The Confirmation of the Charters, 1297

III

De Tallagio non Concedendo

The fact that the so-called Confirmation of the Charters of 1297 was officially an addicio to Magna Carta, with its corollary that the opposition asked for more than the usual 1225 form of Magna Carta, puts a new aspect upon the chroniclers' accounts of 1297 and therefore upon the problem of De Tallagio non Concedendo, for which the chroniclers are the chief authority. But before seeing how much nearer it gets us to a solution of that problem, we must first have a reliable text of De Tallagio non Concedendo and then, with its aid, clear the ground of certain irrelevancies that would otherwise obscure the discussion.

I. The Text of De Tallagio non Concedendo

The need of a reliable text of De Tallagio is the greater because of the existence of a text so different from those hitherto known as to amount to a different version.

The sources for De Tallagio known to me are the following:

1. Published chronicles:
   Walter of Hemingburgh.
   Trivet's Annales.
   The so-called Rishanger's Chronica.

1 In two recent articles in this Review (ante, lixiii. 147–71 and 273–300) Mr. J. G. Edwards has dealt with the problem of De Tallagio non Concedendo. As he refers to my views on the subject, I take the opportunity to summarize them in the concluding part of my article. I think it will be obvious that, unknown to each other, Mr. Edwards and I have been exploring the same ground. But if our views, where De Tallagio is concerned, are not identical, I am none the less indebted to Mr. Edwards, as every worker in this field must be, for the many points he has cleared up and in particular for his study of the Monstrances.

2 In a dealer's hands when discovered. Now Bodleian Library, MS. Lat. misc. d. 64. I have to thank the authorities of the Bodleian Library for purchasing it, and Professor F. M. Powicke for his interest in the matter. The De Tallagio text is on fos. 59r–60. It is printed in Note B below.


Knighton.¹

Eulogium Historiarum.²

Walsingham’s Historia Anglicana, ed. Riley.³

2. Unpublished chronicles:

The various manuscripts of the ‘Historia Aurea’ of John, vicar of Tynemouth.

British Museum, Royal 13 E. ix (ff. 177 sqq.).

Bodleian Library, MS. Bodley 462.


3. Manuscript collections of statutes:

Cambr. Univ. Libr. MS. Gg. 5. 7.

Bodleian Libr. MS. Rawl. C. 294 (an abridged text).

C.C.C. Cambr. MS. 377 (the text printed in Stats. of the Realm, i. 125).

Brit. Mus. MS. Cotton Appendix xxv.

Bodleian Libr. MS. Rawl. C. 612 B.

Bodleian Libr. MS. Lat. misc. d. 64 (containing the different text referred to above).

The list is no doubt incomplete.⁴ But further search on the chronicle side would probably add only (for our present purpose) unprofitable derivatives. On the other side, among the collections of statutes, while there is room for a complete survey of this class of manuscript, I have gone far enough to take a fair sample,⁵ and, for reasons which will appear, it is questionable whether, for our purpose, it is necessary to go farther.

The list is, in fact, already unwieldy and, as anyone familiar with fourteenth-century chronicles will see at once, unnecessarily so. Walsingham’s Historia Anglicana (ed. Riley) derives, in this matter, from Walsingham’s ‘Chronica Maiora’, MS. Royal 13 E. ix.⁶ MS. Royal 13 E. ix and Bodl. Libr. MS. Bodley 462, another manuscript of the St. Alban’s chronicle,⁷ for our purpose of establishing the text of De Tallagio non Concedendo cannot safely be distinguished from the so-called Rishanger’s Chronica and must be used along with it.⁸ Similarly, MS. Harl. 655 and

⁴ Though I have not yet been able to examine it, it is likely, for instance, that Bodleian Library, MS. Bodley 462, as well as 462, contains De Tallagio non Concedendo.
⁵ Result: six texts of De Tallagio out of about a hundred collections of statutes examined.
⁷ Ibid. p. x.
⁸ Ibid. pp. xxxiii n. 2, lii and lxxiv.
its fellow, Univ. Coll. Oxford MS. 177 (both manuscripts of a third version, i.e. *Polychronicon* plus *Historia Aurea*, of the *Polychronicon*)\(^1\) derive in this matter from *Historia Aurea*. *Historia Aurea* in turn derives its text of *De Tallagio non Concedendo* from Trivet.\(^2\) Likewise, though it abridges Trivet’s text, *Eulogium Historiarum* derives from Trivet. Knighton derives from Walter of Hemingburgh. We are left with Hemingburgh, Trivet, and the St. Alban’s text (Rishanger—Royal 13 E. ix.—Bodl. Bodley 462) as chronicle-sources and with six statute-collection sources, including the egregious Bodleian, Lat. misc. d. 64 text. Even this list could be still further reduced. Trivet’s *Annales sex regum* and the St. Alban’s group (Rishanger—Royal 13 E. ix.—Bodl. Bodley 462) are not independent, and for purposes of the *De Tallagio* text can only be regarded as one source, Trivet-St. Albans.\(^3\) Even between Trivet-St. Albans and Walter of Hemingburgh there is undoubtedly a relationship,\(^4\) though it awaits complete clarification. But it is not desirable to reduce further. A collation of Hemingburgh, Trivet, and the St. Alban’s group (Rishanger—Royal 13 E. ix.—Bodl. Bodley 462) will give the chronicle-text of *De Tallagio*, or at any rate the best available chronicle-text. For the statute-collection tradition of the text, we shall collate all six known manuscripts. It will then be possible, and perhaps profitable, to compare the two traditions: the chroniclers’ text, the collections of statutes’ text.

