

## CHARTER OF LIBERTIES AND PRIVILEGES, 1683.

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1683.

[Passed by the first New York legislature, October 30, 1683. A sketch of this charter and of its successor, the charter of 1691, will be found in the chapter on the Colonial Period. For convenience of reference I have prefixed a title and number to each paragraph of the charter. I have also added explanatory notes showing the origin and subsequent continuance of various provisions.]

FFOR The better Establishing the Government of this province of New Yorke and that Justice and Right may be Equally done to all persons within the same

BEE It Enacted by the Governour Councill and Representatives now in General Assembly mett and assembled and by the authority of the same.

[The preamble states the general purpose of the charter, and is quite similar, at least, in spirit, to the preamble to our Constitutions. A sketch of the enacting clause, showing its evolution from early parliamentary forms, will be found in the fourth volume, in a note to article 3, § 14, of the Constitution, which prescribes the form of the enacting clause.]

1. [Supreme legislative authority.]-THAT The Supreme Legislative Authority under his Majesty and Royall Highnesse James Duke of Yorke Albany &c Lord proprietor of the said province shall

forever be and reside in a Governour, Councill, and the people mett in Generall Assembly.

[The principle of this paragraph, with modifications, appears in the Constitution of 1777, § 2 ; 1821, art. I, § I ; 1846, art. 3, § I; 1894, art. 3, § I. The phrase "supreme legislative authority" appears in the first Constitution as "supreme legislative power," and in subsequent Constitutions as "legislative power." The governor was also made a constituent part of the legislature. In the chapter on the first Constitution I have noted the fact that the convention which framed that instrument once adopted a similar provision, but afterwards the plan was abandoned.]

2. [Governor and council.]-THAT The Exercise of the Cheife Magistracy and Administracon of the Government over the said province shall bee in the said Governour assisted by a Councill with whose advice and Consent or with at least four of them he is to rule and Governe the same according to the Lawes thereof.

[The executive power of the colony was thus vested in a governor and council. This power had already existed many years and was continued through the colonial period. A similar provision was proposed in the convention which framed the first Constitution, and so far as the appointment of officers was concerned was in fact established by that instrument through the provision for a council of appointment, composed of the governor and four senators, which possessed the absolute power of appointment and removal of nearly all officers, both civil and military.]

3. [Council to act in governor's absence.]-THAT In Case the Governour shall dye or be absent out of the province and that there be noe person within the said province Comissionated by his Royall Highnesse his heires or Successours to be Governour or Comander in Cheife there That then the Councill for the time being or Soe many of them as are in the Said province doe take upon them the Administracon of the Governour and the Execucon of the Lawes thereof and powers and authorityes belonging to the Governour and Councill the first in nominacon in which Councill is to preside untill the said Governour shall returne and arrive in the said province againe, or the pleasure of his Royall Highnesse his heires or Successours Shall be further knowne.

[This paragraph, which was intended to provide for continuing the government whenever the office of governor should become actually or constructively vacant, appears in substance in several commissions issued to governors during the colonial period. This subject has been treated at some length in the fourth volume, in notes to §§ 6 and 7 of article 4 of the Constitution of 1894.]

4. [General assembly, when to meet.]-THAT According to the usage Custome and practice of the Realme of England a sessions of a Generall Assembly be held in this province once in three yeares at least.

[An assembly which could not meet would be of little value as a part of the governmental machinery, or as a means of protection against royal encroachments; hence it was important to provide for frequent meetings of the legislature. Afterwards the people of the colony insisted upon annual meetings of the legislature, and annual appropriations. This subject is further considered

in the chapter on the Colonial Period, and also in the article in the third volume on apportionment during the Colonial Period. The present Constitution requires annual meetings of the legislature.]

5. [Right of suffrage; qualifications of voters.]- THAT Every freeholder within this province and freeman in any Corporation Shall have his free Choice and Vote in the Electing of the Representatives without any manner of constraint or Imposition. And that in all Elections the Majority of Voices shall carry it and by freeholders is understood every one who is Soe understood according to the Lawes of England.

