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## SOME EARLY ANGLO-SAXON DIPLOMAS ON SINGLE SHEETS: ORIGINALS OR COPIES?<sup>1</sup>

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With 3 Plates

SOONER or later every student of Anglo-Saxon charters is faced with the problem of sorting the documents preserved on single sheets into originals, copies and forgeries. That the task is an arduous one comes home to him at an early stage, when, going through printed notices on individual charters, he finds that one particular item, the seventh-century charter of Æthelræd for the abbey of Barking, at one time regarded as an original, now generally thought to be a later copy, was also once in recent years classified as spurious.<sup>2</sup> To be sure this is an extreme case, but the fact that such diverging views on the same document could all have been defended by respected scholars and on seemingly valid grounds is, to say the least, discouraging.

By "original charter" we normally understand a document drawn up in the name of the grantor and with his approval, written at approximately the same time as the oral grant was made, and provided with identifiable marks of authentication such as the grantor's seal or some autograph subscriptions or signa. In a copy the grantor's seal will be absent and the subscriptions and signa will not be autograph. Success in the detection of forgeries will largely depend on the forger's skill: if enough originals have survived, some forgeries will be recognizable at once by a comparison of their alleged marks of authentication with those found on the originals, while others will be eliminated after being subjected to a thorough palaeographical and diplomatic scrutiny.

Although a large number of Anglo-Saxon diplomas written on single sheets are extant, all of them—except the chirographic leases, which begin to appear in the middle of the ninth century<sup>3</sup>—lack identifiable marks of validation: they have no seal, and their subscriptions and signa are not autograph. For this reason, if we apply to them the classifying rules which have been summarized above, we reach the surprising conclusion that no Anglo-Saxon diploma should be described as an original. Once we have disposed of the forgeries by diplomatic and other tests, the remaining charters can be safely divided into two groups only, the contemporary documents and the later copies, one group being distinguishable from the other by a study of their respective palaeographical and linguistic features.<sup>4</sup>

Nobody would wish to deny that among the Anglo-Saxon diplomas classed as contemporary texts there are bound to be some which were drawn up at the time of the grant recorded in them and whose dating clause represents the true date of writing: in this category should be placed, if they have survived, all the diplomas which are said to have been solemnly laid by their grantor on the altar of a church.<sup>5</sup> If such documents could be identified, they would deserve to be described as orig-

<sup>1</sup> I am grateful to Dr. R. W. Hunt, Mr. N. R. Ker and Mr. Francis W. Steer for their help and encouragement. The responsibility for the views expressed in this paper is, of course, entirely mine. Plates I and II are reproduced by courtesy of the Trustees of the British Museum, and Plate III by courtesy of the Dean and Chapter of Chichester Cathedral.

<sup>2</sup> See C. R. Hart, *The Early Charters of Eastern England* (Leicester Univ. Press, 1966), pp. 133-5; *A Hand-Book to the Land-Charters, and other Saxon Documents*, ed. John Earle (Oxford, 1888), pp. 8, 13.

<sup>3</sup> Birch, *Cartularium Saxonum* (hereafter *B.C.S.*), no. 490, A.D. 855, apparently an original chirograph from Worcester, now lost. See H. Bresslau, *Handbuch der Urkundenlehre für Deutschland und Italien*, i (2nd ed., 1912), p. 670. Univ. of Edinburgh, Laing Charters, no. 18 (A.D. 854) is not an original, although the top halves of the letters of the word *CHIROGRAPHVM* appear at the foot of the parchment; its script may belong to the first half of the eleventh century, and the charter mentions the Old Minster, Winchester, although, at the time, the New Minster had not yet been founded; see *Anglo-Saxon Charters*, ed. A. J. Robertson (Cambridge Univ. Press, 1956), no. VIII and notes. The chirographic form may have occasionally been used for making "authentic copies" of much older originals. The earliest original chirographs still extant belong to the early years of the tenth century (*Facsimiles of Ancient Charters in the British Museum* (hereafter *B.M.F.*), 4 vols. (London, 1873-78), III. 1-2).

<sup>4</sup> See, for example, *English Historical Documents* (hereafter *E.H.D.*), i, ed. D. Whitelock (London, 1955), p. 337.

<sup>5</sup> F. E. Harmer, *Anglo-Saxon Writs* (Manchester Univ. Press, 1952), pp. 170-1; H. Brunner, *Zur Rechtsgeschichte der römischen und germanischen Urkunde*, i (Berlin, 1880), pp. 155-6 (not all the examples given are genuine).

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inals, although they had no visible marks of authentication. But how can they be identified with any certainty, since the exact time of writing cannot be determined by any known method? A handwriting expert may be in a position to claim that a document dated 1000 could not have been written later than 1050 or even 1025, but he will never be able to prove that it was actually written in 1000. The script of an original written in 1000 and that of a copy made in the same scriptorium in 1025 are unlikely to have shown very different characteristics which could be precisely dated. It may be objected that a Chichester scribe of the fourteenth century could apparently differentiate an Anglo-Saxon "original charter" from an "ancient copy", if we trust his comments on the foundation charter of the monastery of Selsey attributed to King Ceadwalla of Wessex:<sup>6</sup>

tunc sequuntur limites et bunde terrarum predictarum in lingua Saxonica videlicet in carta originali, sed in quadam alia copia veteri carte predictae sequuntur bunde dicte terre sub hac forma.

The objection, however, is not very serious, because Ceadwalla's charter, in the form in which it appears in the scribe's copy, does not stand up to the most elementary tests of diplomatic criticism: among other errors, the diploma is subscribed by Archbishop Brihtwold of Canterbury, although Brihtwold did not become archbishop until after the death of King Ceadwalla; its dating clause, which states that the charter was written on 3 August 673, in the eleventh indiction, by all accounts an impossible date, seems to have been adapted from that of another Sussex foundation charter of the next century,<sup>7</sup> a practice common enough among forgers.<sup>8</sup> One would like to think that the text which the Chichester scribe, whose honesty is not in doubt, considered to be the original charter was in an older script than the "ancient copy", but even that is by no means certain.

The difficulties involved in dating documents by their script alone—even within the comparatively wide limits of half a century—should not be underestimated. Two pieces of writing executed in the same year may in fact look one or two generations apart owing to such factors as their respective places of origin or the respective ages of their scribes: if it is likely that the evolution of one type of script proceeded at a slower pace in a remote monastery of Devon or Cornwall than in an active literary centre like Winchester, and that as a result a Cornish charter might seem to be older than a Winchester charter of the same age, it is equally probable that an old scribe would write a hand of an earlier type than his younger colleagues. The addition of marks of punctuation by a later corrector may have the opposite effect of giving to an early manuscript the appearance of a later work: for example, the punctuation of the charter in which King Eadred grants Reculver to Christ Church, Canterbury, is more likely to belong to the latter part of the tenth century than to the year 949 of its dating clause, but it is practically certain that the scribe of the charter only punctuated it with dots, all the other punctuation marks showing signs of having been inserted at a later date, possibly by Dunstan himself.<sup>9</sup>

To describe a document as contemporary is only slightly less unrealistic than to call it an original. If, on the sound principle that exaggerated caution can have a paralysing effect, we are prepared to presume a document genuine or contemporary unless or until it can be proved to be either a forgery or a later copy, we should also be ready to extend the same liberal attitude to the use of the term "original". There is adequate evidence that Anglo-Saxon diplomas were occasionally issued in more than one exemplar,<sup>10</sup> and cases of multiple originals may therefore occur; but it has yet to be established that it was common practice in Anglo-Saxon times to make single-sheet copies of an original soon after it was drawn up. If it is correct to assume that such an immediate need for copies is unlikely to have arisen very frequently, it follows that the risk of error in presuming all contemporary single sheets to be originals is very slight. Although we may not succeed in turning this presumption into a certainty, the search for clues with this objective in mind should not be abandoned. Each individual

<sup>6</sup> Chichester, Diocesan Record Office, Ep. VI/1/2, fo. 4<sup>v</sup> (B.C.S., no. 64).

<sup>7</sup> B.C.S., no. 198, dated 3 August, indiction 3, A.D. 762 (for 765).

<sup>8</sup> Compare B.C.S., nos. 86 and 296 (perhaps both forged), nos. 97 and 98.

<sup>9</sup> Compare the added punctuation marks in Ordnance Survey, *Facsimiles of Anglo-Saxon Manuscripts* (hereafter O.S.F.), 3 vols. (Southampton, 1878–84), I, 15, with those in *Saint Dunstan's Classbook from Glastonbury*, ed. R. W. Hunt (Umbrac Codicum Occidentalium, Amsterdam, 1961), fos. 27<sup>r</sup> and 27<sup>v</sup>. For Eadred's charter, see *Journal of the Society of Archivists*, III, 4 (Oct. 1966), p. 164 (where should be added, in note 34, a reference to another Glastonbury charter, B.C.S., no. 169, which uses the words *vel gressum pedis . . . adimere* in its penalty clause).

<sup>10</sup> B.C.S., nos. 313, 421.

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<sup>11</sup> B.M.F. I, 1–3

<sup>12</sup> *Ibid.*, p. 8.

<sup>13</sup> See Jeanne V  
Etudes, fasc. 251, p.

<sup>14</sup> B.M.F. I, 1,  
line 2: *pro oblatione*

<sup>15</sup> B.M.F. I, 1,

<sup>16</sup> *Ibid.*, lines 34

<sup>17</sup> B.M.F. I, 1,

<sup>18</sup> *Ibid.*, lines 14  
*consenso et voluntat*

<sup>19</sup> B.M.F. I, 1,

<sup>20</sup> *Ibid.*, line 41.

<sup>21</sup> *Ibid.*, line 14.

<sup>22</sup> B.M.F. I, 1,

no. 181, line 71: *cor*  
<sup>23</sup> B.M.F. I, 1,

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<sup>24</sup> B.M.F. I, 1,

<sup>25</sup> *Ibid.*, lines 13

<sup>26</sup> *Ibid.*, lines 18

<sup>27</sup> *Ibid.*, lines 25

<sup>28</sup> *Ibid.*, lines 34

document should be examined and judged on its own merits, in the hope that at least in a few single sheets some exceptional features might be discovered which would identify them as originals beyond reasonable doubt.