The Hemingburgh text used for the collations has been prepared afresh from the manuscripts. The *Historia Aurea* text has been established from the manuscripts, including the Third *Polychronicon* version, and, though it does not itself appear, it has, along with the *Eulogium Historiarum* text (abridged as this is), and a fresh collation of MSS. Arundel 46 and 220 of Trivet, served to give us an improved Trivet text.\(^5\) The result is to bring out even more clearly the original identity of the Trivet and St. Albans (Rishanger—Royal 13 E. ix—Bodl. Bodley 462) texts.

For restoring the original statute-collections’ text, MS. Rawl. C. 294 is so abridged as to be of little use. Collation of Cambr. Univ. Libr. MS. Gg. 5. 7, C.C.C. Cambr. MS. 377, and Bodl.

\(^1\) Elucidated by V. H. Galbraith, *ante*, xliii (1928), pp. 203 sqq.

\(^2\) Trivet is named as the source in marginalia in the manuscripts.

\(^3\) Beyond this, it is not necessary, for our purpose, to go, though, of course, Professor Galbraith carries the matter further (St. Albans Chronicle, 1406–1429, pp. xxxiii–xxxvi). Cf. Tait, *ante*, iii. p. 509.


\(^5\) There is still room after Hall’s and Hog’s editions, Oxford 1719 and London 1845 respectively, for a modern edition of Trivet’s *Annales sex Regum*. 
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Libr. MS. Rawl. C. 612 B shows derivation from a common unidentified source, which we may call Stv. Brit. Mus. MS. Cotton App. xcv stands apart from the Stv group with features of its own, but it and Stv undoubtedly derive from a common source in a lost manuscript which we will call Stv. We collate the Stv text with the Hemingburgh, Trivet and St. Albans (Rishanger—Royal 13 E. ix—Bodl. Bodley 462) texts, adding from Note B infra such features of the egregious Bodleian, MS. Lat. misc. d. 64 version as are needed to show its relationship to the normal texts.

The result is to confirm Walter of Hemingburgh's text as the best text yet available of De Tallagio non Concedendo.1 The existing printed text of Hemingburgh as reproduced in Stubbs's Select Charters, 9th ed., pp. 493-4, has been improved upon at three points, but the changes are unimportant and do not affect the sense.2 Readings which are very probable but cannot yet be accepted with absolute certainty as the original text are marked by an asterisk. There are four of these. The statute-collection tradition of the text is more corrupt than the chronicle-tradition, but they are one and the same tradition. The 'Myers' version turns out to be an interpolation of an already corrupt text of the normal version.

Variant readings are indicated as follows: H (=Hemingburgh), T (=Trivet), A (=St. Albans, i.e. Rishanger—Royal 13 E. ix—Bodl. Bodley 462), Sty (=the common source, now lost, of the statute-collection texts in MSS. Cotton App. xcv; C.U.L. Gg. 5. 7; C.C.C.C. 377; and Rawl. C. 612B), Myers (=the Bodl. Lat. misc. d. 64 version, previously Myers & Co., 102 New Bond Street, Catal. no. 270, item 173). I have retained the convenient, and now conventional, division of the text into six articles, each numbered (neither these divisions nor, of course, the numbers, are found in the manuscripts), as well as, for the most part, the modernized, but familiar, punctuation and orthography of Stubbs's Select Charters, 9th edn. pp. 493-4.

I. Nullum tallagium vel auxilium per nos vel haeredes nostros de cetero 3 in regno nostro imponatur seu levetur 4 sine voluntate et assensu communi 5* archiepiscoporum, episcoporum 6 et aliorum

1 It does not answer the question whether Hemingburgh is the source of the other texts or whether Hemingburgh and they had a common source.
2 In clause iv melius et plenius for plenius et melius; the omission of the second per in the phrase per nos vel per antecessores; and, in clause vi, servabunt not observabunt.
3 de cetero om. Sty (given by Myers).
4 levetur minus recte H; seu levetur—Trivet's editor, Hog, prints these words with some doubt. There can, however, be no doubt, from 'Historia Aurea' and other derivatives that they belong to the original text of Trivet.
5 communi om. Myers; tocius for communi Sty.
6 Abbatum add. A.
praelatorum, comitum, baronum, militum, burgensium et aliorum liberorum hominum in regno nostro.

II. Nullus minister noster vel haeredum nostrorum capiat blada, lanas, coria, aut aliquo alia bona cujuscunque, sine voluntate et assensu illius cujus fuerint hujusmodi bona.

