

'An Unknown Charter of Liberties.'

SOME years ago Mr. J. H. Round printed in this Review a document which he entitled 'An Unknown Charter of Liberties.'¹ The date and the signification which he ascribed to this 'charter' have been challenged by Mr. G. W. Prothero,² by Mr. Hubert Hall,³ and more recently by Mr. McKechnie in his monograph on the Great Charter.⁴ There are, therefore, four rival theories in the field. Mr. Round suggests that his document—which we will call X—represents a charter granted to the northern barons in 1218. Mr. Prothero regards it as a draft settlement proposed by the king early in 1215, but rejected by the barons. Mr. Hall thinks it is the work of a forger; that it purports to be John's coronation charter, produced for the purpose of justifying the invasion by Louis of France; and that it is made up of excerpts from four genuine charters—that of Henry I, the reissues of Magna Carta in 1216 and 1217, and the Forest Charter of 1217. Finally Mr. McKechnie makes the tentative suggestion that in X we have a copy of the schedule which the barons sent to the king from Brackley at or before Easter 1215.⁵

We find it difficult to accept any one of these theories. The internal evidence afforded by X appears to be against them. With regard to Mr. Hall's suggestions we may remark that, even if the document is an attempt to forge a charter, it cannot have been fabricated in the manner and for the motive which he suggests. We admit that X, § 8, is nearly equivalent to the scutage clause in the Great Charter of 1217; also that X, § 12, is equivalent to the best known clause of the Forest Charter.

X.

Great Charter of 1217.

§ 8. Et si scutagium evenierit in terra una marca argenti capietur de feodo militis; et si gravamen exercitus contigerit, amplius caperetur consilio baronum regni.

§ 44. Scutagium de cetero capiatur sicut capi consuevit tempore regis Henrici avi nostri.

Forest Charter of 1217.

§ 12. Et concedo ne homo perdat pro pecude vitam nec membra.

§ 10. Nullus de cetero amittat vitam vel membra pro venatione nostra.

¹ *Ante*, vol. viii. p. 288, 1893. Mr. Round used a Record Office transcript. In vol. ix. p. 328 will be found a collation (by M. Bémont) of the original document in the Trésor des Chartes.

² Vol. ix. p. 117, 1894.

³ Vol. ix. p. 326.

⁴ *Magna Carta*, p. 202, &c. (1905).

⁵ Wendover, iii. 296. For discussions of the exact date see Miss Norgate, *John Lackland*, p. 227, and Sir J. Ramsay, *Anglo-Norman Empire*, p. 470.

But in each case there is a remarkable difference in the wording of the two parallel clauses, and nothing suggests that we have to deal with a case of copying. On the other hand X, § 4, follows the *Articuli* or the Great Charter of 1215, not the corresponding concession of 1217, which is more restricted; and X, § 11, corresponds to a clause in the *Articuli* and the Great Charter of 1215, which is absent from the Great Charter of 1216, also from that of 1217:

X.	<i>Articuli.</i>	<i>Great Charters of 1216 and 1217.</i>
§ 4. Si foemina sit haeres terrae, debeo eam maritare, consilio generis sui, ita non sit disparagiata.	§ 8. Ut haeredes ita maritentur ne disparagentur et per consilium propinquorum de consanguinitate sua. ⁶	§ 6. Haeredes maritentur absque disparagatione.
§ 11. Et ad aliquis hominum meorum moriatur, qui Iudaeis debeat, debitum non usurabit quamdiu haeres eius sit infra aetatem.	§ 84. Si quis mutuo aliquid acceperit a Iudeis plus vel minus et moriatur . . . debitum non usurabit quamdiu haeres fuerit infra aetatem. ⁷	[Wanting.]

