentions in the same, by reason of any pretended title to the Crown, and to maintain a certainty in the succession thereof, to which your subjects may safely have recourse for their protection, in case the limitations in the said recited act should determine: therefore for a further provision of the succession of the Crown in the Protestant line, we Your Majesty's most dutiful and loyal subjects, the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, do beseech Your Majesty that it may be enacted and declared, and be it enacted and declared by the King'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, That the most excellent

Princess Sophia, Electress and Duchess Dowager of Hanover, daughter of the most excellent Princess Elizabeth, late Queen of Bohemia, daughter of our late sovereign lord King James the First, of happy memory, be and is hereby declared to be the next in succession, in the Protestant line, to the imperial Crown and dignity of the said Realms of England, France, and Ireland, with the dominions and territories thereunto belonging, after His Majesty, and the Princess Anne of Denmark, and in default of issue of the said Princess Anne, and of His Majesty respectively: and that from and after the deceases of His said Majesty, our now sovereign lord, and of Her Royal Highness the Princess Anne of Denmark, and for default of issue of the said Princess Anne, and of His Majesty respectively, the Crown and regal government of the said Kingdoms of England, France, and Ireland, and of the dominions thereunto belonging, with the royal state and dignity of the said Realms, and all honours, styles, titles, regalities, prerogatives, powers, jurisdictions and authorities, to the same belonging and appertaining, shall be, remain, and continue to the said most excellent Princess Sophia, and the heirs of her body, being Protestants: and thereunto the said Lords Spiritual and Temporal, and Commons, shall and will in the name of all the people of this Realm, most humbly and faithfully submit themselves, their heirs and posterities: and do faithfully promise, that after the deceases of His Majesty, and Her Royal Highness, and the failure of the heirs of their respective bodies, to stand to, maintain, and defend the said Princess Sophia, and the heirs of her body, being Protestants, according to the limitation and succession of the Crown in this act specified and contained, to the utmost of their powers, with their lives and estates, against all persons whatsoever that shall attempt anything to the contrary.

- II Provided always, and be it hereby enacted, That all and every person and persons, who shall or may take or inherit the said Crown, by virtue of the limitation of this present act, and is, are or shall be reconciled to, or shall hold communion with, the See or Church of Rome, or shall profess the popish religion, or shall

marry a papist, shall be subject to such incapacities, as in such case or cases are by the said recited act provided, enacted, and established; and that every King and Queen of this Realm, who shall come to and succeed in the imperial Crown of this Kingdom, by virtue of this act, shall have the coronation oath administered to him, her or them, at their respective coronations, according to the act of Parliament made in the first year of the reign of His Majesty, and the said late Queen Mary, intituled, An act for establishing the coronation oath, and shall make, subscribe, and repeat the declaration in the act first above recited mentioned or referred to, in the manner and form thereby prescribed.

- III And whereas it is requisite and necessary that some further provision be made for securing our religion, laws and liberties, from and after the death of His Majesty and the Princess Anne of Denmark, and in default of issue of the body of the said Princess, and of His Majesty respectively; be it enacted by the King's most excellent majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the authority of the same,

That whosoever shall hereafter come to the possession of this Crown, shall join in communion with the Church of England, as by law established;

That in case the Crown and imperial dignity of this Realm shall hereafter come to any person, not being a native of this Kingdom of England, this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the Crown of England, without the consent of Parliament;

That no person who shall hereafter come to the possession of this Crown, shall go out of the dominions of England, Scotland, or Ireland, without the consent of Parliament;

That from and after the time that the further limitation by this act shall take effect, all matters and things relating to the well governing of this Kingdom, which are properly cognizable in the Privy Council by the laws and customs of this Realm, shall be translated there, and all resolutions taken thereupon shall be signed by such of the Privy Council as shall advise and consent to the same;

That after the said limitation shall take effect as aforesaid, no person born out of the Kingdoms of England, Scotland, or Ireland, or the dominions thereunto belonging (although he be naturalized or made a denizen, except such as are born of English parents) shall be capable to be of the Privy Council, or a member of either House of Parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements or hereditaments from the Crown, to himself or to any other or others in trust for him;

That no person who has an office or place of profit under the King, or receives a pension from the Crown, shall be capable of serving as a member of the House of Commons;

That after the said limitation shall take effect as aforesaid, judges commissions be made *quamdiu se bene gesserint*,²⁶ and their salaries ascertained and established; but upon the address of both Houses of Parliament it may be lawful to remove them;

That no pardon under the Great Seal of England be plead able to an impeachment by the Commons in Parliament.

