

The Provisions of Westminster, October 1259

In the year 1259 from the Incarnation of the Lord, the forty-third of the reign of King Henry, son of King John, at a meeting of the lord king and his magnates at Westminster on Michaelmas fortnight, the provisions hereinunder written, by the common counsel and consent of the said king and his magnates, were enacted and published by the same king and his magnates in this form.

With regard to the performance of suit to the courts of the magnates and of other lords who have such courts, it is provided and established by general agreement that no one who is enfeoffed by charter shall henceforth be distrained to perform suit to his lord's court, unless he is specifically obliged by the tenor of his charter to perform the suit; with the sole exception of those whose ancestors were accustomed to perform suit of this kind, or who, before the first crossing of the said lord king into Brittany — after the time of which crossing twenty-nine and a half years had elapsed down to the time that this constitution was made.

If anyone distrains¹ his tenant contrary to this provision let quick justice be done about it in the king's court as is subsequently provided.

If it happens that an inheritance is divided between several parceners² (like an inheritance that arises as from one heir), the other parceners shall help with the cost of doing the suit reasonably. And if tenants are enfeoffed with the same inheritance the lord may no longer demand more than one suit as is aforesaid.

If any lords distrain their tenants contrary to this provision, than at the complaint of the tenant let them be attached to come to the king's court at an early date to answer them; on which day they shall have one excuse for non-appearance if they are in the realm and the beasts in this connection are to be released immediately to the plaintiff and so remain until the action between them is terminated.

And these who have levied the distress do not appear on the date that was given them by way of essoin³, or on the first date if they were not essoined, then shall the sheriff of the district be ordered to cause them to appear on another date,

¹ To seize property

² i.e. someone who takes an equal share

³Essoin is a legal excuse for non attendance

and if they do not appear the sheriff shall be ordered to distrain them by all that they possess in his bailiwick, and he be answerable to the king for the issue therefrom and that he produce them in person in court on another day. And then on that day if they do not appear the plaintiff shall go away without day⁴ and the beast shall stay released, so that the lords henceforth shall not be able to distrain them on that account until they have their deraignment⁵ by and action in the king's court, saving to the lords their rights in respect of the suits whatever they dare to institute legal proceedings about them. And the lords are to come to the court of the king to answer. And the plaintiffs can have their plaints; then by judgement of the court they shall recover the damages they have had by reason of this distress.

On the other hand let lords distrain their suit by the same speedy justice tenants who withhold from their lords suits which they owe and which they have done since the aforesaid term, and recover their damages just as their tenants do from them. As to suits which were withheld before the aforesaid term the common law shall run as usual.

With regard to the sheriff's tourn, it is provided that, unless their presence is specially demanded, archbishops, bishops, abbots, priors, earls, and barons, or other men of religion, or women, shall not of necessity come thither. But tourns are to be held in the way they were held in the time of the predecessors our our lord king who now is. And if any have lands in several hundreds they are not to be distrained or to attend tourns except where they live. And the tourns shall be held according to the form of the king's Great Charter, and as they were customarily held in the time of the kings John and Richard.

It is also provided that neither on the eyres of the justices nor in the counties nor in the courts of barons nor in a liberty or elsewhere shall fines henceforth be taken from anybody for miskennen⁶, or on condition that people are not molested.

Furthermore it is provided that in a plea of dower that is before the bench one should give four days in the year at least, namely one day each term. And if one can give more, one should give more.

⁴ i.e. without any liability

⁵ Their case, or suit

⁶ A mistaken citation

Like is essoins of darein presentment⁷ and or quarteimpedit⁸ of churches that are vacant one should give a day every fortnight or every three weeks according to whether the district is a long way off or near. And if anyone who is impleaded by quareimpedit does not come on the first day and does not have himselfessoined, on another day if he does not come let him there be distrained by all his lands and his chattels by the great distress, as said above.

Moreover, with regard to charters of exemption and liberty, that those securing them are not to be put on assizes, juries, or recognitions, it is provided that, if their oath is so essential that without it justice cannot be administered as in the grand assize or in a perambulation or where they are witnesses, by name either in charters in writing, in attaints or in other case which cannot be decided without the oaths of knights, in such cases they shall be forced to swear, saving to them their aforesaid liberty and exemption in other respects.

No one except the king is in future to levy a distress outside his own fee or on the king's highway where everybody can come and go.

In addition, if it happens that the lord after his tenant's death takes his lands into his hand because the heir is under age and then when the heir comes of age will not surrender his land without being sued, that the heir get back his land into his hand by writ of mort d'ancestor together with the damages he has sustained on account of the detention after his full age. And likewise if the heir is of age when his ancestor dies and in as the heir apparent who is regarded and accepted, that the chief lord may not evict him, or take anything or remove anything, except take a simple seisin only. And if the chief lord keeps him out, so that he is allowed to obtain a writ of mort d'ancestor or of cosinage⁹, he may recover his land and his damages as by writ of novel disseisin.