III. Nihil capiatur de cetero, nomine vel occasione malae toltae, de sacco lanae.

IV. Volumus et concedimus pro nobis et haeredibus nostris, quod omnes clerici et laici de regno nostro habeant omnes leges, libertates et liberas consuetudines suas ita libere et integre sicut eas aliquo tempore melius et plenius habere consueverunt. Et si contra illas vel quaecunque articulum in praesenti carta contentum statuta fuerint edita per nos vel antecessores nostros, vel consuetudines introductae, volumus et concedimus quod hujusmodi consuetudines et statuta vacua et nulla sint in perpetuum.

V. Remisimus etiam Humfrido de Bown, comiti Hereford et Essex, constabulario Angliae, Rogero Bigot comiti Norfolk, mariscallo Angliae, et aliis comitibus, baronibus, militibus, armigeris, Johanni de Ferrariis ac omnibus aliis de eorum societate, confederatione et concordia existentibus, necnon omnibus viginti libras terrae tenentibus in regno nostro, sive de nobis in capite sive de alio quocunque qui ad transfretandum nobiscum in Flandriam certo die notato vocati fuerunt et non venerunt, rancorem nostrum et malam voluntatem quam ex causis praedictis habuimus; et transgressiones si quas nobis vel nostris fecerint usque ad praesentis cartae confectionem.

1 et aliorum praelatorum om. Sty (given by Myers).
2 de for in Sty and Myers. 3 in regno nostro om. TA.
4 in regno nostro add. TA. 5 lanas om. Sty (given by Myers).
6 hujusmodi om. Sty (given by Myers); hujusmodi bona om. TA.
7 male toute* H; vectigalis for vel occasione malae toltae TA; maletoute or blank, Sty (male tolte Myers).
8 etiam om. Sty and Myers. 9 et add. Sty.
10 omnes for liberas A. 11 suas om. TA (H uncertain).
12 tempore consueverunt melius pleniusque habere TA.
13 quocunque articulo Sty and Myers. 14 content* Sty.
15 consuetudines et om. TA. 16 vacua sint et nulla TA.
17 The article Remisimus . . . confectionem wholly omitted, Myers. 18 et add. Sty.
19 et add. Sty. 20 Ferrers Sty.
21 et add. Sty. 22 terrarum TA.
23 sive de nobis sive de alio quocunque in capite TA.
24 qui om. Sty. 25 Flandr Sty.
26 Trivet's original reading was notato, like H and A, and not nominato as given by Hog's edition of Trivet (p. 367); instead of notato . . . venerunt Sty reads vocatis, agreeing with tenentibus and the suppression of the relative at note above (though this looks like interpolation of the sentence after omission of et non venerunt by homoeography (fuerunt and venerunt) at an earlier stage of transmission).
27 nostrum om. Sty. 28 supradictis Sty.
29 vos for eos Sty. 30 ac for et Sty.
31 etiam om. TA. (Trivet emended to et transgressiones).
32 Trivet emended to presentis like H and A.
VI. Et ad majorem hujus rei securitatem in perpetuum in suis cathedralibus ecclesiis habitabitis praesenti carta et lecta, excommunicent publice et in singulis parochialibus ecclesiis suarum diocesium excommunicare seu excommunicatos denunciare faciant, bis in anno, omnes qui contra tenorem praesentis cartae, vim et effectum in quocunque articulo scinter fecerint, aut fieri procuraverint, quoquo modo.

In cujus rei testimonium praesenti cartae sigillum nostrum est appensum, una cum sigillis archiepiscoporum, episcoporum, comitum, baronum et aliorum qui sponte juraverunt quod tenorem praesentis cartae, quatenus in eis est, in omnibus et singulis articulis servabunt, et ad ejus observationem consilium suum et auxilium fidele praestabunt in perpetuum.

II. INTERPRETATIONS OF De Tallagio non Concedendo

(1) Bémont’s theory. Put forward by Charles Bémont in 1892 in Chartes des libertés anglaises, pp. xliii and 87, on the strength of a passage in Bartholomew Cotton’s chronicle, it has found increasing acceptance. It is that De Tallagio is ‘ce qu’ils (the barons) demandèrent’, a ‘pétition présentée au prince Édouard et au conseil royal dans le Parlement assemblé à Londres, le 30 Septembre 1297’. The assumption is that though Cotton does not give the text of De Tallagio, ‘il en résume la teneur’ (p. xliii, n. 1). Actually what Cotton gives is a summary of the three official documents of the 10 October settlement, the Confirmatio Cartarum and the two documents undertaking to obtain the king’s pardon.