Mr. Hall, therefore, does not supply his forger with an adequate stock of materials. Moreover the facts of chronology are against Mr. Hall. The Forest Charter of Henry III was issued, as we know from the Durham text, on 6 Nov. 1217. The Great Charter of the same year was issued about the same time, *post festum Michaelis*, according to the Waverley Annals, in any case not earlier than the treaty of Lambeth (11 Sept. 1217). But after the treaty of Lambeth there was no longer any reason for the fabrication of documents to support the title of Louis. The French prince renounced at Lambeth all his claims to the throne of England. We submit that the onus of proof lies upon those who regard X as a forgery. If it be not a forgery we must date it as belonging to the reign of John; so much is clearly implied by the scribe's preamble, *Haec consequentia concedit rex Iohannes*, which may be compared with the preamble to the '*Articuli Baronum*': *Ista sunt capitula quae Barones petunt et dominus Rex concedit*.

We now pass to the theory of Mr. McKechnie. Assuming that X is a formal statement of grievances presented to the king at an important crisis, he has to explain the very peculiar form of the document. Beginning in the third person (*concedit rex Iohannes*), it immediately passes into the first person singular (*debeo ei reddere*, &c.) Mr. McKechnie explains the use of the first person

⁶ Cf. *Great Charter* of 1215, § 6.

⁷ Cf. *ibid.* § 10.

with some ingenuity. The Brackley schedule, he remarks, was presented with a demand that it should be instantly sealed;⁸ it would, therefore, naturally take the form of a draft charter. But the Articuli were similarly presented with a demand that they should be sealed, and the Articuli are not in the form of a charter. Again, it is difficult, especially on comparison of the Articuli with X, to believe that the latter was a formal statement on the part of the barons. It is too clumsy; the language (e.g. in § 12) is too untechnical; however great the haste of the barons, they would have produced a composition of a more workmanlike character.

We believe, however, that Mr. McKechnie and Mr. Prothero are nearer to the truth than Mr. Round when they reject his date of 1218 and adopt that of 1215. The scribe of X prefaces his list of concessions with a copy of the charter of Henry I and with a note: *Hæc est carta Regis Henrici per quam barones quaerunt libertates*. Now the first mention of this charter in connexion with the grievances of the opposition is in Wendover's account of the St. Albans meeting of 4 Aug. 1213; but the first recorded occasion on which the barons made the charter the basis of their demands was 6 Jan. 1215, when they came in full armour to the king's court at the New Temple and insisted that the concessions of Henry I should be confirmed. In the interval between these two dates the barons had bound themselves by an oath to defend the charter, but, so far as we know from the chronicles, had not negotiated on the subject with the king. For these reasons it seems that 6 Jan. 1215 must be our *terminus a quo* for the date of X. Mr. Prothero and Mr. McKechnie assume that it is prior in time to the Articuli. The copy through which the Articuli are known to us is a fair copy, which appears to have been made on 15 June 1215, the date at which they were sealed.⁹ How much earlier the first draft was drawn up one cannot say with certainty; but the Brackley schedule (before 27 April 1215) is the first recorded list of articles presented to the king; and these we know that he rejected.¹⁰ Now X records the king's assent to certain articles. This should be at a date subsequent to the rejection of the Brackley schedule. What is more, we can prove that certain clauses in X are derived from the Articuli in their extant form. Of course the Articuli are often in verbal agreement with the Great Charter of 19 June 1215.¹¹ But in these particular cases the Articuli and the Great Charter present some variants of phraseology; and X follows the Articuli rather than the Great Charter. We quote the three texts in parallel columns.

⁸ Wendover, *ubi supra*.

⁹ For the proof of this date see McKechnie, *op. cit.* pp. 44 ff.

¹⁰ Wendover, *ubi supra*.

¹¹ For the date see McKechnie, pp. 47 ff.