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John Earle believed that there were two—but only two—Anglo-Saxon diplomas of the seventh century whose “originality” could not be doubted: one was the charter of King Hlothhere of Kent for Abbot Brihtwold of Reculver (May 679), the other the charter of Æthelræd for Abbess Æthelburh of Barking (March 687?).<sup>11</sup> In his view both were “absolute originals”. This is indeed the view which many Anglo-Saxon scholars would like to share, but Earle’s argument that, in so far as Hlothhere’s charter is concerned, ‘besides internal evidence, the originality of the document is attested by the uncial and doubtless contemporary penmanship’ is hardly convincing.<sup>12</sup>

The text of Hlothhere’s charter is rightly regarded as irreproachable. Its Latin may be faulty, but it is no more so than the barbarous Latin displayed in many Italian and Frankish charters of the sixth and seventh centuries.<sup>13</sup> Good Latin at the end of the seventh century would arouse suspicion rather than strengthen our confidence in the authenticity of the charter. The construction is awkward and repetitive, and the punctuation, often misplaced, is of little assistance to anyone who tries to separate the various clauses from one another. The scribe uses the accusative instead of the ablative after *pro* (*pro remedium animae meae*),<sup>14</sup> and what appears to be a dative form after *a* (*a . . . sanguini*);<sup>15</sup> he makes an accusative agree with an ablative (*cum omnibus ad se pertinentia*),<sup>16</sup> and replaces, perhaps under Greek influence, the ablative absolute by an accusative absolute (*manentem hanc donationis chartulam in sua nihilominus firmitate*).<sup>17</sup> In one clause, out of six words which should all be in the genitive, only four are actually in that case; of the remaining two one is in the dative or ablative and the other in the accusative (*cum consensu archiepiscopi Theodori et Edrico filium fratris mei*).<sup>18</sup> The letter *i* is sometimes used for *ii* (*piscaris* for *piscartis*),<sup>19</sup> *hlothari* for *hlotharii*,<sup>20</sup> *o* for *u* (*cum consensu*, later corrected to *cum consensu*),<sup>21</sup> *u* for *o* (*demonstratus* for *demonstratos*),<sup>22</sup> and *b* for *u* (*antememorabimus* for *antememorauimus*).<sup>23</sup> The confusion between *b* and *u*, common on the Continent in the seventh and eighth centuries, is particularly unfortunate because it makes it impossible to distinguish some forms of the perfect indicative of a large number of verbs from the corresponding forms of the future. In one case a masculine past participle and a feminine adjective are used to qualify the same noun (*In ipsa antememorato die*).<sup>24</sup> The division of words at the ends of lines seems to have been governed by chance as often as by any logical principle (*nu-llo*; <sup>25</sup>*donatione-m*, the letter *m* having been later erased and replaced by an abbreviation mark above *e*; <sup>26</sup>*subscribere-nt*),<sup>27</sup> and is responsible for one case of dittography (*pertinen-tinentia*, later corrected by erasure to *perti-nentia*)<sup>28</sup> and one of quasi-haplography

<sup>11</sup> *B.M.F.* I. 1–2; *B.C.S.*, nos. 45, 81; Earle, *op. cit.*, pp. 8, 13.

<sup>12</sup> *Ibid.*, p. 8.

<sup>13</sup> See Jeanne Vieliard, *Le latin des diplômes royaux et chartes privées de l'époque mérovingienne* (Biblioth. de l'École des Hautes Etudes, fasc. 251, Paris, 1927).

<sup>14</sup> *B.M.F.* I. 1, lines 2–3. Cf. *Archivio paleografico italiano*, ed. E. Monaci, I. 1–5 (G. Marini, *I papiri diplomatici*, no. 90), line 2: *pro oblationem et remedium animae meae*; Marini, *op. cit.*, no. 93, line 21: *pro remedium animae meae*.

<sup>15</sup> *B.M.F.* I. 1, line 20.

<sup>16</sup> *Ibid.*, lines 34–5. Cf. *Urkunden und Akten*, ed. K. Brandi (3rd ed., 1932), no. 16: *cum omnia sua pertinentia*.

<sup>17</sup> *B.M.F.* I. 1, lines 21–3; compare notes 91–2, below.

<sup>18</sup> *Ibid.*, lines 14–16. Cf. *Codice paleografico lombardo, saec. VIII*, ed. G. Bonelli (Milan, 1908), no. 2, lines 4–5: *una cum consensu et voluntate ipsius genitori suo*.

<sup>19</sup> *B.M.F.* I. 1, line 7.

<sup>20</sup> *Ibid.*, line 41.

<sup>21</sup> *Ibid.*, line 14. Cf. *Codice pal. lombardo*, no. 1, line 6: *mano sua propria*; line 9: *pro stato meo*.

<sup>22</sup> *B.M.F.* I. 1, lines 10 and 30. Cf. *Chartae Latinae Antiquiores*, ed. A. Bruckner and R. Marichal (hereafter *Ch.L.A.*), no. 181, line 71: *comparature (for comparatore)*; line 74: *venditure (for venditore)*.

<sup>23</sup> *B.M.F.* I. 1, line 32. Cf. *Ch.L.A.*, no. 181, line 21: *ribis*; line 38: *inliuatas*; *Raccolta di documenti latini*, ed. L. Schiaparelli (Como, 1923), no. 66, p. 121: *suscribisse nobit*.

<sup>24</sup> *B.M.F.* I. 1, lines 27–8.

<sup>25</sup> *Ibid.*, lines 13–14.

<sup>26</sup> *Ibid.*, lines 18–19.

<sup>27</sup> *Ibid.*, lines 25–6.

<sup>28</sup> *Ibid.*, lines 34–5.

(*fon-nis* for *fonta-nis*).<sup>29</sup> The grantor is normally made to speak in the first person singular (e.g. *dono, expraessi*), but the plural occurs once (*conferimus*).<sup>30</sup> In two identical phrases of a prohibitive nature the verb is in the indicative, whereas it should have been in one instance in the subjunctive, and in the other possibly in the ablative absolute (*a nullo contradicatur*).<sup>31</sup> Other errors include the use of *ae* for *e* in *expraessi*,<sup>32</sup> *e* for *a* in *meriscis*,<sup>33</sup> *e* for *i* in *possedeas*,<sup>34</sup> *oa* for *o* in the curious form *proacuratoribus* of which there are two examples,<sup>35</sup> and the misspelling *cristianitata* for *cristianitate*.<sup>36</sup>

The latinity of the charter, which is characteristic of an age rather than typical of one particular people or scribe, does not yield any clue to the identity or even the place of origin of its draftsman. Nor is the diplomatic of the document of much help in that respect. One can only state once again the well-known fact that the formulae used in the charter are of Italian origin: those with legal implications (mainly in the *dispositio*) can be traced back to the technical phrases which the notaries of the late Roman Empire had over the years evolved for private deeds, particularly for transfers of land by gift and sale, while the formulae with purely religious connotations (the *invocatio* and *sanctio*) were without doubt borrowed from ecclesiastical, probably papal, sources.

(A) *INVOCATIO*. Hlothhere's charter begins with a pictorial invocation in the shape of a cross, followed by a verbal invocation, *In n(omine) d(omini)*<sup>37</sup> *nostri saluatoris Ie(s)u Cr(ist)i*,<sup>38</sup> apparently a variant of *In nomine domini dei et* [sometimes without *et*] *saluatoris nostri Iesu Christi*; the latter form was used by Gregory I before and after his elevation to the papacy,<sup>39</sup> and adopted by Titillus, Archbishop Theodore's notary, in the record of the council of Hertford (24 Sept. 672);<sup>40</sup> a slightly different version, *In nomine domini dei saluatoris nostri Iesu Christi*, occurs in three models of the *Liber Diurnus*.<sup>41</sup>

(B) *DISPOSITIO*. There is no proem; the invocation is immediately followed by the dispositive clause:

Ego Hlotharius rex Cantuariorum pro remedium animae meae dono terram in Tenid quæ appellatur Uuestanae<sup>42</sup> tibi Bercuald tuoque monasterio cum omnib(us) ad se pertinentibus campis pascuis meriscis siluis modicis fon[ta]nis piscaris omnibus ut dictum est ad eandem terram pertinentia, sicuti nunc usque possessa est, iuxta notissimos terminos a me demonstratus et proacuratoribus meis, eodem modo tibi tuoque monasterio conferimus, teneas possedeas tu posterique tui in perpetuum defendant, a nullo contradicatur, cum consensu archiepiscopi Theodori et Ædrico filium fratris mei necnon et omnium principum, sicuti tibi donata est ita tene et posteri tui.

The whole clause is in direct speech: the grantor, speaking in the present and in the first person, addresses the grantee in the second person, a feature also found in some Italian charters, for example in a Ravenna charter of 491,<sup>43</sup> in the well-known grant made in 587 by Gregory the Deacon (later

<sup>29</sup> *Ibid.*, lines 6-7. This explanation for the unrecorded word *fomis* seems more plausible than the assumption that it is a latinized form of the English word 'fen' (*Revised Medieval Word-List*, ed. R. E. Latham, s.v. 'fonnum'; *E.H.D.*, i, p. 443). *Fontanis* occurs in *B.C.S.*, nos. 36, 72, 86.

<sup>30</sup> *B.M.F.* I. 1, line 12: *conferimus*. Cf. Marini, *op. cit.*, no. 86, where the singular and plural are also used (*conferimus, polliceor*, etc.).

<sup>31</sup> *B.M.F.* I. 1, lines 13-14, and line 36. Cf. *M.G.H., Formulae*, ed. K. Zeumer, p. 539, line 10: *nemine contradicente*.

<sup>32</sup> *B.M.F.* I. 1, line 25. Cf. *Ch.L.A.*, no. 181, line 72: *quimquae*; Schiaparelli, *Raccolta di doc. lat.*, no. 66, p. 121: *magnificae frater*.

<sup>33</sup> *B.M.F.* I. 1, line 6.

<sup>34</sup> *Ibid.*, line 12. Cf. *Ch.L.A.*, no. 181, line 24: *possedentur*.

<sup>35</sup> *B.M.F.* I. 1, lines 10 and 30-1. Perhaps the scribe was influenced in his spelling by the word *proacutoribus* of an Italian model. See *M.G.H., Epistolae*, ii, p. 438: *auctoribus proacutoribusque meis . . . possessae sunt*.

<sup>36</sup> *B.M.F.* I. 1, lines 19-20.

<sup>37</sup> L. Traube, *Nomina Sacra* (Munich, 1907), p. 146, rules out *d(ei)* as an alternative reading.

<sup>38</sup> In an English manuscript of this date *Cristi* seems to be more likely than *Christi*. *Cristo* is found unabbreviated in *Codices Latini Antiquiores* (hereafter *C.L.A.*), ed. E. A. Lowe, no. 280.

<sup>39</sup> *M.G.H., Epistolae*, ii, pp. 275, 437; W. Levison, *England and the Continent in the Eighth Century* (Oxford, 1946), pp. 229-30.

<sup>40</sup> Bede, *Historia Ecclesiastica*, ed. C. Plummer, i (Oxford, 1896), p. 214.

<sup>41</sup> *Liber Diurnus Romanorum Pontificum*, ed. H. Foerster (Berne, 1958), pp. 132, 137, 145 (Codex Vat., nos. 74, 76, 83).

<sup>42</sup> Between *Uuestan* and *ae* there is a triangle of dots, the meaning of which is uncertain: perhaps it is meant as a transposition sign for the two letters *a* and *e* or as a word-division mark to emphasize that *Uuestan* and *ae* are two separate vernacular words (*westan* meaning 'west of', and *ae* meaning 'river').

<sup>43</sup> Marini, *op. cit.*, no. 84.