[This provision was continued with some statutory modifications during the Colonial Period, and was substantially incorporated in the first Constitution (1777) §§ 7 and 10, and Const. 1821, art. 2, § 1. The property qualification, except as to colored voters, was abrogated by the amendment of 1826. See Constitution of 1846, art. 2, § 1, including amendments of 1864 and 1874, and the Constitution of 1894, art. 2, § 1, for subsequent and existing provisions on this subject.]

6. [Representatives, how apportioned.]-THAT The persons to be Elected to sitt as representatives in the Generall Assembly from time to time for the severall Cityes townes Countyes Shires or Divisions of this province and all places within the same shall be according to the proporcon and number hereafter Expressed that is to say for the City and County of New Yorke four, for the County of Suffolke two, for Queens County two, for Kings County two, for the County of Richmond two for the County of West Chester two, for the County of Ulster two for the County of Albany two and for Schenectade within the said County one for Dukes County two, for the County of Cornwall two and as many more as his Royall Highnesse shall think fitt to Establish.

[This subject is considered elsewhere in this volume, and also in detail in the article on colonial apportionment in the third volume. Provisions relating to the same subject will be found in the Constitution of 1777, § 4; 1821, art. 1, § 7; 1846, art. 3, § 5; and 1894, art. 3, § 5.]

7. [General assembly, how constituted.]-THAT All persons Chosen and Assembled in manner aforesaid or the Major part of them shall be deemed and accounted the Representatives of this province which said Representatives together with the Governour and his Councell Shall forever be the Supream and only Legislative power under his Royall Highnesse of the said province.

[See note to par. 1.]

8. [Sessions of General Assembly.]-THAT The said Representatives may appoint their owne Times of meeting dureing their sessions and may adjourne their house from time to time to such time as to them shall seeme meet and convenient.

[This made the assembly independent of the governor and council in the transaction of its ordinary business, including the power of adjournment. The first Constitution contained a provision, which has been continued in subsequent Constitutions, prohibiting the adjournment by either House for more than two days without the consent of the other; but the colonial assembly was not, in this respect, subject to the control of the governor and council. They formed the executive branch of the government and were a continuing authority, not chosen by the people, and it would have been a serious limitation on the power of the people if their representatives had

been made subject to executive control.]

9. [Assembly may determine qualifications and election of members.]-THAT THE said Representatives are the sole Judges of the Qualifications of their own members, and likewise of all undue Elections and may from time to time purge their house as they shall see occasion during the said sessions.

[This was the assertion of an ancient parliamentary privilege and it has been continued in all our Constitutions. Const. 1777, § 9; 1821, art. I, § 3; 1846, art. 3, § 10; 1894, art. 3, § 10.]

10. [Immunities of members.]-THAT No member of the general Assembly or their servants during the time of their Sessions and whilst they shall be going to and returning from the said Assembly shall be arrested sued imprisoned or any wayes molested or troubled nor be compelled to make answer to any suite, Bill, plaint, Declaration or otherwise, (Cases of High Treason and felony only excepted) provided the number of the said servants shall not Exceed three.

[This was another ancient privilege which was as necessary for members of the assembly as for members of the House of Commons. The present provision on this subject is found in the legislative law, § 2, which prohibits the arrest of members of the legislature on civil process, except in certain extraordinary cases. See, as to Congress, Articles of Confederation, art. 5.]

11. [Laws must be approved by governor and council.]-THAT All bills agreed upon by the said Representatives or the Major part of them shall be presented unto the Governour and his Council for their Approbation and Consent All and Every which Said Bills soe approved of Consented to by the Governour and his Council shall be Esteemed and accounted the Lawes of the province, Which said Lawes shall continue and remaine of force untill they shall be repealed by the authority aforesaid that is to say the Governour Council and Representatives in General Assembly by and with the Approbation of his Royal Highnesse or Expire by their own Limittations.

[This specifically made the governor and council component parts of the legislature. See note to par. I.]