Cotton’s evidence does not sustain Bémont’s interpretation of it.
(2) The *Statutum de tallagio non concedendo*. In the seventeenth century, by royalists and parliamentarians alike, *De Tallagio non Concedendo* was regarded as a statute. In 1637, by allowing it in the Ship Money Case, royalist judges made it so. But anyone reading the Ship Money Case ¹ will soon realize that all that the counsel and judges in the case really knew about *De Tallagio* was that it had come down to them as a statute in the old law-books. Precise knowledge of it (beyond its text) they had not; they disputed its date; its resemblance to the official settlement of 1297 bewildered them as it bewilders us. Looking into the old law-books we find that *De Tallagio* is printed in Berthelet's *Secunda Pars Veterum Statutorum* (London, 1532) fo. 39 and in Redman's *Magna Carta in F* (dec.) (London, 1529 or 1539) f. 37⁵, in each case with the title 'Statutum de tallagio non concedendo'. Behind these there are collections in manuscript. But, as has been said, of the large number of manuscript collections of statutes still in existence, the vast majority do not contain *De Tallagio*, and after an examination of nearly a hundred of these manuscript collections I have not been able to raise the number of those known to contain it to more than six, the six listed on page 301 above. I list them again according to the date of the manuscript:

A Cambridge Univ. Libr. MS. Gg. 5, 7 early XVI
B Bodleian Libr. MS. Rawl. C. 294 (the abridged text) c. 1500
C C.C.C. Cambr. MS. 377 (the text printed in Stat. of the Realm, i. 125) XIV
D Bodleian Libr. MS. Lat. misc. d. 64 (the ‘Myers’ text) XIV
E Brit. Mus. MS. Cotton Appendix XXV XIV
F Bodleian Libr. MS. Rawl. C. 612B early XIV

Berthelet’s and Redman’s texts, while not derived from A, both possess most of the otherwise peculiar features of A, and must have been derived from a manuscript very closely related to it. A also describes *De Tallagio* as ‘Statutum de Tallagio non concedendo’ (fo. xvjb). This view goes back through the fifteenth to the fourteenth century. B, C, and D entitle *De Tallagio* ‘Statutum de tallagio’ (fo. 208), ‘Statutum: de: tallag’: (m. 7),² and ‘Statutum de tallagiis’ respectively. But with the earliest manuscripts ‘Statutum’ disappears. F has simply ‘Nullum: tallagium’ (fo. 14); E has ‘Noua Addicio cartarum’ (fo. 7). E and F do in fact give *De Tallagio* at the

¹ Cobbett’s *State Trials*, iii (1809), cols. 825–1316.
² It is by the kind permission of the Librarian of Corpus Christi College that I have been able to supply this title, which *Stat. of the Realm*, i. 125 does not print, as well as verify the text printed in that work.
beginning of their collections along with Magna Carta and the Forest Charter before the ordinary statutes. 'Statutum', in short, is a legend which does not reach even as far back as Stv. That E's is the genuine tradition to which all Stv texts 1 belong whatever their titles—that in the Stv group De Tallagio became a statute in legal eyes only by the company it kept—is seen if we examine the texts that these manuscripts give. They all, 2 as we have seen, preserve, in differing degrees of corruption, the same text of De Tallagio. They all 1 except E itself end with 'praestabunt etc.'. This would be surprising if 'etc.' were meant only to replace the 'in perpetuum' of the chroniclers' text (to which the legal tradition otherwise conforms). But E gives it in full—'... prestabunt. Et omnia ista scribantur in magna carta et carta de foresta. Explicit Noua Addicio.'

The title of D, outside the Stv. group, is a difficulty. But D is palaeographically later fourteenth, not early fourteenth, century; an interpolated, and therefore, in any case, a suspect, text. Its 'statutum' may be part of a general tendentiousness or, alternatively, it may be due, here too, to the company kept. The less sinister interpretation seems the likelier one. The text of D tells neither way. It is a truncated text ('In cuius etc.'). Whether the attestation, if it had been given in full, would have ended as E's does, it is impossible to say.

But the evidence of Stv. is as clear as could be desired, and it does not stand alone.

The other known sources for De Tallagio are the chronicles listed on pages 300–1 above. All these describe the concessions won from the king in 1297 as 'Articuli adjecti ad Magnam Cartam'. So far, so good, of course. But under that description they all give De Tallagio non Concedendo. 3 For them, too, De Tallagio is an addicio, and they believe—wrongly, as we know, but no doubt quite honestly—that it is what the king actually granted in 1297. The early-fourteenth-century view of De Tallagio is not in doubt.

(3) This brings us to our enquiry proper. To get behind the early-fourteenth-century view, to the truth, we naturally look first to the most circumstantial of the chroniclers, Walter of Hemingburgh—the more readily as it is from him too, as we have seen, that we get the best text of De Tallagio. Hemingburgh's explanation of De Tallagio, however, is an impossible one. De Tallagio would incorporate the pardon for the rebels into