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<sup>47</sup> *Mari*  
<sup>48</sup> *Ibid.*,  
<sup>49</sup> *Is unc*  
synonym of .  
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<sup>56</sup> *Table*

to become Pope Gregory I) to his Roman monastery of Sant' Andrea al Clivo di Scauro,<sup>44</sup> in a charter of the bishop of Lucca dated 685,<sup>45</sup> and in a stone inscription of uncertain date.<sup>46</sup> The gift is made for the redemption of the donor's soul, *pro remedium animae meae*, the very words (with the same grammatical error) used in a sixth-century grant to the church of Ravenna;<sup>47</sup> the phrase *pro oblationem et remedium animae meae* also occurs in another Ravenna charter.<sup>48</sup> The object of the grant is the land called *Westanae* in Thanet: it is given to Abbot Brihtwold and his monastery in the same way as it has been possessed to the present day, with all its appurtenances, fields, pastures, marshes, small woods, wells and fisheries, and within the well-known boundaries which have been established by the king and his reeves. The Ravenna deeds of the sixth century use much the same terminology; for example, a deed of sale of 572 describes the estate sold as follows:

. . . id est fundi, cui vocabulum est Custinis, uncias quinque<sup>49</sup> . . . constitutum in territorio Ariminensi inter adfines fundum Varianum et fundum Titzianum atque fundum Quadrantula, . . . finibus, terminis, silvis, campis, pratis, pascuis, salectis, sationalibus,<sup>50</sup> . . . ribis, fontibus, aquis perennibus limitibusque earum et omnibus ad se pertinentibus, sicuti a suprascripto venditore et ab eiusque auctoribus bono, optimo et inconcusso iure possessae sunt et hucusque in hanc diem possedentur, ita et tradentur.<sup>51</sup>

Another estate given to the church of Ravenna in the sixth century is said to be granted with its lands and vines and all appurtenances,

. . . inter adfines circumcirca . . . sicuti a me meaque patrona, auctores et proauctores . . . possessum est atque nunc usque in hodiernam diem rite possedetur, ita et a me traditur a praesenti die suprascriptae sanctae ecclesiae Rav' . . .<sup>52</sup>

In one of the Albertini tablets, a Vandal deed of 493 from Roman North Africa, the field which is being sold is described in the following words:

inter adfines eiusdem agri a coro Martialis benditor et Ianuarius Fortuni, ab aquilo supradictus Martialis benditor, a meridie Quintianus, ab africo supradictus Quintianus et Victor, sibe quibus adfinibus cum quibus eos solbensisse [*for soluisse*] mostrarunt benditoribus [*for uenditores*] ex ereditate parentum cum transitis suis . . .<sup>53</sup>

This method of describing a land by reference to its northern, southern, eastern and western limits, common in Vandal deeds of the late-fifth century, was also often adopted in early Anglo-Saxon diplomas.<sup>54</sup> The boundaries of the land granted by Hlothhere, however, are not so given; instead they are described as *notissimos terminos a me demonstratus et proacuratoribus meis*, a phrase which is reminiscent of that used in the Vandal deed of 493, *adfinibus cum quibus eos solbensisse mostrarunt benditoribus*. The words *demonstratus* and *mostrarunt* may refer to an actual perambulation such as that described in a Ravenna document of the fifth century:

. . . Et cum hodie ambulassent et pervenissent ad singula praedia, adque introissent . . . et inquilinos sive servos et circuisserunt omnes fines, terminos, agros, arbos cultos vel incultos seu . . . , et traditio corporalis celebrata fuisset actoribus Pieri viri iulustris nullo contradicente . . .<sup>55</sup>

The purpose of Hlothhere's grant is to give Abbot Brihtwold and his successors the right to hold, possess and preserve the land of *Westanae* in perpetuity without interference from anyone. Here again we find the same expressions in Italian and Vandal charters of an earlier period. For example, the Vandal deed of sale of 493 already quoted gives the purchasers the right *ut abeant, teneant, possideant, utantur, fruantur ipsi eredesbe eorum in perpetum*.<sup>56</sup> In a Ravenna charter of the sixth century the donor, after reserving to himself a usufruct of ten days (*quia reservatio ususfructus, etiamsi stipulatio inserta non*

<sup>44</sup> *M.G.H., Epistolae*, ii, p. 437. Cf. *Urkunden und Akten* (3rd ed., 1932), ed. Brandi, no. 12.

<sup>45</sup> *Codice diplomatico longobardo*, ed. L. Schiaparelli, i (Rome, 1929), no. 7.

<sup>46</sup> *Urkunden und Akten*, ed. Brandi, no. 16.

<sup>47</sup> Marini, *op. cit.*, no. 93.

<sup>48</sup> *Ibid.*, no. 90; *Archivio paleografico italiano*, ed. Monaci, I, 1-5, line 2.

<sup>49</sup> Is *unculam* in *B.C.S.*, no. 497 (*B.M.F.* II, 34) a diminutive of *unciam*, or should we regard *terre unculam* as one word synonym of *terrum* (*B.C.S.*, nos. 148, 199) and formed by analogy with *mansiunculam*?

<sup>50</sup> Compare *B.C.S.*, no. 67: omnes terras sationales.

<sup>51</sup> *Ch.L.A.*, no. 181.

<sup>52</sup> Marini, *op. cit.*, no. 93.

<sup>53</sup> *Tablettes Albertini*, ed. Courtois and others (Paris, 1952), no. 6; see also *ibid.*, nos. 3, 5, 9, 16, 19.

<sup>54</sup> *B.C.S.*, nos. 86, 163-4, 182, 187, etc. See W. H. Stevenson, 'Trinoda necessitas', *English Historical Review* (hereafter *E.H.R.*) xxix (1914), p. 695, note 34.

<sup>55</sup> *Urkunden und Akten*, ed. Brandi, no. 8. By reserving a usufruct, the donor could dispense with the formality of the *traditio corporalis*; see below, note 57.

<sup>56</sup> *Tablettes Albertini*, no. 6; cf. *ibid.*, no. 3.

*fuert, pro traditione habeatur*<sup>57</sup>), defines the powers which the church of Ravenna is to have after expiry of the usufruct:

Post vero transactos dies usufructuarios meos memoratam portionem fundi suprascripti predicta ecclesia Rav' actoresque eius habeant, teneant, possedeant, iuri dominioque more quo voluerit imperpetuo vindicent atque defendant.<sup>58</sup>

In his grant of 587 to Sant' Andrea al Clivo di Scauro Gregory the Deacon reserves a usufruct of only five days and adds:

Transactum vero usumfructum meum superius designatum antefatum monasterium habeat, teneat, possideat, iure dominioque suo in perpetuum vindicet ac defendat.<sup>59</sup>

In Hlothhere's charter there is no mention of a usufruct, long or short, real or fictitious, to be retained by the king or anybody else, and the grant to Abbot Brihtwold was presumably to take full effect immediately, *a praesenti die et tempore*, as other Italian and Anglo-Saxon charters explicitly state.<sup>60</sup>

It is well to remember at this point that the rights transferred to the respective beneficiaries of the various documents cited above were not necessarily the same in practice. Wording similarities between deeds coming from different ages and lands suggest a common diplomatic ancestry; they do not imply identical effects in law.<sup>61</sup> It is evident, as Maitland suggested long ago, that Abbot Brihtwold and the other beneficiaries of royal Anglo-Saxon grants of the late-seventh century cannot have acquired on the land given to them such absolute rights as did the purchasers of a North African field in a Vandal deed of the late-fifth century.<sup>62</sup> Anglo-Saxon kings could only transfer to others the rights which they had themselves on the lands granted, and these lands cannot all have been waste lands in their own personal possession. The charter states that Hlothhere obtained the consent of Archbishop Theodore, Eadric and all the magnates. The agreement of the magnates in general may have been required simply because any grant of royal rights affected the kingdom as a whole.<sup>63</sup> This in itself is noteworthy, as it shows that the king could not dispose at will of the lands of his kingdom, but the mention of Theodore and Eadric by name suggests that their consent was more important than anybody else's and that it was needed for a special reason, obviously because they already had in Kent some rights of their own with which the grant of *Westanae* to Brihtwold might somehow interfere: Theodore was archbishop of Canterbury, and Eadric, who issued a legal code as joint king with Hlothhere, his uncle,<sup>64</sup> perhaps already enjoyed quasi-royal rights in Kent when the charter was issued.

(C) *SANCTIO*. In Italian private deeds of the sixth and seventh centuries the dispositive clause is often followed by what might be called a clause of warranty, consisting of a promise made by the donor or seller that neither he nor his heirs would infringe the terms of the grant or sale. The clause inserted in the grant of Gregory the Deacon is fairly typical:

In qua donationis pagina spondeo atque promitto nunquam me, haeredes successoresque meos nec per aliam quamlibet dolosam fictitiamque personam per cuiuslibet legis interventum contrariam inferre voluntatem; sed in huius me, haeredes successoresque meos promitto fidem chartulae duraturos.<sup>65</sup>

Another Italian charter, dated 553, expresses the same idea in a shorter form:

Contra quam donationem nullo tempore nullaque ratione me, posteros successoresque meos venturos esse polliceor invocato tremendi diem iudicii.<sup>66</sup>

Similar clauses occur in several royal Anglo-Saxon diplomas of the last quarter of the seventh century, for example in a Kentish grant of 686:

<sup>57</sup> *Codex Theodosianus*, VIII. 12. 9 (*Brev. Alar.*, VIII. 5. 2; *Interpretatio*); Ernst Levy, *West Roman Vulgar Law (Memoirs of the American Philosophical Soc. held at Philadelphia . . . , xxix, 1951)*, pp. 144-5; see also *Ch.L.A.*, no. 181, lines 54-7; *M.G.H., Epistolae*, ii, p. 438: quae retentio ipsius usufructus praefato monasterio eiusque actoribus pro solenni et legitima traditione constare sanxerunt.

<sup>58</sup> Marini, *op. cit.*, no. 93.

<sup>59</sup> *M.G.H., Epistolae*, ii, p. 438.

<sup>60</sup> Marini, *op. cit.*, no. 86; *B.C.S.*, nos. 34, 67, 73, 86, 90, 148, etc.; cf. Pardessus, *Diplomata* (Paris, 1843-49), ii, p. 426, no. 6.

<sup>61</sup> Levy, *op. cit.*, e.g. pp. 19-34.

<sup>62</sup> F. W. Maitland, *Domesday Book and Beyond* (Cambridge, 1907), pp. 230 ff.

<sup>63</sup> F. M. Stenton, *The Latin Charters of the Anglo-Saxon period* (Oxford, 1955), p. 35.

<sup>64</sup> *E.H.D.*, i, pp. 360-1.

<sup>65</sup> *M.G.H., Epistolae*, ii, p. 438.

<sup>66</sup> Marini, *op. cit.*, no. 86, p. 133. Compare *Codex Theodosianus*, II. 9. 3 (*Brev. Alar.*, II. 9. 1): promissa ea, quae invocato dei omnipotentis nomine eo auctore solidaverit.

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<sup>73</sup> *Ibid.*,

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<sup>75</sup> *M.G.*

<sup>76</sup> *M.G.*

Nunquam me hæredesque meos vel successores contra hanc donationis meæ cartulam ullo tempore esse venturos.<sup>67</sup>

In a Surrey charter the clause resembles a wish rather than a promise:

Numquam ego heredesque mei ullo tempore contra hanc donationis cartulam venire temptaverit.<sup>68</sup>

In Hlothhere's charter it is neither a promise nor a wish, but a general prohibition to everyone (*a nullo contradicitur*), inserted in the middle of the dispositive clause. In a postscript which states that, on the day on which the king granted *Westanæ* to Brihtwold, he also gave him another land in Sturry, the prohibition is repeated, this time in a longer version:

A nullo contradicitur, quod absit, neque a me neque a parentibus meis neque ab aliis.

Here the word *parentibus* is used in the wide sense of "kinsmen", that is to say the members of the grantor's *parentela* who, in a Worcester charter of the second half of the eighth century, are contrasted with the "outsiders" (*externorum*).<sup>69</sup>

Originally the insertion of a promise of non-infringement in deeds of gift seems to have been the equivalent of a general renunciation by the grantor, not only of the use of force or treachery in order to recover what had been given, but also of all the legal loop-holes which the Theodosian and Barbaric Codes provided for the revocation of gifts.<sup>70</sup> Because gifts extorted by force, threats or trickery could be revoked,<sup>71</sup> Italian charters of the sixth and seventh centuries often state that the grant was made of the grantor's own free will, 'omni vi, dolo [*or dolo malo*], metu et circumscriptione cessante'.<sup>72</sup> This is specified, for instance, in a charter of the sixth century for the church of Ravenna, in which the grantor—a woman—adds that she renounces all the remedies provided by law for the revocation of gifts and in particular those open to women.<sup>73</sup> The promise that neither she nor her heirs or successors will infringe the terms of the grant was made, she says, because the laws stipulate that what has once been given to holy places cannot be taken back from them (*quoniam et legebus cautum est ut quod semel in loca venerabilia donatum vel quoquo modo cessum fuerit nullo modo revocetur*).<sup>74</sup> It is evident that a promise of non-infringement, implying a renunciation of legal remedies, was hardly suitable in a royal charter. On the other hand, an order forbidding anybody to violate a royal grant was most appropriate and simply confirmed the accepted rule that royal gifts should remain in force, 'quia non oportet principum statuta convelli'.<sup>75</sup> Clauses of non-infringement of the prohibitive type are commonly found in papal grants of all kinds. In a document issued in 590 Gregory I, after stipulating that the lands which he had given three years earlier to the monastery of Sant' Andrea al Clivo di Scauro were not to be alienated by the abbot or his successors, added: *Et hoc constitutum nullus qualibet exquisicione vel nitatur arte dissolvere*.<sup>76</sup> Five years later, however, Gregory was using a promissory formula in a manumission:

<sup>67</sup> *B.C.S.*, no. 67; see also *ibid.*, nos. 34, 86.