12. [Elections for vacancies in assembly.]-THAT In all cases of death or removal of any of the said Representatives The Governour shall issue out Summons by Writt to the Respective Townes Cittyes Shires Countreyes or Divisions for which he or they soe removed or deceased were Chosen willing and requiring the freeholders of the Same to Elect others in their place and stead.

[The present provision relating to elections to fill vacancies in the office of a senator or member of assembly will be found in the election law, § 4. The governor's proclamation in such a case is a substitute for the writ of election required by the foregoing paragraph.]

13. [Freemen's rights.]-THAT Noe freeman shall be taken and imprisoned or be disseized of his freehold or Libertye or free Customes or be outlawed or Exiled or any other wayes destroyed nor

shall be passed upon adjudged or condemned But by the Law-full Judgment of his peers and by the Law of this province. Justice nor Right shall be neither sold denied or deferred to any man within this province.

[The first part is from the famous 39th article of Magna Charta. Gilbert Livingston presented it in a more modern form to the convention which framed the first Constitution, and it appears as § 13 of that instrument and has been continued in the Constitution of 1821, art. 7, § I; 1846, art. I, § I; and in Const. 1894, art. I, § I. The last sentence of the paragraph is from article 40 of Magna Charta.]

14. [When aids and other burdens not to be levied.]-THAT Noe aid, Tax, Tallage, Assessment, Custome, Loane, Benevolence or Imposicon whatsoever shall be layed assessed imposed or levied on any of his Majestyes Subjects within this province or their Estates upon any manner of colour or pretence but by the act and Consent of the Governour Councill and Representatives of the people in Generall Assembly mett and Assembled.

[This provision is borrowed in substance from the English Petition of Rights of 1628, a sketch of which will be found in the article on the Bill of Rights in the chapter on the Convention of 1821.]

15. [Due process of law.]-THAT Noe man of what Estate or Condicon soever shall be putt out of his Lands or Tenements, nor taken, nor imprisoned, nor disherited, nor banished nor any wayes destroyed without being brought to Answer by due Course of Law.

[This is from the statute 28 Edward III. (1354). The provision also appears in the English Petition of Rights, 1628, and in other English declarations relating to the rights of freemen. This subject is considered in the article on Due Process of Law in the fourth volume in a note to article I, § 6.]

16. [Amerciaments to be reasonable.]-THAT A ffreeman Shall not be amerced for a small fault, but after the manner of his fault and for a great fault after the Greatnesse thereof Saveing to him his freehold, And a husbandman saveing to him his Wainage and a merchant likewise saveing to him his merchandize And none of the said Amerciaments shall be assessed but by the oath of twelve honest and Lawfull men of the Vicinage provided the faults and misdemeanours be not in Contempt of Courts of Judicature.

[This paragraph is based on article 20 of Magna Charta. The constitutional provision, article I, § 5, prohibiting excessive fines, expresses the principle of this paragraph, to which should probably be added statutes providing for exemptions from execution, which embody the same idea, but in a different form.]

17. [Trial by jury.]-ALL Tryalls shall be by the verdict of twelve men, and as neer as may be peers or Equals And of the neighbourhood and in the County Shire or Division where the fact Shall arise or grow Whether the Same be by Indictment Infermacon Declaracon or otherwise against the person Offender or Defendant.

[The right of trial by jury, intended to be secured by this provision, was reasserted in the revived Charter of Liberties of 1691, and was one of the fundamental rights enjoyed during the colonial

period. It has been preserved in all our Constitutions,-1777, § 41; 1821, art. 7, § 2; 1846, art. I, § 2; 1894, art. I, § 2. Additional notes on this subject will be found in the article on Trial by Jury in the fourth volume.]

18. [Indictment and trial in criminal cases.]- THAT In all Cases Capitall or Criminall there shall be a grand Inquest who shall first present the offence and then twelve men of the neighbourhood to try the Offender who after his plea to the Indictment shall be allowed his reasonable Challenges.