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1 Including Redman and Berthelet, and possibly even the abridgement B, which is normal as far as it goes.
2 Supra, pp. 302–3.
3 That Hemingburgh gives the truth of the matter as well, the official text as well as De Tallagio, does not alter the fact that he takes the same view of De Tallagio as the rest, in some sort equating it with the other text that he gives.
Magna Carta itself. Now this may have been asked for, it may even have been entertained at a stage in the negotiations, but it certainly is not what was agreed upon on 10 October. The agreement on that occasion expressly provided that the pardon should be in the form of letters patent. This rules out the pardon-clause of De Tallagio and therefore the rest of De Tallagio from any official place in 1297 unless as something prior to 10 October. Yet Hemingburgh's explanation of De Tallagio would make it part, or at any rate a consequence, of 10 October, certainly not prior to it. What he says, moreover, does not fit the rest of his account of the 1297 settlement and I am inclined to regard the whole of what he says about De Tallagio as well as the De Tallagio text itself (i.e. the whole passage 'Missumque est idem . . .' (p. 152) to ' . . . in perpetuum' at the top of p. 154) as an interpolation. The rest is itself a complete, straightforward, and, on the whole, accurate account of the settlement, the fullest account that we have of the London agreement of 10 October: an account of the summoning and meeting of the parliament; a three-point summary of the terms agreed upon on 10 October; the actual text of the 'articuli adjecti' (to the bottom of p. 151); then ('Ipse etiam Edwardus . . .', p. 154) summaries of the two promises of 10 October to obtain pardon; more information about 10 October; the sending of these terms to the king; the king's acceptance of them on 5 November (though the date is not given); the aid the king got in return for these concessions. The bulk of this is verifiably true. On the other hand, the passage 'Missumque est . . . consignaret' (p. 152) is quite uncorroborated; it is out of place; and it is untrustworthy at any rate about the disposition of the seals in 1297 (the great seal went with the king and it was the king's son who used a seal of absence; the great seal was the one that was used at Ghent on 5 November).

Interpolated or not, Hemingburgh on De Tallagio is not credible. The other chroniclers simply give De Tallagio as

1 ' . . . les lettres du dit nostre pere patentes seeles de sun graunt seel.' (Reg. Winch., ed. Graham, pp. 204 and 206).
4 The reference, seemingly to De Tallagio, on p. 156 also falls to be discussed, though it is only the word 'insertis' that has to be considered—the rest would fit the official text equally well. It is suggestive that Trivet (Annales, ed. T. Hog, 1845, p. 370), who on constitutional matters is not independent of Hemingburgh, has 'confirmatione chartarum articulorumque adjectorum'—which, however mistaken he may be elsewhere as to the nature of those articles, is in itself a correct enough description of the official 1297 settlement.
5 Mr. Edwards (ante, lviii (1943), pp. 284-86) takes the other possible view on how the redundancies in the existing Hemingburgh text arose (though, incidentally, not only Confirmatio Cartarum and some half-dozen lines of narrative before De Tallagio but also 'Ipse etiam . . . illaesos et indemnes' after it would have to be reckoned

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if it were the official text. Thus all we have is a text and all we really know about it is what the early fourteenth century believed it to be. As no manuscript of the text is earlier than the fourteenth century the question naturally arises whether there is any reason to associate it with 1297 at all, whether it is not a fourteenth-century creation. We certainly cannot exclude the possibility that certain details of the text that has come down to us—even in the purest form we have, which is Hemingburgh's—may be fourteenth-century: that the original text of *De Tallagio*, if we could recover it, might be still nearer the official 1297 settlement. But may it not be entirely fourteenth-century?

It is possible to state the issues more precisely. Thus in connection with a 1297 origin we can rule out the possibility of bad faith. The form granted by the king on 5 November and recorded in the royal records, the French articles and the separate French pardon, is the form that was agreed upon on 10 October, and understood by both parties: Archbishop Winchelsey's register, and Bartholomew Cotton's chronicle leave no doubt about that. We can even rule out the possibility of its being a draft, at least an official chancery one, of the 10 October settlement. To this extent the consideration advanced by Mr. Edwards is decisive: it is inconceivable that the royal chancery would have perpetrated such an anomaly—articles in the manner of Magna Carta rounded off with an attestation proper only in a private charter. The only possible place for *De Tallagio* in the negotiations of 1297 is as a baronial text: whether drawn up in advance of the Michaelmas parliament, or in the course of it, to serve as a basis for discussion, a statement of what the opposition asked for—in Bémont's phrase, 'ce qu'ils (les barons) demandèrent', though not, as he would have it, 'une pétition'. This possibility we shall refer to as the 'programme theory'.

Similarly in connection with a fourteenth-century origin, we may, I think, safely rule out Blackstone's suggestion that it may be 'a contemporary latin abstract . . . intended (however imperfectly executed) to express the self-same meaning (i.e. as the official 1297 settlement) in another language' as not really tenable. We should in the first place have to accept *De Tallagio* as part of the intercalation). For the present purpose it is not necessary to commit oneself to either view: on either Hemingburgh is incredible as regards *De Tallagio*. To the one reason which I have given there come several from Mr. Edwards (ibid. pp. 282-84), above all the point that *De Tallagio* is not in proper royal form.

1 This alone, of course, would suggest nothing: it is rare to find the original manuscript of a chronicle still in existence.


3 This, incidentally, is an additional reason for rejecting Hemingburgh's account of *De Tallagio*. Cf. supra, pp. 307-8.