<sup>68</sup> *Ibid.*, no. 72.

<sup>69</sup> *Ibid.*, no. 220. See *E.H.D.*, i, p. 453.

<sup>70</sup> See Marini, *op. cit.*, no. 90: *excluso a me vel meos heredes omnium legum beneficia iuris et facti ignorantia fori loci militiaeque perscriptione seu quod de revocandis donationibus sunt per lege indulta donantibus.*

<sup>71</sup> See the beginning of the Arcadian constitution (*Codex Theodosianus*, II. 9. 3; *Brev. Alar.*, II. 9. 1): *Si quis maior annis adversum pacta vel transactiones nullo cogentis imperio, sed libero arbitrio et voluntate confecta putaverit esse veniendum . . . M.G.H., Legum Sectio I. i (Leges Visigothorum)*, p. 18, fragm. 308: *Res donata, si in praesenti traditur, nullo modo a donatore repetatur, nisi causis certis et probatis; ibid.*, fragm. 309: *Donatio que per vim et metum probatur extorta, nullam habeat firmitatem. Compare Codex Theodosianus, XV. 14. 9: Stent denique omnia, quae in placitum sunt deducta privatum, nisi aut circumscribitio subveniet aut vis aut terror ostenditur. See also ibid., VIII. 13 (De revocandis donationibus), etc.*

<sup>72</sup> Marini, *op. cit.*, nos. 92, 93.

<sup>73</sup> *Ibid.*, no. 93: *excluso erga me omnium legum beneficia quae de revocandis donationibus et de sexu femineo Bellianus [recte Velleianus] senatusconsultus mulieribus subvenire adsolet; quoniam ad hanc largitatem meam sponte et habeta deliberatione perveni, nullius cogentis imperio nec suadentis impulso et haec inrevocabiliter me donasse profiteor: quam donationis meae paginam omni vi dolo metu et circumscriptione cessante . . .*

<sup>74</sup> *Ibid.* See W. John, 'Formale Beziehungen der privaten Schenkungsurkunden Italiens . . .', *Archiv für Urkundenforschung*, xiv (1935-36), p. 17. See also *M.G.H., Legum Sectio I. i*, p. 208: *quicumque res sanctis Dei basilicis aut per principum aut per quorumlibet fidelium donationes conlate repperiuntur votive ac potentialiter, pro certo censetur, ut in earum iure inrevocabili modo legum eternitate firmentur. Compare Codex Theodosianus, XI. 24. 6: Quidquid autem . . . ecclesiae venerabiles . . . possedis de teguntur, id pro intuitu religionis ab his praecipimus firmiter retineri . . . See also Nino Tamassia, 'La defensione nei documenti medievali italiani', *Archivio Giuridico Filippo Serafini*, lxxii. 3 (1904), p. 460.*

<sup>75</sup> *M.G.H., Legum Sectio I. i*, p. 210; see also p. 16.

<sup>76</sup> *M.G.H., Epistolae*, i, p. 15.



Haec igitur quae per huius manumissionis cartulam constituimus atque concessimus, nos successoresque nostros sine aliqua scitote refragatione servare. Nam iustitiae ac rationis ordo suadet ut qui sua a successoribus desiderat mandata servari decessoris sui procul dubio voluntatem et statuta custodiat.<sup>77</sup>

In England neither the prohibitive clause, which still occasionally occurs in Kentish charters of the ninth century,<sup>78</sup> nor the promissory one ever became a regular feature of the royal diploma before the Norman Conquest.

Even promises solemnly given could be broken and strongly-worded prohibitions ignored. Grantees could not be expected to find much comfort in purely ethical rules such as those formulated by Gregory I that anybody who wished his successors to carry out his instructions should begin by showing the same respect for the wishes of his predecessor. One way of deterring possible transgressors was to insert a penalty clause in the text of the written grant. A constitution of Emperors Arcadius and Honorius (*Lex Arcadiana*, A.D. 395), incorporated in the section 'De pactis et transactionibus' of the Theodosian Code, had decreed that the party who broke an agreement would be declared infamous and would have to pay to the other party the penalty which had been laid down in the agreement.<sup>79</sup> Deeds of sale and other contracts could be regarded as covered by the provisions of the constitution, but unilateral gifts could not. Italian deeds of sale of the sixth and seventh centuries normally contain a clause imposing a money penalty on the party guilty of infringement;<sup>80</sup> on the other hand, Italian deeds of gift of the sixth and early-seventh centuries have no penalty clause of any kind. This is true, for example, of Gregory the Deacon's grant of 587.<sup>81</sup> How soon were such clauses extended from bilateral contracts to unilateral grants, it is difficult to say. What is certain is that, as early as Gregory I's time, some papal confirmations of privileges granted to monasteries ended with a threat of excommunication against those guilty of infringement.<sup>82</sup> This religious sanction, obviously less effective than a pecuniary penalty, was the only one at the disposal of the Church: used first in purely ecclesiastical matters, it was gradually extended to the secular affairs of the Church. In the course of the seventh century it spread further to all sorts of private grants, although mainly to those intended for ecclesiastical uses; it is found, for example, in a charter of Bishop Felix of Lucca of 685.<sup>83</sup> Some Frankish private charters also stipulate religious penalties, but, from the early part of the seventh century, the normal penalty in Frankish charters is a secular one, providing for the payment either of double the value of the property involved or of a fixed sum of money, part of which is allocated to the fisc and part to the injured grantee.<sup>84</sup> By the end of the seventh century the system of pecuniary penalties had also infiltrated into Italian private charters, and soon it was universally accepted on the Continent, ecclesiastical penalties being sometimes added as a supplementary guarantee.<sup>85</sup> In Marculf's day, however, the draftsmen of charters still argued that in transfers of land by gift the insertion of a penalty clause was not necessary: *Licet in cessionibus poenam adnecti non sit necesse, sed nobis pro homni firmitate placuit inserendum.*<sup>86</sup>

No evolution of this kind took place in Anglo-Saxon England. From the seventh to the eleventh century the only penalty to be mentioned in Anglo-Saxon charters granting land in perpetuity is a religious one, threatening with excommunication or punishment in the next world those guilty of violating the terms of the grant.<sup>87</sup> Hlothhere's charter is no exception; its main penalty clause reads:

Quisquis contra hanc donatione(m) uenire temptauerit sit ab omni cr(ist)ianitata separatus et a corpore et sanguini d(omi)ni nostri Ic(s)u Cr(ist)i suspensus,

<sup>77</sup> *Ibid.*, p. 391.

<sup>78</sup> *B.C.S.*, no. 313; see also *ibid.*, nos. 319, 442.

<sup>79</sup> *Codex Theodosianus*, II. 9. 3 (*Brev. Alar.*, II. 9. 1, and *Interpretatio*). See Giorgio La Pira, 'La stipulatio Aquiliana nei papiri', *Atti del IV Congresso Internazionale di Papirologia 1935* (Milan, 1936), pp. 479-80; F. Brandileone, 'La stipulatio nelle carte italiane del medio evo', *Mélanges Fitting*, I (Montpellier, 1907), pp. 103-11.

<sup>80</sup> *Ch.L.A.*, no. 181; Marini, *op. cit.*, no. 120; *Urkunden und Akten*, ed. Brandt, no. 10.

<sup>81</sup> *M.G.H., Epistolae*, II, pp. 437-9.

<sup>82</sup> *Ibid.*, I, p. 15; II, pp. 378, 380, 381.

<sup>83</sup> *Codice diplomatico longobardo*, ed. Schiaparelli, I, no. 7.

<sup>84</sup> Pardessus, *Diplomata*, I, pp. 227-8; *Ch.L.A.*, nos. 40, 45, etc.

<sup>85</sup> *Monumenti Ravennati de' Secoli di Mezzo*, VI (Venice, 1804), pp. 263-4; *Codice diplomatico longobardo*, I, no. 12; *Ch.L.A.*, no. 44.

<sup>86</sup> *M.G.H., Formulae*, ed. Zeumer, p. 77; see also *ibid.*, pp. 19, 159, 175, 489. See also Fritz Boye, 'Über die Poenformeln in den Urkunden des früheren Mittelalters', *Archiv für Urkundenforschung*, VI (1916), pp. 77-148; Joachim Studtmann, 'Die Pönformel der mittelalterlichen Urkunden', *ibid.*, XII (1931-32), pp. 251-374.

<sup>87</sup> Sometimes the anathema (*sanctio negativa*) is followed by a blessing (*sanctio positiva*) as in papal documents.

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to which is added another, at the end of the Sturry postscript:

Si aliquis aliter fecerit, a d(e)o se damnatum sciat et in die iudicii rationem reddet d(e)o in anima sua.

The formulae used by Grégoire I are considerably longer, but the punishment envisaged is the same:

Si quis vero . . . hanc constitutionis nostrae paginam agnoscens contra eam venire temptaverit, . . . a sacratissimo corpore ac sanguine dei domini redemptoris nostri Iesu Christi alienus fiat atque in aeterno examine districtae ultioni subiaceat.<sup>88</sup>

The main purpose behind all penalty clauses was to deter unscrupulous people from violating the terms of the grant in which the clauses were inserted. Even a money penalty was intended as a punishment for transgressors rather than a compensation for despoiled grantees. What the beneficiaries of charters particularly wanted was to be assured that, should an infringement take place, they would be restored to the *status quo ante*. For this reason the money-penalty clause of Italian and Frankish charters was normally followed by a phrase such as *sed presens cessio omni tempore inlibata permaneat*<sup>89</sup> or *et cartula ista . . . in sua permaneat nihilominus firmitate*.<sup>90</sup> In early Italian private charters the phrase is sometimes found in the accusative absolute, for instance in a Ravenna charter of *plenaria securitas* of 564 (*manente nihilominus hanc plenariam securitatem in sua firmitate*)<sup>91</sup> and in another Ravenna charter of 681 (*manentes hos libellos in sua nihilominus firmitate*).<sup>92</sup> It is this form in the accusative absolute which was adopted in Hlothhere's charter (*manentem hanc donationis chartulam in sua nihilominus firmitate*), a feature which is shared by a number of other Kentish diplomas of the seventh and eighth centuries.<sup>93</sup> It should be added that in Anglo-Saxon charters the formula is combined with the threat of a religious sanction, whereas in Italian and Frankish charters it seems to have been reserved for clauses stipulating a money penalty.<sup>94</sup>

(D) *CORROBORATIO*. The *sanctio* of Hlothhere's charter is followed by the announcement of the signs of validation: the king explains that he has "confirmed" the charter by tracing the sign of the cross with his own hand and by asking witnesses to subscribe it:

Et pro confirmatione eius manu propria signum s(an)c(t)e crucis expraessi et testes ut subscriberent rogavi.