IV And whereas the laws of England are the birth-right of the people thereof, and all the Kings and Queens, who shall ascend the throne of this Realm, ought to administer the government of the same according to the said laws, and all their officers and ministers ought to serve them respectively according to the same: the said Lords Spiritual and Temporal, and Commons, do

²⁶ During good behaviour.

therefore further humbly pray, That all the laws and statutes of this Realm for securing the established religion, and the rights and liberties of the people thereof, and all other laws and statutes of the same now in force, may be ratified and confirmed, and the same are by His Majesty, by and with the advice of the said Lords Spiritual and Temporal, and Commons, and by authority of the same, ratified and confirmed accordingly.

IX ROYAL MARRIAGES ACT 1772²⁷

12 Geo III c 11

Most gracious Sovereign,

Whereas your Majesty, from your paternal affection to your own family, and from your royal concern for the future welfare of your people, and the honour and dignity of your crown was graciously pleased to recommend to your Parliament to take into their serious consideration, whether it might not be wise and expedient to supply the defect of the laws now in being, and by some new provision more effectually to guard the descendants of his late Majesty King George the Second (other than the issue of princesses who have married, or may hereafter marry, into foreign families) from marrying without the approbation of your

²⁷ Australia has had, until recently, no royal succession legislation of its own. Following an agreement struck in Perth in October 2011, it was agreed by the States in the Commonwealth that recognise the Queen as the Head of State to change the rules in two respects. First, succession would go to the first born irrespective of their gender and second, the rule that marriage to a Roman Catholic would disqualify a royal heir would be abolished. Note the 1772 Act was amended by the *Succession to The Crown Act 2013* (UK). There is as yet no Commonwealth legislation on the point though several States have passed legislation: *Succession to the Crown (Request) Act 2014* (SA); *Succession to the Crown Act 2013* (Qld); *Succession to the Crown (Request) Act 2013* (NSW), as have Canada and New Zealand. This version of the Act was obtained from the Australian Legal Information Institute (AUSTLII) online database, <http://www.austlii.edu.au/au/legis/act/consol_act/rma177212g3c11195/>.

Majesty, your heirs or successors, first had and obtained, we have taken this weighty matter into our serious consideration; and being sensible that marriages in the royal family are of the highest importance to the State, and that therefore the kings of this realm have ever been entrusted with the care and approbation thereof, and being thoroughly convinced of the wisdom and expediency of what your Majesty has thought fit to recommend upon this occasion; No descendant of the body of his late Majesty King George the Second, male or female, (other than the issue of princesses who have married, or may hereafter marry, into foreign families) shall be capable of contracting matrimony without the previous consent of his Majesty, his heirs or successors, signified under the great seal, and declared in council (which consent, to preserve the memory thereof, is hereby directed to be set out in the licence and register of marriage, and to be entered in the books of the Privy Council); and that every marriage, or matrimonial contract, of any such descendant, without such consent first had and obtained, shall be null and void to all intents and purposes whatsoever.

- II Provided always that in case any such descendant of the body of his late Majesty King George the Second, being above the age of 25 years, shall persist in his or her resolution to contract a marriage disapproved of, or dissented from, by the King, his heirs or successors; that then such descendant, upon giving notice to the King's Privy Council, which notice is hereby directed to be entered in the books thereof, may, at any time from the expiration of 12 calendar months after such notice given to the Privy Council as aforesaid, contract such marriage; and his or her marriage with the person before proposed and rejected, may be duly solemnised, without the previous consent of his Majesty, his heirs or successors; and such marriage shall be good, as if this Act had never been made, unless both Houses of Parliament of the United Kingdom shall, before the expiration of the said 12 months, expressly declare their disapprobation of such intended marriage.
- III And it be further enacted that every person who shall knowingly or willfully presume to solemnize, or to assist, or to be present at the celebration of any marriage with any such

descendant, or at the his or her making any matrimonial contract, without such consent as aforesaid first had and obtained, except in the case above-mentioned, shall, being duly convicted thereof, incur and suffer the pains and penalties ordained and provided by the statute of provision and premunire, made in the sixteenth year of the reign of Richard the Second.