[This subject is considered in a note to article I, § 6, in the fourth volume. The provision requiring an indictment in important criminal cases was not included in the first Constitution, and the subject was therefore left to legislative discretion. The New York Bill of Rights of 1787, § 3, required an indictment in these cases, and the provision was incorporated in the Constitution of 1821, art. 7, § 7. See also, Const. 1846, art. I, § 6; 1894, art. I, § 6.]

19. [Bail.]-THAT In all Cases whatsoever Bayle by sufficient Suretyes Shall be allowed and taken unlesse for treason or felony plainly and specially Expressed and menconed in the Warrant of Committment provided Alwayes that nothing herein contained shall Extend to discharge out of prison upon bayle any person taken in Execucon for debts or otherwise legally sentenced by the Judgment of any of the Courts of Record within the province.

[This paragraph seems to have been based upon the statute 23 Henry VI., chap. 9 (1445), which imposed on sheriffs the duty of taking bail. The general policy of this paragraph has been continued in various state statutes which need not here be cited, except the Code of Criminal Procedure, which contains detailed provisions on this subject. Another aspect of the subject appears in the constitutional provision, article x, § 5, which prohibits excessive bail.]

20. [Martial law regulated.]- THAT Noe Comissions for proceeding by Marshall Law against any of his Majestyes Subjects within this province shall issue forth to any person or persons whatsoever Least by Colour of them any of his Majestyes Subjects bee destroyed or putt to death Except all such officers persons and Soldiers in pay throughout the Government.

[This is evidently taken from a similar provision in the English Petition of Rights of 1628. The colonists, like their English neighbors, were evidently afraid of military power, and jealous of their civil rights, which were supposed to be sufficiently guarded by Magna Charta. In notes to the militia article in the fourth volume I have cited decisions in which the courts assert the broad principle that civil judicial tribunals may review the proceedings of the military department, at least so far as relates to questions of jurisdiction, and will protect the citizen against an unconstitutional exercise of military authority.]

21. [Land to be deemed estate of inheritance.]- THAT From hence forward Noe Lands Within this province shall be Esteemed or accounted a Chattle or personall Estate but an Estate of Inheritance according to the Custome and practice of his Majestyes Realme of England.

[This paragraph asserts a well settled rule relating to real property, which is of great importance in a community free from the limitations and burdens of the feudal system. Early state statutes expressed the same rule, and abolished feudal tenures. These subjects were included in the

Constitution of 1846, and appear as §§ 11 and 12 of article I in the Constitution of 1894. The latter section declares all lands to be allodial.]

22. [Execution against property regulated.]- THAT Noe Court or Courts within this province have or at any time hereafter Shall have any Jurisdiction power or authority to grant out any Execucion or other writt whereby any mans Land may be sold or any other way disposed off without the owners Consent provided Alwayes That the issues or meane proffitts of any mans Lands shall or may be Extended by Execucion or otherwise to satisfye just debts Any thing to the Contrary hereof in any wise Notwithstanding.

[This seems to be a corollary to the last paragraph. It prohibited a sale of the debtor's land without his consent, and limited a creditor's remedy to the issues and mean profits of the land. This land policy was too rigid for a commercial people, and has since given place to statutory provisions by which a debtor's land may be sold for the payment of his debts.]

23. [Married woman's deed.]-THAT Noe Estate of a feme Covert shall be sold or conveyed But by Deed acknowledged by her in Some Court of Record the Woman being secretly Examined if She doth it freely without threats or Compulsion of her husband.

[This rule continued in force until abrogated by statute in 1879.]

24. [Conveyance by will.]-THAT All Wills in writeing attested by two Credible Witnesses shall be of the same force to convey Lands as other Conveyances being registered in the Secretaries Office within forty dayes after the testators death.

[This rule as to witnesses is still in force.]

25. [Dower.]-THAT A Widow after the death of her husband shall have her Dower And shall and may tarry in the Cheife house of her husband forty dayes after the death of her husband within which forty dayes her Dower shall be assigned her And for her Dower shall be assigned unto her the third part of all the Lands of husband dureing Coverture, Except shee were Endowed of Lesse before Marriage.

[This is substantially the present law.]