The words *Et pro confirmatione eius*, which give the clause its corroborating character, do not occur in Italian private charters, although they may have been used in papal and episcopal documents. In private charters written by Italian notaries the signs of validation (signa or subscriptions of the author and witnesses, and *completio* of the notary) are announced, not in a self-contained corroboration clause, but in the second part of the *rogatio*, the first part of which consists of a statement made by the author of the document that he has entrusted the writing of his charter to one particular notary whom he names. It is from the second part of the *rogatio* that most of the wording of the corroboration clause in Hlothhere's charter is derived. In a grant of 491 made to the church of Ravenna by a certain Maria, an illiterate woman, the *rogatio* reads:

. . . chartulam Iovino, noto meo, scribendam dictavi, cuique, quia ignoro litteras, signum feci, ad quod Castorium, virum clarissimum, carum meum, ut pro me suscriberet conrogavi, nobiles quoque viros qui suas suscriptiones dignanter adnectant pari supplicatione poposco, stipulantique tibi, vir beatissime pater et papa Iohannes, spopondi ego qui supra Maria, spectabilis femina.<sup>95</sup>

In a Ravenna deed of sale of 572 the notary states that he has written the document at the request of the seller,

. . . ipso praesente, adstante mihique dictante et consentiente et subter manu propria pro ignorantia litterarum signum faciente, et testes ut suscriberent conrogavit.<sup>96</sup>

When the author of the document can write, the subscriptions of witnesses are announced—in slightly different words—not only in the *rogatio*, but also in the author's own subscription. For example, Gregory the Deacon's subscription to his charter of 587 reads:

Ego Gregorius peccator, sanctae Romanae ecclesiae diaconus, huic donationi a me factae in praefato monasterio de supramemoratis fundis ad omnia superscripta relegi, consensi et subscripsi et testes ut subscriberent rogavi.<sup>97</sup>

<sup>88</sup> *M.G.H., Epistolae*, ii, p. 378.

<sup>89</sup> *M.G.H., Formulae*, ed. Zeumer, p. 77.

<sup>90</sup> *Il regesto di Farfa*, ed. Giorgi and Balzani, ii (Rome, 1879), no. 5; compare *Ch.L.A.*, no. 45, etc.

<sup>91</sup> Marini, *op. cit.*, no. 80.

<sup>92</sup> *Monumenti Ravennati de' Secoli di Mezzo*, vi, p. 263.

<sup>93</sup> *B.C.S.*, nos. 42 (doubtful), 159, 193, 196, 199, 228, etc.

<sup>94</sup> The phrase seems to make better sense at the end of a clause stipulating a money penalty.

<sup>95</sup> Marini, *op. cit.*, no. 84.

<sup>96</sup> *Ch.L.A.*, no. 181.

<sup>97</sup> *M.G.H., Epistolae*, ii, p. 438.

(E) DATE. The dating clause of Hlothhere's charter (*Actum in ciuitate Reculf in mense maio*,<sup>98</sup> *indictione septima*) is also an adaptation of an Italian formula. Some Ravenna charters and two of Gregory I's manumissions have a dating clause which begins with the word *Actum*, followed by the place of issue.<sup>99</sup> The reference to the indictional year is undoubtedly of Italian origin: it is also in this way that the year is given in the record of the Council of Hertford of 24 September 672; towards the beginning of this record, the meeting is said to have been held *die xxiiii<sup>o</sup> mensis Septembris, indictione prima, in loco qui dicitur Herulford*, and later on in the document, the dating clause is given as follows: *Actum in mense et indictione supra scripta*.<sup>100</sup> In this second date, as in the dating clause of Hlothhere's charter, the day of the month is not given. Other early Anglo-Saxon charters are also dated by the indictional year and the month only. Why this should have been so, it is impossible to say. Dating habits vary so much from one document to another that it would be futile to hazard an explanation.

It is well known that in the second half of the seventh century at Canterbury, and presumably throughout Kent, the indictional year was reckoned from 1 September (Greek indiction). This is proved by the records of the councils of Hertford and Hatfield, which are respectively dated 24 September in the first indiction and 17 September in the eighth indiction: by using other dating elements Reginald Lane Poole has established beyond doubt that the two councils were held on 24 September 672 and 17 September 679, proving thereby that it was the Greek indiction which was in use in Canterbury in the time of Archbishop Theodore.<sup>101</sup> The view of modern scholars seems to be that the Greek indiction was in any case the only one known at the time and that the indiction calculated from 24 September was invented by Bede. If Bede really was responsible for this new reckoning, he must have known that, until he came on the scene, everybody calculated the indiction from 1 September. Yet in his *Ecclesiastical History* he wrongly converted the two Greek indictions of the councils into the years of the incarnation 673 (main text of the *History*) and 680 (*Recapitulatio*),<sup>102</sup> thus showing that he was unaware that the indiction could have begun on 1 September in Kent; worse still, he placed 24 September 673 in the first indiction, although in the system which he is supposed to have introduced this date should have been the first day of the second indiction. It has often been pointed out that Bede was not infallible in his chronology, but it seems rather odd that a man who gave in his *De Temporum Ratione* an easy way of calculating the indiction from the year of the incarnation<sup>103</sup> should have made three blunders, all connected with the reckoning of the indiction, in only two dating clauses. If, on the other hand, he did not invent the indiction of 24 September, but simply adopted it because it was already in use in Northumbria before his time, he might not have known that a different indiction, the Greek one, was current in Kent.

It has been suggested that either Bede made the year of the incarnation start on the same day as the indiction, in which case his dates 673 and 680 would not be errors at all, or he simply converted the indiction into the year of the incarnation by using the tables of Dionysius Exiguus and omitted to make the required corrections for dates falling between the beginning of the indiction and the beginning of the year of the incarnation.<sup>104</sup> Either of these two suggestions would explain Bede's dates of 673 and 680 for the two councils, but neither provides a satisfactory answer for a third date given by Bede, this time in his *Historia Abbatum*. Here Bede tells the story of Abbot Ceolfrid's arrival at Langres on Friday (*feria sexta*) 25 September 716 (*septimo kalendarum Octobrium die, anno ab incarnatione Domini septingentesimo sextodecimo*) at about 8 a.m. (*circa horam diei tertiam*), and his death there, on the same day, at about 3 p.m. (*decima ipsius diei hora; . . . post horam nonam*).<sup>105</sup> Bede's year of the incarnation, A.D. 716, in this instance is undoubtedly correct. Nor is there much doubt that Bede arrived at that year by calculating it from the indictional year given in the anonymous *Historia Abbatum*, on which Bede depends for much of his information:

<sup>98</sup> A letter (?d) has been erased between *a* and *i*.

<sup>99</sup> *M.G.H., Epistolae*, i, p. 391 (*Actum in urbe Roma*); ii, p. 108 (*Actum Romae*).

<sup>100</sup> Bede, *Hist. Eccl.*, ed. Plummer, i, pp. 215, 217.

<sup>101</sup> R. L. Poole, *Studies in Chronology and History* (Oxford, 1934), pp. 9, 41, 44-9.

<sup>102</sup> Bede, *op. cit.*, ed. Plummer, i, pp. 217, 355.

<sup>103</sup> Bede, *Opera de temporibus*, ed. C. W. Jones (Med. Acad. of America Publ. no. 41, Cambridge, Mass., 1943), pp. 268-9.

<sup>104</sup> Poole, *op. cit.*, p. 41; C. W. Jones, *Saints' Lives and Chronicles in Early England* (Cornell Univ. Press, 1947), pp. 40-1, 171-2.

<sup>105</sup> Bede, *Hist. Eccl.*, ed. Plummer, i, pp. 385-6.

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If Bede had used the Dionysian tables *without* making the necessary corrections or if he had made the year of the incarnation coincide with the indictional year, he would have given A.D. 717 as the year of Ceolfrid's death. In my view this proves that Bede used a different beginning for the indiction and for the year of grace. In so far as the year of grace is concerned, Levison has shown that Bede made it start on Christmas Day,<sup>107</sup> and so probably did the anonymous *Historia Abbatum*, which refers to 12 January (*II id. Ian.*) as *anni sequentis exordis*.<sup>108</sup> It also proves that Bede could make the necessary corrections for dates falling between September and 25 December. But on what day in September did Bede make the indiction begin? If it was 24 September, Bede should have dated the council of Hertford 24 September 672, and not 24 September 673 as he in fact did; on the other hand, Bede's years for the council of Hatfield and for Ceolfrid's death would fit in with an indiction beginning on 24 September. Assuming that Bede was using the same consistent system to arrive at the three years 673, 680 and 716, we must inevitably conclude that he placed the beginning of the indiction between what he regarded as the end of 24 September and the beginning of 25 September (not later than *hora prima* or 6 a.m.). In other words, the change in the number of the indiction took place between sunset on 24 September and sunrise on 25 September. If this interpretation is correct, it follows that the words *incipiente indictione XV* in the anonymous *Historia Abbatum* should be understood in the narrow sense of "on the first day of the fifteenth indiction". A tenth-century transcriber of the anonymous work seems to have been worried by the statement that the fifteenth indiction began on 25 September (*septimo kal. Octob.*) and he changed the word *septimo*, which was retained by Bede, into *VIII*.<sup>109</sup> If now we turn to Bede's *De Temporum Ratione*, we find that the author uses a particularly ambiguous phrase when he states on what day the indiction should change: *Incipiunt autem indictiones ab viii kal. octobres ibidemque terminantur*.<sup>110</sup> How could the old indiction end on 24 September and the new one start *from* that day also, unless again one makes the number of the indiction change between sunset on 24 September, that is to say at 6 p.m. since Bede thought that 24 September was the date of the autumn equinox, and sunrise on 25 September, i.e. 6 a.m.? This would mean in practice that a document issued on 24 September would still be placed in the old indiction and another issued on 25 September would fall in the new indiction. All the medieval calendars which have been studied in recent years are as vague as Bede in their references to the indiction: they note that the change took place on 24 September, one notable exception being an eleventh-century calendar wrongly attributed to Bede by Johannes Herwagen (*Hervagius*); if Herwagen can be trusted, the calendar which he used (probably a manuscript from a "Swiss" monastery) had the following entry opposite 25 September: *Æquinoctium iuxta quosdam, et locus indictionum*.<sup>111</sup>

As we do not know whether the anonymous *Historia Abbatum* was written before or after the *De Temporum Ratione*, we cannot be certain that the indiction of 24/25 September was in use in Northumbria before Bede, but this seems likely; otherwise, he would probably have warned us that his computation was different from that used before his time and he would not have misdated the councils of Hertford and Hatfield. It may also be worth noting that one date in the anonymous work is given by reference to the year of the incarnation.<sup>112</sup>

In so far as Kent is concerned, the Bedan indiction had replaced the Greek indiction by A.D. 822;<sup>113</sup> in Worcester it was already in use by 780.<sup>114</sup>

(F) *POSTSCRIPT*. The dating clause is followed by a postscript in which Hlothhere states that *in ipsa antememorato die* he made to Brihtwold an additional grant of land in Sturry. In form the postscript is a miniature charter, with a *dispositio* which is *mutatis mutandis* an abridged version of the dispositive

<sup>106</sup> *Ibid.*, pp. 400-2.

<sup>107</sup> W. Levison, *England and the Continent in the Eighth Century* (Oxford, 1946), pp. 265-79.

<sup>108</sup> Bede, *Hist. Eccl.*, ed. Plummer, i, p. 394; Levison, *op. cit.*, p. 269.

<sup>109</sup> Bede, *Hist. Eccl.*, ed. Plummer, i, p. 401, note 9.

<sup>110</sup> Ed. Jones, p. 268.

