

## Doomsday For the Magna Carta: Will the Bill of Rights Be Next?

By Jerry Buchmeyer



Our Bill of Rights is, of course, a direct descendant of that prestigious bulwark of freedom — the *Magna Carta*. Since 1215 A.D., the *Magna Carta* has served as the venerable foundation of our most precious constitutional liberties (trial by jury, habeas corpus, due process of law, etc.).<sup>1</sup>

So, what would become of the Bill of Rights if something were to happen to the *Magna Carta*? Needless worry and speculation, you say? Not so — not if you consider *Rex v. Haddock*,<sup>2</sup> a recent traffic ticket case of **truly landmark dimensions**.

In this case, the defendant Albert Haddock was fined two pounds and costs under the “Transport and Irritation of Motorists Act of 1920,” for obstructing traffic by leaving his motor-car unattended for two hours on New Year’s Eve.<sup>3</sup>

The appeal confronted Mr. Justice Lugg with a Novel Point of Law — that the fine was too excessive for this minor offense because the 14th chapter of *Magna Carta* prohibits a free man from being “amerced [i.e., fined] for a small fault, but after the manner of the fault.” Justice Lugg thus considered a Monumental Issue: *Is Magna Carta Law*? He began:

There is no doubt that persons are accustomed to speak loosely of *Magna Carta* as the enduring foundation of what are known as the liberties of the subject, and to assume that that Charter is as potent a measure today as at the time of its origin. But, if we examine the Great Charter, as I did for the first time in bed this morning, we are led towards the conclusion that, if this is the foundation of the liberties of the subject, then these liberties are not so numerous as is commonly supposed; for *out of the thirty-seven chapters of Magna Carta at least twenty-three have become obsolete, or have been abolished* by later legislation, while among the fourteen which are not definitely extinguished there are at least as many for the benefit of the Crown as for the benefit of the subject, *and the remainder have*

*only a precarious existence, if any.*

Justice Lugg first gave several examples of obsolete, abolished or meaningless chapters from which it would be difficult, indeed, to support “any extravagant description of *Magna Carta* as the foundation of individual freedom,” including the command of Chapter 23 that “*All weirs from henceforth shall be utterly pulled down in the Thames and Medway, and through all England, but only by the sea-coasts.*”<sup>4</sup> Then he proceeded to analyze the more fundamental provisions, such as Chapter 29:

*‘To no man will we sell, to no man deny, to no man delay, justice or right.*

But we in this court are well aware that these undertakings have very little relation to the harsh facts of experience. All that can be said is that much justice is sold at quite reasonable prices, and that there are still many citizens who can afford to buy the more expensive brands. If a man has no money at all he can get justice for nothing; but if he has any money at all he will have to buy justice, and even then may have to go without right (for the two expressions are not always synonymous). Indeed, there is something to be said for selling, denying, and delaying some sorts of justice. . . . The proper business of the courts could not be conducted if every citizen who conceived himself insulted could immediately bring an action for defamation without cost to himself. . . . As for the delay, there can be no dignity without what appears to the thoughtless to be delay. But, beyond that, there will always be a certain delay in the courts so long as the crown and parliament decline to equip them with an adequate supply of judges and shorthand-writers. At all events, the statutory pledges of the crown set out above mean very little today.

Finally, Justice Lugg — relying upon *Klaxon v. Great Western Railway* (1871) 2 Q.B. (“If on examination of a statute, as of a bicycle, it is found that nearly every part is obsolete or has been destroyed, there is a strong presumption that the whole has for practical purposes ceased to exist”) — concluded:

... And in this case I am satisfied that so little of *Magna Carta* is left that nothing of *Magna Carta* is left, and therefore that chapter on which the appellant relies must be taken to have perished with the others.

The appellant [Haddock] has done his country an ill service in raising this point, for but for his rash act generations of English orators might have continued in the fond belief that *Magna Carta* was still the abiding bulwark of our liberties, and for the act I shall order him to pay a further fine of five pounds. But it is no part of my duty to conceal the truth, and I am compelled to declare with some reluctance that *Magna Carta* is no longer law.<sup>5</sup>

Oh my!! If it's doomsday for the *Magna Carta*, will the end of the Bill of Rights be far behind?