26. [Alienation of lands to be free.]-THAT All Lands and Heritages within this province and Dependencyes shall be free from all fines and Lycences upon Alienacons, and from all Herriotts Ward Shipps Liveryes primer Seizins yeare day and Wast Escheats and forfeitures upon the death of parents and Ancestors naturall unatural casual or Judiciall, and that forever; Cases of High treason only Excepted.

[Fines and other restraints on alienation were prohibited by statute in the early history of the state, and the prohibition was incorporated in the Constitution of 1846.]

27. [Religious toleration.]-THAT Noe person or persons which professe ffaith in God by Jesus Christ Shall at any time be any wayes molested punished disquieted or called in Question for any Difference in opinion or Matter of Religious Concernment, who doe not actually disturb the Civill

peace of the province, But that all and Every such person or persons may from time to time and at all times freely have and fully enjoy his or their Judgments or Consciencies in matters of Religion throughout all the province, they behavieing themselves peaceably and quietly and not using this Liberty to Lycentiousnesse nor to the Civill Injury or outward disturbance of others provided Alwayes that this liberty or any thing contained therein to the Contrary shall never be Construed or improved to make void the Settlement of any publique Minister on Long Island Whether Such Settlement be by two thirds of the voices in any Towne thereon which shall alwayes include the Minor part Or by Subscripcions of perticuler Inhabitants in Said Townes provided they are the two thirds thereon Butt that all such agreements Covenants and Subscripcions that are there already made and had Or that hereafter shall bee in this Manner Consented to agreed and Subscribed shall at all time and times hereafter be firme and Stable And in Confirmacon hereof It is Enacted by the Governour Councell and Representatives; That all Such Sumes of money soe agreed and Consented to or Subscribed as aforesaid for maintenance of said Publick Ministers by the two thirds of any Towne on Long Island Shall alwayes include the Minor part who shall be regulated thereby And also Such Subscripcions and agreements as are before menconed are and Shall be alwayes ratified performed and paid, And if any Towne on said Island in their publick Capacity of agreement with any Such minister or any perticuler persons by their private Subscripcions as aforesaid Shall make default deny or withdraw from Such payment Soe Covenanted to agreed upon and Subscribed That in Such Case upon Complaint of any Collector appointed and Chosen by two thirds of Such Towne upon Long Island unto any Justice of that County Upon his hearing the Same he is hereby authorized impowered and required to issue out his warrant unto the Constable or his Deputy or any other person appointed for the Collection of said Rates or agreement to Levy upon the goods and Chattles of the Said Delinquent or Defaulter all such Sumes of money Soe covenanted and agreed to be paid by distresse with Costs and Charges without any further Suite in Law Any Lawe Custome or usage to the Contrary in any wise Notwithstanding.

PROVIDED Alwayes the said sume or sumes be under forty shillings otherwise to be recovered as the Law directs.

AND WHEREAS All the Respective Christian Churches now in practice within the City of New Yorke and the other places of this province doe appeare to be priviledged Churches and have beene Soe Established and Confirmed by the former authority of this Government BEE it hereby Enacted by this Generall Assembly and by the authority thereof That all the Said Respective Christian Churches be hereby Confirmed therein And that they and Every of them Shall from henceforth forever be held and reputed as priviledged Churches and Enjoy all their former freedoms of their Religion in Divine Worshipp and Church Discipline And that all former Contracts made and agreed upon for the maintenances of the severall ministers of the Said Churches shall stand and continue in full force and virtue And that all Contracts for the future to be made Shall be of the same power And all persons that are unwilling to performe their part of the said Contract Shall be Constrained thereunto by a warrant from any Justice of the peace provided it be under forty Shillings Or otherwise as this Law directs provided allsoe that all Christian Churches that Shall hereafter come and settle with in this province shall have the Same priviledges.

[The first part of this paragraph was included in substance in § 38 of the Constitution of 1777, which has since been continued without change, except that a provision relating to the competency of witnesses was added in 1846. Notes on this provision will be found in the fourth volume.]

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