X HABEAS CORPUS ACT 1816²⁸

56 Geo III c 100

An Act for more effectually securing the Liberty of the Subject.

- I *Judges to issue, in vacation, writs of habeas corpus returnable immediately, in cases other than for criminal matter, or for debt, or on civil process* – Where any person shall be confined or restrained of his or her liberty (otherwise than for some criminal or supposed criminal matter, and except persons imprisoned for debt or by process in any civil suit) within England, dominion of Wales, or town of Berwick-upon-Tweed, or the Isles of Jersey, Guernsey, or Man, it shall and may be lawful for any one of the barons of the Exchequer, of the degree of the coif, as well as for any one of the justices of one bench or the other, and where any person shall be so confined in Ireland, it shall and may be lawful for any one of the barons of the Exchequer, or of the justices of one bench or the other in Ireland, and they are hereby required, upon complaint made to them by or on the behalf of the person so confined or restrained, if it shall appear by affidavit or affirmation (in cases where by law an affirmation is allowed) that there is a probable and reasonable ground for such complaint, to award in vacation time a writ of habeas corpus ad subjiciendum, under the seal of such court, whereof he or they shall then be judges or one of the judges, to be directed to the person or persons in whose custody or power the party so

²⁸ This version was obtained from the British and Irish Legal Information Institute (BAILII), <http://www.bailii.org/uk/legis/num_act/1816/1028841.html2>.

confined or restrained shall be, returnable immediately before the person so awarding the same, or before any other judge of the court under the seal of which the said writ issued.

- II *Non-obedience to such writ to be a contempt of court, and punishable accordingly – Judges to make writs of habeas corpus, issued late in vacation, returnable in court in the next term – Courts to make writs issued late in term returnable in vacation.* – If the person or persons to whom any writ of habeas corpus shall be directed according to the provision of this Act, upon service of such writ, either by the actual delivery thereof to him, her, or them, or by leaving the same at the place where the party shall be confined or restrained with any servant or agent of the person or persons so confining or restraining, shall willfully neglect or refuse to make a return or pay obedience thereto, he, she, or they shall be deemed guilty of a contempt of the court, under the seal whereof such writ shall have issued; and it shall be lawful to and for the said justice or baron, before whom such writ shall be returnable, upon proof made by affidavit of willful disobedience of the said writ, to issue a warrant under his hand and seal for the apprehending and bringing before him, or before some other justice or baron of the same court, the person or persons so willfully disobeying the said writ, in order to his, her, or their being bound to the King's Majesty, with two sufficient sureties, in such sum as in the warrant shall be expressed, with condition to appear in the court of which the said justice or baron is a judge, at a day in the ensuing term to be mentioned in the said warrant, to answer the matter of contempt with which he, she, or they are charged; and in case of neglect or refusal to become bound as aforesaid, it shall be lawful for such justice or baron to commit such person or persons so neglecting or refusing to the jail prison of the court of which such justice or baron shall be a judge there to remain until he, she, or they shall have become bound as aforesaid, or shall be discharged by order of the court in term time, or by order of one of the justices or barons of the court in vacation; and the recognizance or recognizances to be taken thereupon shall be returned and filed in the same court, and shall continue in force until the matter of such contempt shall have been heard and determined, unless sooner ordered by the court to be discharged: Provided, that if

such writ shall be awarded so late in the vacation by any one of the said justices or barons, that, in his opinion, obedience thereto cannot be conveniently paid during such vacation, the same shall and may, at his discretion, be made returnable in the court of which the said justice or baron shall be a justice or baron, at a day certain in the next term; and the said court shall and may proceed thereupon, and award process of contempt in case of disobedience thereto, in like manner as upon disobedience to any writ originally awarded by the said court: Provided also, that if such writ shall be awarded by the Court of King's Bench, or the Court of Common Pleas, or Court of Exchequer, in the said countries respectively, which last-mentioned court shall have like power to award such writs as the respective courts of King's Bench and Common Pleas in each of the said countries now have, in term, but so late that, in the judgment of the court, obedience thereto cannot be conveniently paid during such term, the same shall and may, at the discretion of the said court, be made returnable at a day certain in the then next vacation, before any justice or baron of the degree of the coif, or if in Ireland, before any justice or baron of the same court, who shall and may proceed thereupon, in such manner as by this Act is directed concerning writs issuing in and made returnable during the vacation.