On wardship of socage it is so provided that if land which is held in socage is held in wardship by his kinsmen because of the heir who is under age, the guardian cannot do waste, sale or any destruction of the land that is in his wardship, but shall safely keep it for the benefit of the heir so that when he comes of age the guardian shall answer to him loyally for the issues and the

⁷ 'last presentation' – i.e. who had last made the appointment to a church benefice

⁸ Pretty much the same thing

⁹ A writ to recover your land

profits of the thing, saving to him his reasonable outlay. Nor can he sell or give the marriage except to the advantage of the minor.

In addition it is provided that the escheators, those appointed to hold inquests, justices assigned to take assizes and justices assigned to hear and determine pleas of trespass, or any other bailiff, have no power to amerce for failure to obey a common summons, except the chief justice and the justices in eyre for all pleas.

It is likewise provided that no man of religion can buy any land without the agreement of the lord, namely that lord who is nearest except for the mesne lord.

It is likewise provided on essoins that no one henceforth is to be distrained to take an oath in warranty of the esoin either in county court or elsewhere.

Hereafter no one but the king shall hold in his court a plea concerning false judgment rendered in a court of his tenant; for pleas of this sort especially pertain to the crown and dignity of the king.

It is provided that if any one is distrained and his beasts are kept against gage and surety, the sheriff when complaint has been made can freely release the beasts in accordance with the law of the land, if they are taken outside a liberty, without contradiction and without hindrance from him who took them. And if they are within a liberty and the bailiff will not release them the sheriff shall release them for default on the part of the bailiff of the liberty.

Without the king's writ, no one may henceforth distrain his free tenants to respond concerning their free tenements or anything that pertains to their free tenements. Nor may he cause his free tenants against their will to take oaths; so that no one may do this without the king's precept.

It is provided that no bailiff who ought to render account is to take himself off away from his lord. And if he will not render his account and has no land or tenement whereby he can be distrained he is to be attached in person, so that the sheriff in whose bailiwick he is found shall make him come to render account if he is in arrears.

It is provided that no farmers during the period of their farm shall do sale or exile of woods, houses, men or other things belonging to the tenement which they have at farm, unless they have special permission in writing to make the sale. And if they do it and are convicted, they shall render the damages for it.

Hereafter itinerant justices shall not amerce vill on their eyres because particular twelve-year-old persons do not come before sheriffs and coroners for inquests concerning a man's death or other matters pertaining to the crown; so long as, nevertheless, enough men come from those vill for satisfactorily carrying out such inquests.

No coroner or sheriff or other bailiff from now on shall amerce townships because they do not come to inquests. But when they find a default, let it be put in the coroner's roll and presented before the justices in eyre who have power to amerce townships and no one else.

No judgment of murder shall henceforth be rendered before the justices in a case that is adjudged merely one of accident; but murder shall be proper in the case of a man feloniously slain, and not otherwise.

No justice or sheriff or other bailiff is from now on to amerce townships for hue and cry raised and not followed up if it is not raised for reasonable cause, such as for the death of a man, robbery, wounding or similar case with pertains specially to the crown.

Furthermore is any one is vouched to warranty in a plea of land in the eyre of the justices he is not from now on to be amerced for not being present, inasmuch as no free man ought to be amerced for default except on the first day of the coming of the justices. But if he who is vouched to warranty is then within the same county, then it is for the sheriff to cause him to come on the third day or the fourth according to whether he is far away or near, as is the practice in the eyre of the justices. And if he is living in another county he shall have a reasonable summons of 15 days in accordance with the common law.

Furthermore than justices are provided to go through the land. And there is to be one of the 12 or others of the community to see that justice is done to plaintiffs and to all others. And so they are to see that order is sent to the counties that establishments made for the benefit if the realm, those that are made and those that will, are to be kept.

Likewise that the provisions that have been made since the beginning of these establishments are to be upheld and maintained.

Furthermore the rolls of these establishments are to be read and affirmed. And the charters of liberties and of the forests are to be kept and maintained.

It is likewise provided that no one is to come and attend parliament with horses or with arms, or armed, unless he is specifically ordered by the king or by his councillor by writ for the common business of the land.

Where itinerant justices were lately on circuit, good men and sage are to be appointed to hear and inquire into all complaints that could have been terminated without writ during the last seven years; similarly that if anyone has not made plaint before the seven years and has not had justice he is to recover to get it. And they are to have the power to inquire concerning the sheriffs and their bailiffs, how they have behaved towards the district since their establishment.

They are to enquire also concerning the bailiffs of the rich men of the land and concerning the rich men themselves.

Itinerant justices are to have the same power as sheriffs in their eyre; in addition they are to have their own power throughout their eyre.