4 *Ante*, lviii (1943), pp. 283-4, 298.

as an abstract of the baronial gains of 1297–1301 as a whole and not merely of the 1297 settlement, the correspondence would not be perfect even then, and the differences not such as would arise from mere incompetence. Secondly, we already have in the chronicles brief attempts to render the sense of the 1297 settlement into Latin.¹ Compared with these, De Tallagio, whether in the order of its clauses or in the substance of them in some cases, is not the natural result of such an attempt. And despite its anomalous form,² its details show sufficient precision of thought and expression to suggest care. One’s general impression is that, for whatever purpose, De Tallagio is a deliberate piece of work. It is, of course, possible to imagine someone who knew that the 1297 terms of settlement were officially addiciones to the Charters, getting the idea of actually inserting not merely them but the whole of the gains wrung from Edward I into Magna Carta and lavishing pains on a freak. But it is a clumsy theory, and if the ‘abstract theory’ (as we may call it) can be maintained at all, a tendentious abstract, deliberate misrepresentation, in short, forgery, seems a much more natural explanation. The early fourteenth century is not lacking in occasions when misrepresentations of the nature of the 1297 settlement would have been politically useful.³

Baronial programme of 1297’ and ‘fourteenth-century misrepresentation of 1297’ are not irreconcilable possibilities. It is very probable ⁴ that De Tallagio non Concedendo has a fourteenth-century history if only it could be recovered. But I know of no evidence that would justify the assertion that it is exclusively fourteenth-century, and if the view be accepted of two phases to the crisis of 1297 with the new policy of 30 July as the starting-point of the second, there is much to associate it with the thirteenth century. The Petition of the earls or, to give it its better-known name, the Articles of Grievance, clearly belongs to the earlier phase before 30 July, or at any rate before the exchequer had had time to put the policy of 30 July into effect,⁵ when, apart from the Charters and the maltote (which persist as issues until 10 October), the projected Flemish campaign, service in it, aid for it, the wisdom of it, were the questions uppermost. The second phase, again apart from the Charters and the maltote, is dominated by the eighth and the prise of 30 July. This is shown by the intervention of the earls at the exchequer on 22 August and

¹ B. Cotton, p. 337, is a good example.
² Cf. supra, p. 309.
⁴ This seems to be the most obvious explanation of statute-collection text D given in Note B below, especially in view of its basically corrupt text (cf. p. 303 supra).
⁵ This is quite consistent with the latest possible date (20 August) suggested by Mr. Edwards (ante, lviii (1943), pp. 149–53) for the Petition.
by Confirmatio Cartarum itself. The Flemish campaign, wise or unwise, is now a fact. As to an aid for it, the question is no longer whether one shall, or can, be given, but the legality of the aid which the king says has been granted and which he is trying to collect. The issue of consent, that is, appears in the second phase. Consent is not mentioned in the Petition. Similarly with prise. From being mentioned merely incidentally to other things in the Petition and without the right of prise being in any way challenged (we must remember that prise was a prerogative right) it now ranks with aids in importance, and the ground has changed. The grievance in the Petition that prise have not been paid for has ceased to be the main issue. A new issue, and legally speaking a much more serious one, has arisen since 30 July. The chief issue by October is prise without consent. The question of service in Flanders has shrunk to the question of an amnesty for those who did not serve. In short, by September, the Petition was already out of date in some respects, notably in its emphasis, and was silent on other matters that since 30 July the earls had come to regard as of the first importance, and to account for Confirmatio Cartarum of 10 October we have to assume, written or unwritten, a supplementary programme of the earls.

If we ask ourselves 'Is De Tallagio non Concedendo that programme?' we have to admit that it satisfies the preliminary conditions. Aid, prise, consent to these things; maltote; Magna Carta¹ and safeguards therefor (iv and vi); the amnesty. Whatever the explanation, De Tallagio reflects the political heat of the summer of 1297. Moreover, its form is not the strain on our credulity that it used to be, now that we know that Confirmatio Cartarum itself² was looked on as articles added to Magna Carta. The anomalous 'In cujus rei testimonium praesenti cartae sigillum nostrum est appensum, etc.'³ is a comparatively minor difficulty and, while it excludes origin in the royal chancery,⁴ it does not exclude a baronial origin. And, again, if it be agreed that by 'commun assent de tout le roiaume' no novel consent to aid was intended in 1297,⁵ then De Tallagio too, may be less revolutionary than has been supposed. The formidable list in c. i of those whose will and common assent is needed is less formidable, and the presence of the commons in it less surprising, if the king does not thereby bind himself to exclusively parliamentary means of assuring himself of their will and assent. The chief difference left between De Tallagio, c. i, and Confirmatio Cartarum, cc. v and vi is in 'Nullum' (and possibly 'tallagium'), not in the nature of the assent required.