<sup>111</sup> *Opera Bedae*, ed. Iohannes Heruagius, i (Basel, 1563), p. 258.

<sup>112</sup> Bede, *Hist. Eccl.*, ed. Plummer, i, p. 390.

<sup>113</sup> *B.C.S.*, no. 370.

<sup>114</sup> *B.C.S.*, no. 236.

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clause of the *Westanae* grant, and with a prohibitive clause and an anathema which have already been quoted. The whole of the diploma is so clumsily drafted that one cannot be surprised by this addition or by the statement that the Sturry grant was made on the day "aforesaid", although in reality the day of issue of the *Westanae* grant is not given in its dating clause.

(G) *SIGNS OF VALIDATION*. Italian private deeds of gift and sale were validated by the autograph signa or subscriptions of the author and witnesses, and by the autograph subscription (*completio*) of the notary who wrote the document. If the grantor or seller was literate, he wrote his own subscription himself, in the first person (e.g. *Ego . . . relegi, consensi et subscripsi . . .*).<sup>115</sup> If the author was illiterate, the notary wrote on his behalf a formula of the type *Signum* [or *Signum manus*] *Mariae spectabilis feminae suprascriptae donatricis*<sup>116</sup> or *Signum suprascripti Domini viri honesti agellarii, venditoris*,<sup>117</sup> and the author traced with his own hand, next to the word *Signum*, a sign which normally was the sign of the cross.<sup>118</sup> Similarly, the witnesses who could write made their own subscription; those who could not write simply made a cross.

In so far as deeds of gift were concerned, this system of validation fitted in well with the publicity rules laid down in the Theodosian Code and in the *Interpretatio* of the Breviary of Alaric, and even better with the more precise regulations set out in the "national" Barbaric Codes. The *Interpretatio*, after saying that every deed of gift should give the names of the donor and donee, and describe what was given, all this being done publicly, not in secret, added the following rule:

Quam tamen donationem, si litteras novit donator, ipse subscribat; si vero ignorat, praesentibus plurimis eligat qui pro ipso subscribat.<sup>119</sup>

Some additional Visigothic laws are more specific:

Si quis domum aut villam alio donaverit, hoc quod donavit per donationis cartulam firmet, ita ut in ea donatione ipse donator propria manu subscribat, et ipsa donatio non minus tribus testibus roboretur. Si autem ipse donator et testes litteras nesciunt, unusquisque signum propria manu faciat.<sup>120</sup>

All the Barbaric Codes have similar rulings, although the required number (*competens numerus*) of witnesses varies according to the Codes and sometimes according to the importance of the gifts; the minimum number is sometimes five, sometimes seven.<sup>121</sup> These witnesses, of course, had to be "suitable" (*idonei*), an expression which the Visigothic laws interpreted as follows:

In duobus autem idoneis testibus, quos prisca legum recipiendos sancit auctoritas, non solum considerandum est quam sint idonei genere, hoc est indubitanter ingenui, sed etiam si sint honestate mentis perspicui adque rerum plenitudine opulenti.<sup>122</sup>

According to the *Leges Burgundionum* a person without a stain on his character qualified as an *idoneus testis* (*quorum fama numquam maculata est*).<sup>123</sup>

Hlothhere's charter is attested by the king as grantor and by eleven witnesses. The king's attestation is in the form: *Signum manus Hlothari regis, donatoris*, and the attestation of each witness consists of the words *Signum manus* followed by his name in the genitive. All the attestations are written in the same hand, probably that of the scribe who wrote the rest of the document. In this respect the charter conforms to the practice normal in Italy and apparently everywhere in the sixth and seventh centuries: the *signum manus* was a non-autograph type of attestation which was written by the scribe of the charter and reserved for illiterate signatories. If, however, the charter had been written in Italy, the crosses which accompany the attestations would have been autograph. In fact Hlothhere's cross is in the same stylized form as the cross which is prefixed to the verbal invocation, and the crosses attached to the attestations of the witnesses, although less carefully drawn, are all undoubtedly in one hand and cannot therefore be autograph. As the king is made to state in the corroboration clause that he has drawn the sign of the cross with his own hand, it is clear that in England, as early as 679, the words *propria manu* had already lost their literal meaning: one might suggest that perhaps

<sup>115</sup> *M.G.H., Epistolae*, ii, p. 438; Marini, *op. cit.*, p. 143, etc.

<sup>116</sup> Marini, *op. cit.*, no. 84.

<sup>117</sup> *Ch.L.A.*, no. 181.

<sup>118</sup> *Ibid.*

<sup>119</sup> *Codex Theodosianus*, VIII. 12. 1 (*Brev. Alar.*, VIII. 5. 1).

<sup>120</sup> *M.G.H., Legum Sectio I*, i, p. 471.

<sup>121</sup> *Ibid.*, ii (part 1), p. 74; v (part 1), p. 64; v (part 2), pp. 268-9.

<sup>122</sup> *Ibid.*, i, p. 96.

<sup>123</sup> *Ibid.*, ii (part 1), p. 113.

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 † EGO BEACSI INDIGNUS ABBAS CONSENSI ET SUBSCRIPSI  
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 † EGO EBBELLA CONSENSU COME ACOMODANS SUBSCRIPSI  
 † EGO ONOC COMES SUBSCRIPSI  
 † EGO OBX CONSENSI ET SUBSCRIPSI  
 † EGO SIGIBED CONSENSI ET SUBSCRIPSI  
 † EGO BERCOL CONSENSI ET SUBSCRIPSI  
 † EGO ELDAPT CONSENSI ET SUBSCRIPSI  
 † EGO CUSA CONSENSI ET SUBSCRIPSI

(b)

(a) Charter of King Hlothhere of Kent (extract): May 679  
 (b) Charter of King Æthelbald of Mercia (extract): A.D. 736

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<sup>125</sup> See F  
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<sup>127</sup> Lowe

the king touched the charter with his hand to show his approval, a practice which became current in later times on the Continent;<sup>124</sup> each of the witnesses may have done the same. By the eighth century it was not unusual for Frankish charters to be wholly written in one hand, including the attestations and crosses; it was certainly the case at St. Gallen, but there it was customary for the scribe of the charter to subscribe it and state that he was the writer. By contrast Hlothhere's charter—like all but a few Anglo-Saxon diplomas—does not even name its scribe.

Perhaps the latinity and diplomatic of the charter should have been examined and discussed in greater detail than has been done here, but I doubt whether this line of enquiry, however thoroughly it was pursued, would ever do more than strengthen our conviction that there is nothing in the document which can be regarded as inconsistent with its date, A.D. 679. If a proof that the charter is an original is to be found, it must be sought in its physical appearance and particularly in the appearance of its uncial script. Reservations have already been made on the value of palaeographical methods for determining the originality or otherwise of a document. In so far as Hlothhere's charter is concerned, we are even in a less favourable position than usual, because the charter, if it really is an original, is the earliest piece of English writing to have survived. The only comparative material of English origin available for the late-seventh and early-eighth centuries consists of a few books or fragments of books, the most famous of which is the Codex Amiatinus.<sup>125</sup> These are fine books, one of them a presentation copy, all written in Northumbria, miles away from Kent. How can we be sure that a Kentish scribe writing a charter, however important, would show the same loving care and the same degree of skill as a scribe of the Wearmouth-Jarrow school writing a gospel-book intended for presentation to the pope?

Here again the only safe statement that can be made about the script of the charter is that there is nothing in it which can be proved to be inconsistent with the year 679. There is one palaeographical feature of the charter, however, which in my view proves that the document cannot be anything but an original: it concerns the different appearance of the script in the attestations and in the text of the charter. From the beginning of the verbal invocation to the end of the Sturry postscript, the right-hand vertical stroke of the letter *N* has a triangular, "wedge-shaped", finial; the same wedge-shaped finials also occur in the letters *C*, *E*, *G*, *L*, *S*, *T*; the letter *D* ends with a backward hook. On the other hand, there does not appear to be one single wedge-shaped finial in any of the attestations; instead, the letter *N*, for example, is topped by two horizontal serifs; the horizontal stroke of *E* consists of a short line of constant width; the letter *D* is not hooked at the end; in addition, the word *manus* in the third attestation has a *us* ligature, a feature which does not appear in the text of the charter.<sup>126</sup> It may be argued that these palaeographical differences between the attestations and the text have no more meaning than those between the text-type of uncials and the capitular type, both found in the same books.<sup>127</sup> In the charter, however, the script differences are accompanied by other peculiarities which add to their significance: for example, the ink of the attestations is of a lighter colour than that used for the text of the charter; the lines of the text are roughly horizontal, whereas the lines of the attestations, although parallel to one another, slope slightly downwards from left to right. All these differences suggest that the attestations were written later than the text, although probably by the same scribe. In other words, the charter seems to have been written in two stages: the text of the grant, including the Sturry postscript, was prepared in advance, to be presented to the king for confirmation at a convenient time; the attestations were added when the king actually confirmed the grant, presumably at a solemn ceremony attended by witnesses. If this interpretation is correct, the conclusion that the charter is an original cannot be avoided.

\* \* \*

The second single-sheet diploma to be considered is the charter of Æthelræd for the abbey of Barking in Essex (March 687?). Its Latin is closer to classical standards than the Latin of Hlothhere's

<sup>124</sup> A. de Bouard, *Manuel de diplomatique française et pontificale*, ii (Paris, 1948), p. 91. See *B.C.S.*, no. 293 (*O.S.F.* III. 7): et inspicias nomina principum qui hoc consensientes signum manus imposuerunt; *M.G.H.*, *Legum Sectio* I. v (part 2), pp. 268-9: hoc per epistolam confirmet propria manu sua ipse et testes adhibeat vj vel amplius, si voluerit, inponant manus suas in epistula et nomina eorum notent ibi, quem ipse rogaverit.

<sup>125</sup> See E. A. Lowe, *English Uncial* (Oxford, 1960), Introduction.

<sup>126</sup> See Plate I (a).

<sup>127</sup> Lowe, *op. cit.*, Introduction.

charter, but it is not without examples of misuse of case, gender and number (e.g. *provincia* perhaps for *provinciae*;<sup>128</sup> *monasterii tui quae*;<sup>129</sup> *possideatis et quaecumque uolueris . . . habeatis*<sup>130</sup>). In so far as its formulae are concerned, the charter is also of undoubted Italian parentage. Unlike Hlothhere's charter it has no pictorial invocation, but the verbal invocation is the same in both except that the word *saluatoris* follows the words *Iesu Christi* in Æthelræd's charter instead of preceding them as in the charter of Hlothhere.

A more important difference between the two documents is the presence of a proem in the charter of Æthelræd:

Quotiens s(an)c(t)is ac uenerabilib(us) locis uestris aliquid [o]fferre uidemur, uestra uobis reddimus, non nostra largi[mu]r.

This proem bears a striking resemblance to the preamble used by Gregory the Deacon in his charter of 587 to his Roman monastery:

Quotiens laudis uestrae usibus licet parua quaedam conferimus, uestra uobis reddimus, non nostra largimur, ut haec agentes non simus elati de munere, sed de solutione securi.<sup>131</sup>

Perhaps we should not attach too much importance to the resemblance, but it is worth noting that the proem is an uncommon one: the version found in the charter of Gregory the Deacon has been noticed in only one other Italian document, a decree of Pope Gregory II;<sup>132</sup> the version in Æthelræd's charter is apparently unique, but a third variant occurs in two Surrey charters, one of which records a grant of Frithuwold, sub-king of Surrey, to the abbey of Chertsey (A.D. 672-74) and the other a grant of King Ceadwalla of Wessex for the foundation of a monastery at Farnham (A.D. 688 possibly for 687):

Quotienscumque aliqua [or aliquid] pro opere pietatis membris Christi [or Christi membris] impendimus nostrae animae prodesse [or fore prodesse] credimus, quia sua illi reddimus et nostra non [or reddimus, non nostra] largimur.<sup>133</sup>

It has been suggested, very plausibly in my view, that a common scriptorium would have accounted for the similarities between the three English charters. Eorcenwold, founder of the abbeys of Barking and Chertsey, became the first abbot of Chertsey and his sister Æthelburh the first abbess of Barking; when later he was appointed bishop of London, his authority as diocesan extended over Barking, Chertsey and Farnham. In one capacity or another he could therefore have had a hand in the drafting of the three charters.<sup>134</sup> The model available to him was probably Italian, although not necessarily the charter of Gregory the Deacon.