And there are to be provided from the less important people of the council two or three who are to be constantly in attendance on the king between parliaments. And they are to be changed at each parliament and others appointed. And their action is to be viewed at each parliament. And if there is anything in it to be amended, it is to be amended by those of the council. And if any important business arises between parliament that cannot be settled by the aforesaid two or three, or can not well be delayed until the next parliament, all those of the council are to be summoned by writ to settle this business. And there is to be put in the writ the occasion of the summons, if this is not secret. And if any of the others of the council, or of the aforesaid two or three, comes to king's council as long as the business lasts both as to their own business and as to the king's business for which they are summoned.

It is to be remembered that two good men are to be provided to sell the wardships that are now of right in the king's hand.

Furthermore that two good men are to be provided to ordain equally with the council of the exchequer concerning sheriffs and counties.

Furthermore people are to be provided to go with the king to France. And who shall stay in the land with the Justiciar.

And that an answer is to be given to the envoys from Wales.

And it is to be provided how the writs of the provisions and of the establishments shall issue from the chancery without delay.

And likewise about the envoys who shall go to Rome.

For selling the wardships the Justiciar, the treasurer, Mr Thomas of Wymondham, Sir Roger of Thirkleby and Sir Henry of Bath are to be appointed immediately. And that these same are to ordain and provide on what items the queen ought to get gold.

It is provided that these same are to come to the exchequer and view the sums of all kinds of tallages that have been imposed since the king's accession. And that they are to estimate how much each one can raise.

And these same are to provide how one ought to proceed in pleas about customs and about services.

And these same are to provide how one ought to proceed in escheats and in wardships.

It is to be provided which people ought to go to correct trespasses and wrongs done, which can be determined without writ.

The Justiciar is to provide this with the others. And which are to be at the bench with the justices, and which at the exchequer.

It is provided that four knights are to be appointed in each country to observe the wrongs which sheriffs do; that if it happen that they do wrongs, these four are to admonish the sheriffs to have them corrected. And if they will not correct them, let them enter the wrongs done onto a roll, and show them to the chief justices at the end of the year when he asks for them; or earlier if he asks for them, if so be that the plaintiffs to who the wrongs have been done are willing to prosecute. And that these aforesaid four knights are not to have any authority to interfere with the performance by the sheriffs of their office.

If a clerk is accused of the death of a man, of robbery, or larceny or other crime that concerns the crown, then it is by command of the king delivered on bail to 12 good men that they have him before the justices or released by pledges without command of the king if the aforesaid 12 or the pledges have his person before the justices on the first day, they are not in future to be amerced, even though the clerk will not answer or stand his trial in the king's court, insomuch as they were not pledged or going surety for anything other than to produce the clerk's person in court.

The justiciar, the treasurer Sir Henry of Bath, Sir Roger of Thirkleby and the barons of the exchequer are to provide this year instantly which good men, upright and sage, are to be sheriffs this year. And they are to be vavasours ¹⁰in the shire they are sheriffs of.

¹⁰ i.e. a tenant, landholder, vassal

On the other hand, next year at the last county court before Michaelmas there are to be chosen in full county court four good men, upright and who will be advantageous to the king and to the shire in this office. And they are to be at the exchequer at Michaelmas. And the barons are to pick out the most sufficient in their estimation

Furthermore good men are to be chosen by the Justiciar and the treasurer to provide during this advent and the festival days, against the next parliament, what is to be amended at the great exchequer and at the exchequer of the Jews. And by the same reasonable sustenance is to be provided for those who are at either exchequer.

It is provided that Sir Thomas de Gresley, justice of the forest, is to take Nicholas of Ramsey and three knights from each county and they are to enquire into the condition of the forests, of vert and venison, and of sales and destructions, and by whom they are done. And they are to enquire about malpractices in connection with forest pleas and by whom they were established and from what time; and when he has done this he is to make it known to the king and his council.

It is to be done the same way with the forests beyond the Trent; that the chief justice provide four knights and enquire about all the forests beyond Trent in the way aforesaid.

The archbishop, the bishop of Worcester, the earl marshal, the earl of Warwick are to be with the Justiciar to deal with the important business of the kingdom as long as the king is out of England. And all those of the council and the community's twelve who stay in England are to be summoned if needs be. Sir Philip Basset and Sir Roger Mortimer are to be constantly with the Justiciar.

It is provided that the Justiciar is to provide that the castellans are to have reasonable sustenance for keeping the king's castles and maintaining them.

It is provided to put two good men from the community for from the community's twelve or from others with the justices at the bench. And that they are to see that justice is done. And in the same way two good men from the community or from the community's twelve or from others are to be put at the exchequer.

These are the provisions and the establishments made at Westminster at the Michaelmas parliament by the king and his council and the twelve chosen by the common counsel before the community of England which then were at Westminster in the forty third year of the reign of Henry and the con of king John.