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## **Judgment<sup>1</sup> delivered by Chief Justice Dame Sian Elias Magna Carta Mock Trial, Westminster Hall, 31 July 2015**

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[1] The question for the Court is whether Baron Fitzwalter is guilty of treason as charged. That must be decided on the evidence we have heard and after applying the law of the land. That is our province as judges, which is why the opinion of His Holiness on the validity of the Charter is not relevant to our task.

[2] The essential issue in the case is whether it was treason for the Barons led by Fitzwalter to obtain from the King the Great Charter entered into at Runymede and to seek to enforce it through the security clause.

[3] There are two principal arguments put forward by the prosecution. First, it is said that the Charter was extracted by force and is void for duress so that its non-observance by the king is no justification for the latest resort to arms. Secondly, it is said that the Barons had no justification for renouncing their oaths of fealty and taking up arms against the king in the first place. The King, it is said, is accountable only to God.

[4] The contention that the Charter is void for duress fails on the facts established by the evidence.

- (a) John was attended at Runymede by a powerful force, including the greatest knight in England, William Marshal. He had given safe conduct to the Barons and withdrew during the days of the negotiations into his stronghold at Windsor for the nights. Archbishop Langton, who was in a position to know, refused to excommunicate the Barons, as he would surely have done if the Charter had been

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<sup>1</sup> These are notes prepared by Dame Sian for delivery at the end of the mock trial event, more details about which can be found at <https://www.supremecourt.uk/news/magna-carta-barons-found-not-guilty-of-treason-against-king-john.html>. It is not an official judgment of a court of law.

coerced. The Charter was not extracted from King John at sword point, as the King suggested in his evidence.

- (b) By the Charter, John gained some important advantages. Not only peace, but a mechanism in article 61 by which the barons promised to return to obedience when reparations as agreed were made. In the meantime, the safety of the king and his family were secure. For the most part, the clauses of the Charter either returned the King to his obligations according to custom and his own coronation oaths or set up modern standards for the benefit of the country (such as those supportive of commerce, transport and justice). The terms of the Charter do not therefore support the contention of duress.

[5] Were the actions of the Barons treason even if there was not duress? This turns on whether the Barons were entitled to insist on the King's observance of his obligations and to renounce their fealty until he returned to his duty:

- (a) Fealty is reciprocal, as the act of homage makes clear. John's breaches of duty justified those he had wronged withdrawing from their oaths of fealty. They were entitled to take up arms to compel the king to return to his duty, as William Marshal had earlier been justified in defying the king when he was himself wronged. And as John himself justified his own taking up arms against the King of France, to whom he owed fealty in respect of his Norman duchy. Resorting to self-help in this manner is not treason. The fact that homage was renewed following the Charter sealing shows, as Baron Fitzwalter rightly said in evidence, that the bonds of fealty had earlier been dissolved on 5 May by the formal act of defiance.
- (b) As to justification for the act of defiance, the evidence of actions taken by the king against the laws and customs of England is overwhelming. The King is not above the law. Glanvill and Bracton make that clear. And, in any event, it follows from the very concept of free men. The unfree may be subject to arbitrary government by

those in authority over them. But a free man is protected against arbitrary interference. Wherever power is organised and not arbitrary, it is subject to law. That includes the power of the ultimate temporal lord, the king. The king is made by the law and is subject to law.

- (c) The prosecution puts forward a novel proposition for which there is as yet no support in our law in arguing that the defence of justification can never be available against a king and that the king is answerable only to God. If accepted, this divine right to arbitrary sovereign power, unlimited by law, would deny constitutional government. It is contrary to our traditions and should not be accepted in our time. If it takes hold, it is bound to cause a great deal of trouble and may even lead to revolution here or in our overseas territories. We should not go down that path.
- (d) The acknowledgements made in the Charter are not novel. There are precedents for them in the Coronation oaths, in the Charter of Henry I, and as a matter of comparative law as in the Statute of Palmiers of Simon de Montfort and as in King Pedro's Charter for Catalonia, cited by counsel for Baron Fitzwalter. The comparative law dimension indicates that the ideas expressed in the Charter are universal, not shocking. The Charter is an insecure step only. But the ideas it contains tap into fundamental human concerns with justice, fairness, and good government. They can be expected to develop.

[6] For these reasons, I would find the accused not guilty.