The study of the origin, adaptation and wanderings of proems from one country to another is one of the most fascinating aspects of international diplomatic. Far from being content always to resort to such common themes as *Nihil intulimus*<sup>135</sup> or *Omnia que uidentur*,<sup>136</sup> possibly borrowed from formularies and based on quotations from the Pauline epistles, the draftsmen of early English charters occasionally drew on lesser-known sources: in a Worcester charter of the early-eighth century the proem, *Tempora temporibus subeunt, abiit et uenit aetas, sola sanctorum gloria durat in Christo*,<sup>137</sup> seems to be an adaptation in prose of the first four verses of *Carmen XVI* of St. Paulinus of Nola:

Tempora temporibus subeunt, abiit et uenit aetas;  
cuncta dies trudendo diem fugit, et rotat orbem;  
omnia praetereunt, sanctorum gloria durat  
in Christo, qui cuncta nouat, dum permanet ipse.<sup>138</sup>

Two and a half centuries later, the draftsman of an Abingdon charter of 956 took his proem directly or indirectly from one of Marculf's formulae (II. 3) and interpolated in it another passage from an unidentified source. The passage borrowed from Marculf reads as follows:

<sup>128</sup> *B.M.F. I. 2* (*Ch.L.A.*, no. 187), line 3.

<sup>129</sup> *Ibid.*, line 5.

<sup>130</sup> *Ibid.*, lines 10-11.

<sup>131</sup> *M.G.H., Epistolae*, ii, p. 437; Levison, *op. cit.*, p. 230; W. H. Stevenson, 'Trinoda necessitas', *E.H.R.*, xxix (1914), p. 702.

<sup>132</sup> *M.G.H., Epistolae*, ii, p. 437, note 4.

<sup>133</sup> *B.C.S.*, nos. 34, 72.

<sup>134</sup> Hart, *Early Charters of Eastern England*, p. 133 and references.

<sup>135</sup> *B.C.S.*, nos. 47, 59, 64, 114, 182, 187, 206, 218, etc. (not all genuine).

<sup>136</sup> *B.C.S.*, nos. 62, 63, 70, 85, 1331, etc.

<sup>137</sup> *B.C.S.*, no. 122.

<sup>138</sup> *Corpus scriptorum ecclesiasticorum latinorum*, xxx (*Sancti Pontii Meropii Paulini Nolani Carmina*), ed. G. de Hartel (1894), p. 67.

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<sup>139</sup> *B.C.S.*

<sup>140</sup> *F. M.*

<sup>141</sup> *B.C.S.*

<sup>142</sup> *Urkun  
für Urkundenf*

<sup>143</sup> *Archiv*

no. 265; ii, n  
<sup>144</sup> *Mari*

<sup>145</sup> *Racco*

note 3; *Archiv*  
<sup>146</sup> *Levis*

<sup>147</sup> *M.G.*

<sup>148</sup> *Mari*



Mundi terminum ruinis crebrescentibus adpropinquantibus etiam indicia manifesta et experimenta liquida declarant et ad discutiendum torpentes infidelium mentes illa dudum dicta oracula incumbere noscuntur . . . opere precium reor futurorum temporum vicissitudinem preoccupans anticipari et incertum humane condicionis statum sagaci mentis intuitu providere quatinus ex his inflictis facinorum vulneribus indulta superne pietatis remedia merear adipisci.<sup>139</sup>

As Æthelwold, then abbot of Abingdon, is known to have had close connexions with the abbey of St. Benoit-sur-Loire (Fleury),<sup>140</sup> a continental formula in a charter granted to his abbey would not be hard to explain. Unfortunately, the document belongs to a group of four, all concerned with Tadmarton in Oxfordshire, the authenticity of which has yet to be ascertained.

More interesting still is the proem found in two Kentish charters of the third quarter of the eighth century, one for the abbey of St. Peter's (later St. Augustine's), Canterbury (A.D. 761) and the other for Bishop Eardwulf of Rochester (A.D. 759-65):

Quamvis parva et exigua sint [or sunt] quæ pro ammissis [or ammissis] peccatis offerimus, tamen pius dominus et redemptor noster [or pius omnipotens deus] non quantitatem muneris sed devotionem offerentium semper inspicit [or inquiri].<sup>141</sup>

Is it pure coincidence that during the same period, from 754 to 775, this should be the proem most commonly used in charters granted to the monastery of Fulda, a monastery founded in 744 by the Anglo-Saxon Wynfrith (Boniface)? The proem of one of those charters (15 June 754) reads as follows:

Licet parva et exigua sunt, que pro immensis peccatis et debitis offero, tamen pius dominus noster Iesus Christus non quantitatem muneris perspicit sed devotionem offerentis.<sup>142</sup>

Is it also by accident that the proem reappears in the ninth century in charters for other continental monasteries also with close English connexions, for instance Echternach, founded by Willibrord, Hersfeld, founded by Lull, and Lorsch?<sup>143</sup>

The dispositive clause of Æthelræd's charter is, like its proem, derived from well-established Italian formulæ:

Quapropter ego Ho[d]ilredus parens Sebbi prouin[c]ia East Sexanorum, cum ips[i]us consensu, propria u[o]luntate, sana mente int[er]rog[ati]o[n]e consilio, tibi Hedilburge abbatissæ ad augmentum monasterii tui quæ dicitur Beddanhaam perp[et]ualiter trado et de meo [i]ure in tuo transscribo terram quæ appellatur Ri[c]ingahaam Budinhaam Deccanhaam Angenlabeshaam et campo in silua quæ dicitur Uuidmundesfelt, quæ simul sunt coniuncta XL [written over an erasure, probably of LXXXV] manen[tium] usq[ue] ad terminos quæ [ad] eum pertinent, cum omnib[us] ad se pertinentib[us], cum campis siluis pratis et marisco, ut tam tu quam posteri tui teneatis possideatis et quaecumq[ue] uolueris de eadem facere terra liberam habeatis potestatem.

The donor explains that he is making his gift of his own free will (*propria uoluntate*), that is to say without pressure of any kind from anyone; similar expressions are, as we have seen in connexion with the dispositive clause of Hlothhere's charter, usual in early Italian charters (e.g. *sine vi, metu . . . et circumventionis studio, sed deliberatione propria et uoluntate prona*).<sup>144</sup> He is in full possession of all his faculties, *sana mente integroque consilio*: these words were at first used exclusively by testators, and they occur regularly in Italian wills of the fourth and fifth centuries,<sup>145</sup> but by the seventh century they had spread to the dispositive clause of ordinary grants *a praesenti*.<sup>146</sup> The dispositive words, *perpetualiter trado et de meo iure in tuo transscribo*, are very close to those used in Gregory the Deacon's charter of 587 (*dono cedo trado ac mancipo et ex meo iure in vestro iure dominioque transcribo*),<sup>147</sup> and in a Ravenna charter of the sixth century (*in potestatem perpetem transcribo cedo trado et mancipo*).<sup>148</sup>

<sup>139</sup> B.C.S., no. 964. Compare M.G.H., *Formulæ*, ed. Zeumer, pp. 74-5.

<sup>140</sup> F. M. Stenton, *Anglo-Saxon England* (Oxford, 2nd ed., 1947), p. 442.

<sup>141</sup> B.C.S., nos. 190, 194.

<sup>142</sup> *Urkundenbuch des Klosters Fulda*, ed. E. E. Stengel, i (Marburg, 1913), no. 22. See also *ibid.*, nos. 23-33, etc.; *Archiv für Urkundenforschung*, xiv (1935-36), p. 51.

<sup>143</sup> *Archiv für Urkundenforschung*, loc. cit.; *Codex principis olim Laureshamensis abbatiae diplomaticus*, i (Mannheim, 1768), no. 265; ii, no. 858.

<sup>144</sup> Marini, *op. cit.*, no. 85.

<sup>145</sup> *Raccolta di documenti latini*, ed. Schiaparelli, nos. 49, 65 (p. 116); Marini, *op. cit.*, no. 74; Levison, *op. cit.*, p. 186, note 3; *Archiv für Urkundenforschung*, xiv (1935-36), pp. 17-18.

<sup>146</sup> Levison, *op. cit.*, p. 186, note 3.

<sup>147</sup> M.G.H., *Epistolæ*, ii, p. 437.

<sup>148</sup> Marini, *op. cit.*, no. 93.

The number of hides (*manentium*) granted to Abbess Æthelburh now appears as *XL*, but these numerals are clearly written by a different hand and over an erasure: the erased numerals seem to have been *LXXU*, but only the letters *L* and *U* are still visible.<sup>149</sup> In fact a charter of Bishop Eorcenwold claims that Æthelræd's grant to the abbey of Barking amounted to 75 hides:

Secunda quae ab Oedilredo tradita fuerat 75 manentium et appellatur Ricingahaam, Bydinhaam, Dæccan-  
haam, Angenlabeshaam cum campo qui dicitur Uuidmundes felth.<sup>150</sup>

Bishop Eorcenwold's charter may not be authentic in its entirety, but its diplomatic is unobjectionable. The title *seruorum dei seruus* used by the bishop was commonly adopted by bishops and archbishops in the seventh century, for example by Desiderius, bishop of Cahors, Eligius, bishop of Noyon, by archbishops of Canterbury and York, and by St. Boniface.<sup>151</sup> Gregory the Deacon also uses it in his charter of 587.<sup>152</sup> Nor is the clause concerning the monastery's freedom from episcopal interference, and guaranteeing a free election for its abbess, unusual in the latter part of the seventh century.<sup>153</sup> The dating clause is clumsily drafted and may have been interpolated in part. Its general meaning seems to be that, when Eorcenwold was in Rome ten years earlier, he was authorized by Pope Agatho to grant the charter. This alleged visit cannot have taken place before the summer of 678, since Agatho was consecrated in June 678; yet the charter gives the year of the incarnation as 677, in the first indiction. The mention of the year of the incarnation is probably a later interpolation. The first indiction, which ran from 1 September 687 to 31 August 688, probably refers, not to Eorcenwold's visit to Rome, but to the actual year in which the charter was issued. The date of the charter therefore appears to be June–August 688, but by that time Bishop Wilfrid, one of the subscribers, had already left for the North. In defence of the dating clause of the charter, it should be added that mistakes in the calculation of the indiction are not uncommon.