- III *The judge shall inquire into the truth of facts set forth in return; and where it appears doubtful shall bail the person confined on recognizance to appear in term, etc.* – In all cases provided for by this Act, although the return to any writ of habeas corpus shall be good and sufficient in law, it shall be lawful for the justice or baron, before whom such writ may be returnable, to proceed to examine into the truth of the facts set forth in such return by affidavit or affirmation (in cases where by law an affirmation is allowed), and to do therein as to justice shall appertain; and if such writ shall be returned before any one of the said justices or barons, and it shall appear doubtful to him on such examination, whether the material facts set forth in the said return or any of them be true or not, in such case it shall and may be lawful for the said justice or baron to let to bail the said person so confined or restrained, upon his or her entering into a recognizance with one or more sureties, or in cases of infancy or

coverture, or other disability, upon security by recognizance, in a reasonable sum, to appear in the court of which the said justice or baron shall be a justice or baron upon a day certain in the term following, and so from day to day as the court shall require, and to abide such order as the court shall make in and concerning the premises; and such justice or baron shall transmit into the same court the said writ and return, together with such recognizance, affidavits and affirmations; and thereupon it shall be lawful for the said court to proceed to examine into the truth of the facts set forth in the return, in a summary way by affidavit or affirmation (in cases where by law an affirmation is allowed) and to order and determine touching the discharging, bailing, or remanding the party.

- IV *The truth of the return may be controverted in that court* – The like proceeding may be had in the court for controverting the truth of the return to any such writ of habeas corpus awarded as aforesaid, although such writ shall be awarded by the said court itself, or be returnable therein.
- V *Writ may run into Counties Palatine, Cinque ports, and other privileged places, etc.* – A writ of habeas corpus, according to the true intent and meaning of this Act, may be directed and run into any county palatine or cinque port, or any other privileged place within England, dominion of Wales, and town of Berwick-upon-Tweed, and the Isles of Jersey, Guernsey, and Man, respectively; and also into any port, harbour, road, creek, or bay, upon the coast of England and Wales, although the same should lie out of the body of any county; and if such writ shall issue in Ireland, the same may be directed and run into any port, harbour, road, creek, or bay, although the same should not be in the body of any county; any law or usage to the contrary in anywise notwithstanding.
- VI *Provisions of this Act to extend to all writs of habeas corpus in cases within 31 Cha. 2, c. 2, and Irish Act, 21 & 22 Geo. 3, c. 11.* – The several provisions made in this Act, touching the making of writs of habeas corpus issuing in time of vacation returnable into the said courts, or for making such writs awarded in term time returnable in vacation, as the cases may

respectively happen, and also for making willful disobedience thereto a contempt of the court, and for issuing warrants to apprehend and bring before the said justices or barons, or any of them, any person or persons willfully disobeying any such writ, and in case of neglect or refusal to become bound as aforesaid, for committing the person or persons so neglecting or refusing to jail as aforesaid, respecting the recognizances to be taken as aforesaid, and the proceeding or proceedings thereon, shall extend to all writs of habeas corpus awarded in pursuance of the Act, passed in England in the thirty-first year of the reign of King Charles the Second, or of the said Act passed in Ireland in the twenty-first and twenty-second years of his present Majesty, and herein-before recited, in as ample and beneficial a manner as if such writs and the said cases arising thereon had been herein-before specially named and provided for respectively.

XI HABEAS CORPUS ACT 1862²⁹

25 Vic c 20

*An Act respecting the Issue of Writs of Habeas Corpus
out of England into Her Majesty's Possessions Abroad*

Whereas it is expedient that writs of Habeas Corpus should not issue out of England into any colony or foreign dominion of the Crown where Her Majesty has a lawfully established Court or Courts of Justice having authority to grant and issue the said writ, and to ensure the due execution thereof throughout such colony or foreign dominion. Be it therefore 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:

²⁹ This version was obtained from the British and Irish Legal Information Institute (BAILII), <http://www.bailii.org/uk/legis/num_act/1862/ukpga_18620020_en.pdf>.

- I No writ of Habeas Corpus shall issue out of England, by authority of any Judge or Court of Justice therein, into any colony or foreign dominion of the Crown where her Majesty has a lawfully established Court or Courts of Justice having authority to grant and issue the said writ, and to ensure the due execution thereof throughout such colony or dominion.

- II Provided, That nothing in this Act contained shall affect or interfere with any Right of Appeal to Her Majesty in Council now by law existing.