Articuli.	X.	Great Charter of 1215.
§ 8. Ut haeredes ita mantentur ne disparagantur et per consilium propinquorum de consanguinitate sua.	§ 4. Si foemina sit haeres terrae, debeo eam maritare consilio generis sui, ita non sit disparagiata.	§ 6. Haeredes maritentur absque disparagatione, ita tamen quod, antequam contrahatur matrimonium, ostendatur propinquis de consanguinitate ipsius haeredis.
§ 84. Debitum non usurabit quamdiu haeres fuerit infra aetatem.	§ 11. Debitum non usurabit quamdiu haeres eius sit infra aetatem.	§ 10. Debitum non usuret quamdiu haeres fuerit infra aetatem.

We therefore conclude that X falls in point of time between the Articuli and Magna Carta, basing this conclusion on the argument that its scribe is acquainted with the former of these two documents and not acquainted with the latter. Now there is one clause in X (§ 8) which appears at first to contradict our argument; for this clause does not appear in the Articuli, whereas something like it does appear in the Great Charter. In this clause, however, we find on further inspection a remarkable confirmation of our argument and a clue to the real nature of X. The clause relates to the protection of royal wards against waste on the part of the crown's representatives. We give it in full, together with the corresponding sections of the Articuli and of the Great Charter.

Articuli.	X.	Great Charter.
§ 2. Custos terrae haeredis capiet rationabiles exitus . . . et si custos terrae fecerit destructionem et vastum amittat custodiam.	§ 8. Si ita sit quod haeres sit infra aetatem, debeo iij ^{or} militibus de legalioribus feodi terram baulare in custodiam et illi cum meo famulo debent mihi reddere exitus terrae.	§ 4. Et si nos commiserimus custodiam alicuius terrae vicecomiti vel alicui alii qui de exitibus illius nobis respondere debeat, et ille destructionem de custodia fecerit vel vastum, nos ab illo

captemus emendam, et terra committatur duobus legalibus et discretis hominibus de feodo illo, qui de exitibus respondeant nobis vel ei cui eos assignaverimus; et si dederimus vel vendiderimus alicui custodiam alicuius talis terrae, et ille destructionem inde fecerit vel vastum amittat ipsam custodiam, et tradatur duobus legalibus et discretis hominibus de feodo illo qui similiter nobis respondeant sicut predictum est.

We see that in this case the Great Charter provides for the wards a new and practical safeguard against waste. We see also that the author of X is partially acquainted with the amendment which the Great Charter introduces into the text of the Articuli. But he

gives the amendment incorrectly; he is mistaken about the number of *militēs*; mistaken also in stating that they will be nominated in every case of wardship, whereas the Great Charter makes this provision only for cases of proved waste or destruction. Is it not at least a tenable hypothesis that the author is reporting—it may be as an eye-witness, it may be at secondhand—a conference in which the Articuli were discussed and in which the king assented to certain amendments? The error which we have just noted would be easily explained on this hypothesis. So would the writer's transitions from the third person to the first, from the first to the third; so would the scrappy and disconnected character of his memoranda.

In confirmation of this hypothesis we may point out that the scribe appears to know the Articuli not from the possession of a copy, but from having heard them read. X, § 5, relates to the goods of tenants in chief who have left a will or died intestate. It gives correctly the substance of Articuli §§ 15, 16, so far as they bear upon this subject. But it is almost a verbal reproduction of the source from which these clauses of the articles are derived—namely, § 7 of the charter of Henry I. It looks as though the scribe, whom we know to have possessed a copy of this charter, kept it before him on some occasion when he heard the Articuli recited, noted that in this point they corresponded exactly to the charter, and did not trouble himself to remember their wording. In any case a reference to X, §§ 4–11, will show that while the scribe remembered particular phrases and the general tenor of the relevant Articuli he was paraphrasing with the freedom of a man who writes from memory.