¹ I take it as reasonably obvious that the charter to which De Tallagio more than once refers and of which it professes to be a part is Magna Carta.
² Cf. supra, Note A.
³ Cf. Mr. Edwards, ante, lviii (1943), pp. 283-4.
⁴ Cf. supra, p. 309.
⁵ Cf. supra, pp. 182-7.
There are also details that might indicate a position somewhere between the Petition and Confirmatio Cartarum. De Tallagio i-ii is superficially very like the Petition, especially the Latin version ‘tallagia, auxilia, prisas, videlicet, de frumento, avena, braseo, lanis, coriis, bobus, vaceis, carnibus salsis’, but the grievance in De Tallagio has changed to arbitrary taxation and forced sale.¹ The first half of De Tallagio iv, ‘Volumus . . . consueverunt ’, is something that no mere ‘contemporary latin abstract . . . (however imperfectly executed)’ of Confirmatio Cartarum would give; but it is, allowing for the Magna Carta mould (cf. M.C. 1225, c. 37, McKechnie, Magna Carta, 2nd edn., p. 506), a direct remedy for the grievance in the Petition that the accustomed laws, customs, liberties, and Magna Carta, were being ignored,² while c. vi of De Tallagio provides the extra safeguards of regular ecclesiastical publication and excommunication which are not specified in the Petition but which were worked out for Confirmatio Cartarum.³ A slight detail, not to be gained either from the Petition or from the actual amnesty documents,⁴ but accurate, is ‘viginti libratas terrae tenentibus’ in c. v: this comes from a contemporary or from someone with knowledge of the writ.⁵

All this falls short of proof that De Tallagio is our supplementary programme. We should still have to assume:

1. that the earls asked for revision of Magna Carta by reissue rather than by means of an addicio; ⁶
2. that their demands in 1300 ⁷ for an unusually-witnessed charter rather than letters patent under the royal seal alone, and in 1301 ⁸ for statutes and not merely judgements that were contrary to Magna Carta to be annulled (retrospectively, moreover, and not merely prospectively), really date from 1297;
3. that on the question of form, in their demand for consent to prise, and in certain other matters of substance (e.g. excommunication in parish churches as well as the cathedral church of a diocese) the earls in 1297 accepted less than they had asked for;

² Nocumenta ‘Praeter haec tota terrae . . . populi sui salvationem’ and Monstraunces, cc. 3 and 4.
³ Conf. Cart. iv (Stubbs, Sel. Charters, p. 491).
⁵ 15 May 1297, Loders, Parl. Writs, i. 281, no. 5. Cf. supra, p. 25, n. 2.
⁶ Cf. supra, p. 181.
⁷ W. Rishanger Chroniques et Annales, ed. Riley (Rolls Series, 1865) pp. 404–6, the only account we have of the debates of the Lenten parliament of 1300, and the charters inspecting and confirming Magna Carta and the Forest Charter in 1300 (Statutes of the Realm, i (1810), pp. 38–44, Charters section).
⁸ The ‘billa’ presented to the king on behalf of the community in the Lincoln parliament of 1301 (Parl. Writs, i., p. 104) and the so-called Confirmation of the Charters of 1301, given at Lincoln, 14 Feb. 1301 (Bémont, Chartes des libertés anglaises, no. xvi.)
and, as Mr. Edwards has pointed out, to explain the lack of any provision for the forest in *De Tallagio*:

(4) ‘a parallel set of draft articles’ for insertion at the end of the Forest Charter.

I do not think any of these objections fatal. In (1), for instance, the incredible thing, if any, is the demand for revision at all; but, there, we know the incredible happened, and compared with that a demand for a re-issue rather than an *addicio* to the existing text is (without denying its importance) a minor matter. Given (1), part of (2)—a demand for a charter and therefore witnesses (if not *De Tallagio vi In ejus rei . . . in perpetuum*’, something in its place)—follows as a matter of course. Indeed, the only practical reason for (1), seeing that even as an *addicio* the new articles got the protection of the new securities that 1297 provided, would be to get precisely this extra security. Assumption (3) is not difficult. As for (4), the forest question, important as it was, was overshadowed by bigger things in 1297: we need not make any bigger provision for it than *Confirmatio Cartarum* itself does. That is to say, we need not imagine a set of draft articles anywhere near so long or elaborate as *De Tallagio non Concedendo* for insertion at the end of the Forest Charter: something to correspond to ‘la chartre de la forest solounc l’asise de la forest’ of *Confirmatio Cartarum* and to cc. iv (‘Et si contra . . . perpetuum’) and vi of *De Tallagio* and that is all.

Evidence to warrant these assumptions may yet be discovered, but the fact remains that there is none at present. *De Tallagio non Concedendo*’s place, therefore, is still in the apocrypha. And yet (1) the earls in 1297 did ask for more than the usual 1225 form of Magna Carta, (2) to explain *Confirmatio Cartarum* we have to assume, written or unwritten, a supplementary programme of the earls that, in emphasis at least, must have been extraordinarily like *De Tallagio non Concedendo*, (3) the margin of difference between *De Tallagio* and the official 1297 settlement needing to be accounted for is less than has been supposed, (4) in the absence of decisive evidence there are many things in *De Tallagio* that are explicable at least as naturally on the ‘programme’ theory as on the alternative ‘abstract’ theory, (5) there is at least one, the twenty-pound landholders, for which the ‘abstract’ theory has no natural explanation. To many minds, in the absence of decisive evidence, this will be sufficient to leave at the very least the possibility, if not a degree of probability. It is not yet safe to dismiss *De Tallagio non Concedendo*.

HARRY ROTHWELL.