1. Too often we forget the other fundamental rights established by *Magna Carta*: that no scrutage may be imposed without consent; that a widow may remain in her husband's house 40 days after his death; that no man shall be distrained for a knight's fee; that only the county courts have jurisdiction of recognizances of "novel disseisin" and "mort d'ancestor;" that wapentakes and tithings shall remain at the old rent; that the relations of Gerald and Athee shall be removed from their bailiwicks; and there shall be but one measure of ale and wine throughout the whole realm.
2. *Uncommon Law* (being 66 Misleading Cases), by A.P. Herbert (Methuen & Co. Ltd. 1935).
3. At trial, Haddock's defense — that there was no obstruction of traffic because the motor-car had been left at the end of a blind alley — was brushed aside as frivo-

lous, and Haddock was fined "additional costs of one pound for conducting his defense in rhymed couplets."

4. *Magna Carta* was thus directly responsible for the establishment of a retail furniture store in Dallas. "Furniture," Greater Dallas Yellow Pages 719, at 730 (Oct. 1979).
5. In the chancel of Tewksbury Abbey, Haddock's barrister supposedly once came across a stone to one of the barons of *Magna Carta* with this inscription: "*Magna Carta est lex. Diende caveat rex*" ("*Magna Carta* is the law, and let the king look out").

### Et Cetera

*Judge Jerry Buchmeyer is a federal district judge, Northern District of Texas, in Dallas. Contributions to et cetera can be sent to Judge Buchmeyer, U.S. District Court, Northern District of Texas, Dallas 75242.*

## Bill of Rights Trivia

- New Jersey was the first state to ratify the Bill of Rights. The state ratified Articles 1 and 3-12 on Nov. 20, 1789.

- The adoption of the Bill of Rights required the ratification of 11 states. On Dec. 15, 1791, Virginia provided the margin of victory.

- The original version of the Bill of Rights contained 12 amendments. Only five states ratified all 12 amendments of the Bill of Rights. They were Maryland, North Carolina, South Carolina, Vermont and Virginia.

- Three states — Massachusetts, Connecticut, and Georgia — did not ratify the Bill of Rights until the celebration of the sesquicentennial of the Constitution in 1939.

- The U.S. capital was New York City when the Bill of Rights was written but by 1791 the capital had been moved to Philadelphia. (The capital was moved to Washington, DC in 1801.)

- Articles 1 and 2 failed to receive the necessary approval for ratifica-

tion. Article 1 would have required that there be at least one representative in Congress for every 50,000 people in the United States. That would give today's Congress about 5,000 members. Article 2 would have required that no salary increase for members of the House of Representatives and the Senate could take effect until after the next election of Congress.

- The only original copy on permanent public display is located at the National Archives in Washington, DC. There were 15 original copies. The other 14 were sent to the states for their ratification. (Yes. There were only 13 original states, but by the time the Bill of Rights was ratified, Vermont had become a state.) Eleven other copies are known to exist — the others were lost or destroyed.

- The federal copy of the Bill of Rights was stored at the State Department from 1814 to 1938, when it was transferred to the National Archives. However, in August 1814, while the U.S. was again at war with Great Britain, the Bill of Rights and other documents were carried 35 miles west to Leesburg, VA, and stored there for several weeks until after the

British left Washington. (The Declaration of Independence and the Constitution were packed in linen bags and transported by wagon across the Potomac River to Virginia, where they were hidden overnight in an old gristmill.) From 1875 until it went on display at the National Archives, the Bill of Rights was in the basement of the State Department in a green cabinet along with a sword once owned by the emperor of Haiti and six ancient Japanese swords.

- National opinion polls show that less than half of all Americans can identify the Bill of Rights as the first 10 amendments to the Constitution. Fewer know what is contained in the amendments.

- William Lambert, an assistant clerk of the House of Representatives, actually wrote out the copy of the Bill of Rights that is in the National Archives.

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