At this point we may pause in our inquiry to examine a side-issue which is of some interest, though of no great importance for the purpose in hand. What manner of man was this scribe? Evidently he feels a lively interest in the charter of Henry I. This circumstance would lead us to suspect him of belonging to the opposition; and the suspicion is confirmed by the language of § 12: *Ne homo perdat pro pecule vitam neque membra*. Of this clause we shall have more to say hereafter. For the present let us note that it is rhetorical, contemptuous, certainly not a term which would be used by a matter of fact lawyer or a friend of the forest laws. *Fera* and *bestia* are the technical terms for beasts of chase; *pecus* is used much in the sense of our 'brute beast.' The penalties of the forest law were most bitterly resented by the poorer classes; and it is probable that our author was of humble extraction. At all events he was not highly educated; his Latin is poor even when judged by the standard of contemporary documents. Some of the phrases which he coins give the impression that he thinks in English rather than in French, an

additional proof of his lowly rank. Thus he writes in § 2, *absque magis capiendis* ('without taking more'); in § 4, *ita non sit disparagiata* ('so she be not disparaged'); and in § 8 *gravamen exercitus* reads like a literal rendering of some English compound substantive.¹² That he was a clerk we may assume as a matter of course; and it may be that he attended a conference between the king and barons in the character of a secretary or amanuensis who was not privileged to see the documents under discussion, but kept his ears open and wrote down what he could of the conclusions reached. It has been suggested, and it is not impossible, that he was a spy in the pay of Philip Augustus. In this way we can best explain the fact that the document is now preserved in the French archives.¹³

But what was the conference of which his notes tell us? Any one who has examined the passages in which the Great Charter differs from the Articuli will admit that the sealing of the latter was followed by debates which resulted in amendments. The Articuli themselves imply that such debates will take place; for § 1 says, *Haeredes plenae aetatis habebunt haereditatem suam per antiquum relevium exprimendum in carta*. Mr. McKechnie has shown, in his careful examination of the chronology of the Runymede conference,¹⁴ that three days elapsed after the sealing of the Articuli and before the issue of the charter. This interval would give ample time for discussion, and the text of the charter shows that each party gained something by the discussion. Of the amendments ultimately adopted some are merely epexegetic, but some abandon a proposed limitation of the prerogative, and others deprive the crown of loopholes by which the intention of the Articuli might be evaded. We have seen that X, § 8, incorporates in an erroneous form an amendment which was actually adopted. There are other clauses in it which look like abortive amendments. There is one of the epexegetic class (§ 10), apparently a rider to § 89 of the Articuli; in this case it is easy to understand why the amendment was dropped, for it does little more than summarise provisions of the assize of Woodstock, and might therefore be regarded as otiose.

Articuli.

X.

§ 89. Ut pravae consuetudines de
forestis . . . emendantur.

§ 10. Ut milites qui in antiquis
forestis meis suum nemus habent,
habeant nemus amodo ad herbergia
sua et ad ardendum; et habeant forestarium suum; et ego
tantummodo unum qui servet pecudes meas.

¹² Mr. Hall's amendment *allectamen* is unnecessary, and makes the clause more difficult than it was.

¹³ M. Bémont (*op. cit.*, ix. 827, 838) points out that the original is in a French hand of the early thirteenth century, and probably written in the French chancery. It does not, however, follow that the scribe of our text was also the author of it.

¹⁴ *Op. cit.* p. 14.

There is another clause which is in favour of the king, reserving to him the right of taking a *rationabile auxilium* without the leave of the great council, not merely for the three 'great aids,' but for any purpose he thinks fit (§ 8); this may have been finally omitted, because an aid at the rate proposed—one mark from the knight's fee—seemed wholly inadequate to the king's necessities.

There remain, however, two unfulfilled promises of supreme importance. The first defines the king's right of exacting foreign service; it is a rider to the vague stipulation of Articuli § 7. Henceforward the king will only ask for foreign service in Normandy and Brittany, and from the more important tenants in chief he will accept a quota in lieu of their full *servitium militare*.

Articuli.

§ 7. Ne aliquis maius servitium faciat de feodo militis quam inde debetur.

X.

§ 7. Ad hoc hominibus meis concedo ne eant in exercitu extra Angliam nisi in Normanniam et in Britanniam et hoc decenter; quod si aliquis debet inde servitium decem militum consilio baronum meorum alleviabitur.