(Concluded)
NOTE B

An Unknown De Tallagio non Concedendo

(The chief differences between this and the normal text of De Tallagio are shown in italics. As differences of omission could not be noted in this way, they are pointed out in footnotes. No attempt has been made, however, to draw attention to all the differences.)

Bodleian Library.
MS. Lat. misc. d. 64.
fos. 59f-60.

§ EXPLICIT DE WARDIS ET RELEUIIS. INCIPIT STATUTUM DE TALLIAGIIS

1. (I) Nvllum talliagium aut auxilium per nos vel heredes nostros decetero in regnum nostrum ponatur ezigatur seu leuetur sine voluntate et assensu archiepiscoporum, episcoporum, et aliorum prelatorum, comitum, baronum, militum Angl. et aliorum liberorum hominum de regno nostro nec aliquid decetero faciemen sine consilio eorundem quod possit esse in dampnum et prejudicium regni nostri vel corone nostre.

2. Nullus capiatur aut imprisonetur propter appellum femine de morte alterius quam vry su.

3. (II) Item nullus minister noster vel heredum nostrorum capiat blada, lanas, cariagia, aut aliqua bona cuiuscunque, sine voluntate et assensu illius cuius huiusmodi bona sunt vel balliui sui.

4. (III) Item nichil decetero capiatur nomine seu occasione male tolte de sacco lane nisi dimidia marca.

5. (IV) Item volumus et concedimus pro nobis et heredibus nostris, quod omnes clerici et laici de regno nostro, tam illi de marchia Wallie et Hibernie quam illi de Anglia, habeant iura sua et libertates et leges suas et liberas consuetudines suas secundum ius patrie ita libere et integre sicut easdem aliquo tempore retroacto melius seui plenius habere consueuerunt et (si)

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1 Italics, clause-divisions, and numeration of clauses are editorial. Some guidance as to the scribe's own opinion of the proper division of the text is provided by the mark §, which is reproduced wherever it occurs in the text. The use of capitals has been modernized, as has the (scanty) punctuation of the MS. But care has been taken not to introduce punctuation where there seemed to be the slightest chance of its being misleading. In other respects the manuscript has been adhered to. Wherever the proper extension was in any possible doubt the abbreviation (indicated by a final "") has been retained. The roman clause-numbers in brackets indicate the number of the corresponding clause in the conventional numbering of the normal text. The 'lxx' in the margin opposite clause 1 has no connection with clause 1: it is the serial number of this 'Statutum de Talliagiis' item in the whole collection of statutes contained in the MS.

3 'assensu communi', (normal).

4 This, of course, is Magna Carta, c. 54 (M.C. 1225, c. 34).

5 'cuius fuerint huiusmodi bona' (normal).

6 MS. 'laci': emended as an obvious corruption.

7 The normal text here inserts 'omnes'.

8 MS. omits. Restored from normal text as an obviously accidental omission.
contra illas vel eorum aliquas in quocunque articulo\textsuperscript{1} statutum per nos [fo. 60] vel successores nostros vel alios quoscunque fuerint editum vel consuetudines fuerint introducte, volumus et concedimus quod huiusmodi consilium et statutum irrita et vacua sint imperpetuum.\textsuperscript{2}

Et ad maiorem huius rei securitatem volumus et concedimus pro\textsuperscript{6} nobis et heredibus nostris quod omnes archiepiscopi episcopi Anglie imperpetuum in singulis cathedralibus ecclesiis habita presenti carta signata et lecta coram clero et populo excommunicent in singulis parochialibus ecclesiis suarum dioecesium et excommunicar' faciant diebus solemniter vestiti intra missarum solemnia quater\textsuperscript{3} in anno omnes illos qui contra tenorem istius carte vim seu effectum in quocunque articulo scienter fecerint vel fieri procurauerint\textsuperscript{4} seu facientibus non prohibuerint: quod quidem omnes archiepiscopi et episcopi Anglie in suis consecrationibus se iurent facturos. Et si nos vel heredes nostri contra premissa vel eorum aliquo\textsuperscript{5} fecerimus similiter volumus et concedimus quod omnes comites, barones, milites, et alii de regno nostro sint absoluti eo ipso ab homagio et fidelitate nostra ita quod in nullo teneantur nobis obedire donec presentem cartam fecimus teneri. In cuius etc.

§ EXPLICIT STATUTUM DE TALLIAGIIS. INCIPIIT DE IUSTIC' ASSIGNAT'\textsuperscript{1xxj}

\textsuperscript{1} With the disappearance of ‘in praesenti carta’, ‘contentum’ has disappeared too, cf. normal text.

\textsuperscript{2} Here, in the normal text, follows the amnesty clause.

\textsuperscript{3} ‘bis’ (normal). It may be noted that Articuli super Cartas (1300), c. 1 provides for publication of Magna Carta and the Forest Charter four times a year, though in the shire courts (Bémont, Chartes des libertés anglaises, no. xv).

\textsuperscript{4} Between ‘procuraverint’ and ‘In cujus . . .’ the normal text gives only ‘quoquomodo’.

\textsuperscript{5} Sic MS.