The second promise is that no man shall henceforth suffer punishment in life or limb for the king's game (§ 12). It may be argued that John would not dare to play fast and loose with the opposition after he had formally capitulated to their demands. But, after all, these promises, if they were made, were not confirmed with the royal seal, as the Articuli had been confirmed; and to the medieval mind such a distinction meant a real difference in the degree of obligation, a difference which moderate men would be forced, however reluctantly, to recognise when it was pleaded in extenuation of the king's bad faith. And the important point to notice is that the charter as finally issued gave great dissatisfaction to many of the constitutionalists. The northern barons refused to accept it as a settlement,¹⁵ and this is the more significant when we remember that they had been the loudest in their protests against foreign service. All over the country attempts were made to destroy the royal forests, either by open violence or by straining the forest clauses of the charter.¹⁶ In fact, there is good reason for saying that foreign service and the forest law were among the most important causes which contributed to the outbreak of the second civil war. Walter of Coventry—and his view has been accepted by some recent historians of the reign—regards the resumption of hostilities as

¹⁵ Walter of Coventry, ii. 222. Cf. John's letter of 23 July 1215 to the Yorkshire barons in *Rot. Pat.* p. 150.

¹⁶ W. Coventry, *l.c.*; of the protest of the prelates in *Foedera*, i. 184.

due to the bad faith of the opposition. It is, at all events, worth considering whether the bad faith was not from the first on the king's side.

Our suggestion, then, is that the 'Unknown Charter of Liberties' throws some light upon the conference of Runnymede, and that it helps us to understand why the Great Charter was not regarded by the opposition as a satisfactory settlement. The hypothesis cannot be demonstrated with certainty, but it appears to meet some difficulties suggested by the 'Unknown Charter' which have not so far received sufficient attention. H. W. C. DAVIS.

Some Neglected Fights between Crecy and Poitiers.

In his account of the battle of Poitiers Mr. Oman, after describing how King John ordered the mass of his men-at-arms to dismount and attack the English on foot, adds the remark that 'in preparing the assault on the English position King John adopted a method of fighting which had never before been practised by the French.' This statement that the French tactics were novel is not definitely made by either Froissart or Geoffrey le Baker, who give the fullest accounts of this matter, though it is, perhaps, a not unnatural inference from their silence as to earlier instances and from the stress which Baker lays on the tactics in question being adopted on the advice of the Scottish knight William Douglas, whose countrymen had first taught the English the advantages of fighting on foot. It seems, however, quite clear from the testimony of a chronicler of special competence in dealing with military history that Mr. Oman's inference cannot be justified. The evidence which makes against his view is contained in the not very happily named *Chronique Normande du XIV^e Siècle*, edited in 1882 by MM. A. and E. Molinier for the Société de l'Histoire de France, and almost entirely unused by English writers. The author of this account is, as the editors show, a Norman captain, belonging to the lesser noblesse, who took personal part in many of the campaigns of the period. Though sometimes wild and incoherent in his political details¹ he is a specialist in warfare, with a keen eye to military

¹ *History of the Art of War*, p. 628

² A glaring example of this is the statement on p. 59 of the *Chronique Normande* that the earl of Salisbury, disgusted at Edward III's seduction of his wife, 'se part . . . de la court et envoya deffier le roy Edouart et passa la mer et vint au roy Phelippe.' I may add that I accept the views as to the date of the *Chronique Normande* and of its relation to the Latin *Chronographia regum Francorum* (ed. Moranvillé, Soc. de l'Histoire de France, 1891-7) laid down by Professor H. Pirenne, of Ghent, in his paper on *L'ancienne chronique de Flandre et la Chronographia regum Francorum* in the *Compte rendu des séances de la Commission royale de l'Histoire de Belgique*, ve série, tome viii. pp. 199-206 (1898), which have the support of M. A.