It is only too obvious that no forger would have changed the number of hides from a higher figure (75) to a lower one (40). One can only guess that, some time after Æthelræd's grant, the abbey of Barking lost some of its lands by exchange or gift and was required to alter the figure in the original charter. A similar procedure was used in 825 when the archbishop of Canterbury stipulated that the abbess of Minster should erase from her "ancient privileges" the names of various lands which she had agreed to surrender to him.<sup>154</sup>

The description of the lands granted as *quae simul sunt coniuncta* recalls the formula which introduces the boundaries in Vandal deeds of the late-fifth century, e.g. *inter adfines eiusdem loci qui iungitur a meridie . . .*, etc.;<sup>155</sup> similar expressions occur in two Kentish charters of the seventh century.<sup>156</sup> The abbess and her successors (*posterii tui*, in the masculine) are given freedom to dispose of the land as they wish. This may have meant the power to give, exchange and sell the land, as other early Anglo-Saxon charters explicitly state (*a me habeatis licentiam donandi, commutandi, et in arbitrio vestro sit posita*; <sup>157</sup> *possideas, dones, commutes, venundes vel quicquid exinde facere volueris liberam habeas potestatem*<sup>158</sup>). I doubt, however, whether this formula was meant to be taken literally; royal permission at least is likely to have been required before the land could be alienated. The formula was certainly not usual in grants of land such as those which were made to the church of Ravenna before the seventh century. It occurs, however, in a gift of a servant by Gregory I to the bishop of Porto (*et quicquid de eo facere volueris, quippe ut dominus, ex hac donatione iure perfecta libero potiaris arbitrio*).<sup>159</sup> On the other hand, in a charter to his monastery of Sant' Andrea al Clivo di Scauro, Gregory explicitly forbids the abbot and his successors to alienate any of the lands which he has given to the monastery.<sup>160</sup>

<sup>149</sup> See Plate II (a).

<sup>150</sup> Hart, *Early Charters of Eastern England*, pp. 122–3.

<sup>151</sup> *M.G.H., Epistolae*, iii, pp. 195, 199, 200, 206, 282–3, 285–6, 398, 412, etc.

<sup>152</sup> *Ibid.*, ii, p. 437.

<sup>153</sup> See *Codice diplomatico longobardo*, ed. Schiaparelli, i, no. 7.

<sup>154</sup> *B.C.S.*, no. 384; Levison, *op. cit.*, p. 252.

<sup>155</sup> *Tablettes Albertini*, no. 16; see also *ibid.*, no. 19.

<sup>156</sup> *B.C.S.*, nos. 67, 73.

<sup>157</sup> *B.C.S.*, no. 72.

<sup>158</sup> *B.C.S.*, no. 86 (doubtful).

<sup>159</sup> *Urkunden und Akten*, ed. Brandt, no. 12. See also *Marini, op. cit.*, no. 93: . . . quicquid ex eadem portionem iuris mei facere maluerint per quolibet contractu liberam et perpetem in omnibus habeant potestatem.

<sup>160</sup> *M.G.H., Epistolae*, i, p. 15.



The dating clause of Æthelræd's charter (*Actum mense martio*) mentions neither the place of issue nor the indictional year. A *corroboratio* clause follows, announcing that the grantor has asked an adequate number of witnesses to subscribe (*et testes competenti numero ut subscriberent rogavi*). The phrase *competenti numero* also occurs in two Italian documents of the fifth and sixth centuries.<sup>161</sup>

The *sanctio* consists of a penalty clause of the religious type and it ends with the normal clause stating that infringements will not impair the validity of the charter (*m[anentem] hanc kartulam donationis in sua nihilominus firmitate*).

Then comes the phrase *Et ut firma et inconcussum sit donum*, which could be expected to introduce a clause such as *ego . . . pro confirmatione subscripsi*, but instead it introduces a boundary clause, which in turn is followed by a blessing of a religious kind promising divine rewards to those who would increase the donor's grant. The text of the charter ends with an *apprecatio* (*Amen*), and its validation signs consist of twelve subscriptions, nine of which are in the form *Ego . . . subscripsi* (some without a cross) and three in the form *Signum manus*; seven of them are on the face of the charter and five on the dorse. Neither the subscriptions nor the crosses are autograph.

Considerable doubts have been expressed on the originality of the charter. It has been said, for example, that the uncial script is 'somewhat artificial' and that 'the wide separation of words favours a date in the eighth century'.<sup>162</sup> It has also been argued that the use of *e* for unaccented Old-English *i* in the two names *Oedelraedus* and *Haedde* is a feature of the late-eighth century rather than of the late-seventh.<sup>163</sup> What needs emphasizing as well is that the script of the charter changes abruptly after the second word of the seventeenth line.<sup>164</sup> From the beginning of the verbal invocation to the end of the clause *Et ut firma et inconcussum sit donum* the charter (apart from the numerals *XL* in line 8) is in one single hand which I shall call Hand A. Then Hand B takes over, starting with the boundary clause (*Termini sunt autem . . .*), and is responsible for the rest of the document, including all the subscriptions on the dorse as well as on the face of the charter.

It is difficult to regard Hand A as inconsistent with the date of the charter (March 687?). The separation of words is not wider than—say—in the Stonyhurst Gospel, except in line 9, but there the gap seems to be due to an erasure for which the scribe of that part of the charter was responsible. Much of the apparent artificiality of the script is the result of partial retracing of some of the letters, particularly in lines 7–9. Hand A retains the unaccented *i* in *Hoditredus* and *Hedilburge*. The first part of the charter, written by Hand A, seems to be unobjectionable in every respect, and I am confident that this part, but this part only, should be regarded as an original.

The second part, written by Hand B, raises many difficult problems. Hand B, an ugly and unskilled hand, is undoubtedly imitative; it differs from Hand A in the shape of most letters and especially *A*, *C*, *D*, *M* and *U*. The part written by Hand B has a wider left-hand margin. It is only in that part that we find the later spellings *Oedelraedus* and *Haedde*, the runic *wen* instead of *uu* (twice in line 18) and the abbreviated form *accingit* for *accingitur*. Hand B may belong to the second half of the eighth century.

It seems therefore that the original charter ended with the unfinished clause *Et ut firma et inconcussum sit donum*. As already stated, the clause should perhaps have continued *ego . . . pro confirmatione subscripsi*. It is possible that these last words were in fact written on a separate piece of vellum, on which all the subscriptions may also have been written, and that this piece of vellum, now missing, was once stitched as a schedule to the main charter. Although the charter was trimmed, presumably in Cotton's time, stitching holes are still visible along the lower edge. Perhaps what was written on the schedule was meant to be immediately copied on the main piece of vellum, as in Hlothhere's charter, but this was not done until the next century. As a result, we do not know how far the part written in Hand B can be trusted. Were the original spellings modernized to such forms as *Oedelraedus* and *Haedde*? Was the boundary clause, so incongruously introduced by a corroboration formula, already in the schedule, or was it added in the eighth century? Were all the subscriptions written

<sup>161</sup> *Urkunden und Akten*, ed. Brandi, no. 11; *Raccolta di documenti latini*, ed. Schiaparelli, no. 65 (p. 116).

<sup>162</sup> Lowe, *English Uncial*, p. 21, no. XXII.

<sup>163</sup> W. H. Stevenson, 'Trinoda necessitas', *E.H.R.*, xxix (1914), p. 702, note 66; K. Sisam, 'Cynewulf and his Poetry', *Proceedings of the British Academy*, xviii, p. 325, note 5.

<sup>164</sup> See Plate II (b).

in one hand and at the same time? None of these questions can be answered with any confidence. It is very puzzling to find King Sebbi subscribing twice, in one place in the form *Ego . . . subscripsi* and in the other in the form *Signum manus . . .*: it may be suggested that in the schedule Sebbi's alleged first subscription was not a subscription at all, but the continuation of the corroboration clause *Et ut firma et inconcussum sit donum*, and that his real subscription was the second one (*Signum manus Sebbi regis*). It is likely also that the last two subscriptions, those of Kings Sigehard and Swæfred, were written in a different hand from the rest on the schedule, since they probably represent a later confirmation made by them as joint kings after the abdication or death of their father Sebbi.

An early endorsement, which may be contemporary, reads: *De terram quam donavit Odil*-[gap of almost one inch]-*redus*.<sup>165</sup> The early spelling *Odilredus* should be noted as well as the gap in the middle of the name; a similar gap is found on the dorse of two Carolingian "letters close", in the middle of the address.<sup>166</sup> It seems that, in order to keep the charter folded for easy transport and storage, a loose thong was wrapped around it like a modern rubber-band, and the endorsement was written on either side of the thong. Gaps of the same kind occur in the endorsements of other Anglo-Saxon charters and of many St. Gallen charters.<sup>167</sup> In England, at least from the latter part of the ninth century, a tongue partially cut from the lower edge of the charter in the same fashion as the wrapping-tie of the later writ, was occasionally used as an alternative to the loose thong. Such a tongue is still attached to a Canterbury private charter of the second half of the ninth century,<sup>168</sup> but this is an exceptional survival; normally the tongue has been torn off and a step in the bottom left-hand corner of the document is the only evidence we have of the former existence of the tongue.<sup>169</sup> Reginald Lane Poole drew attention to the surviving tongue and steps, but he wrongly interpreted them as evidence that some Anglo-Saxon diplomas were sealed.<sup>170</sup>

To the contemporary endorsement on Æthelræd's charter were later added the words *XL manentium*, in a cursive hand perhaps of the late-eighth century; the numerals *XL* appear to have been written over an erasure, but it is impossible to say whether the erased numerals were *LXXU* as on the face of the charter.

According to a late-medieval endorsement, the charter of Æthelræd was at one time regarded as the foundation charter of Barking Abbey: *Fundacio mon[asterii] de Bark[in]ge* (not *Karta de Con . . .* as usually printed).

\* \* \*

Of all the arguments put forward in support of the view that the charters of Hlothhere and Æthelræd are both original, one *in toto* and the other in part only, those based on the script and physical appearance of the vellum are the most decisive. In both cases, it seems that the charter was drawn up in two successive stages, the second one being the addition of the signs of validation, that is to say the subscriptions. We have seen that some time elapsed between the writing of the text of Hlothhere's charter and the addition of the subscriptions, and that probably one single scribe was responsible for both stages of the operation. Over one hundred years later, a similar procedure was used for an important grant of King Cenwulf of Mercia to Christ Church, Canterbury.<sup>171</sup> The grant is said to have been made at Tamworth in Staffordshire in 799. Here again the charter is made up of two parts which differ from one another in the appearance of their script: the first part consists of the text of the grant, and the second begins with the dating clause, followed by the subscriptions. The same scribe wrote the text, date and subscriptions, but the script is smaller in the second part and the ink is of a different colour. There is no doubt that the charter is an original, and we may trust its contents without hesitation. The charter tells the story of the land which Cenwulf is restoring to

<sup>165</sup> See Plate II (c).

<sup>166</sup> *Journal of the Society of Archivists*, III, 4 (Oct. 1966), p. 169.

<sup>167</sup> *B.M.F.* I, 14, II, 33; *O.S.F.* II, Exeter 15; *Ch.L.A.*, nos. 109, 113, 116, etc.

<sup>168</sup> *O.S.F.* I, 9.

<sup>169</sup> *O.S.F.* I, 16 and 18; *O.S.F.* II, Exeter 15, Winchester Cath. 2, Earl of Ilchester 2; *O.S.F.* III, 42; British Museum, Add. MS. 713B. The following charters also have steps, but they are not original documents, and some of them are forgeries: *B.M.F.* III, 4; *ibid.*, IV, 9; *O.S.F.* II, Westminster 1 and 4, Earl of Ilchester 1.

<sup>170</sup> Poole, *Studies in Chronology and History*, p. 107, note 1 and plate.

<sup>171</sup> *O.S.F.* III, 7 (*Ch.L.A.*, no. 223; *B.C.S.*, no. 293; *E.H.D.*, I, pp. 470-1).

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<sup>172</sup> *B.M.I.*

<sup>173</sup> Mary

*Mitteilungen de*

<sup>174</sup> *Ibid.*,

<sup>175</sup> *B.M.I.*

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<sup>176</sup> *F. M.*

<sup>177</sup> *C.L.A.*

<sup>178</sup> *B.C.S.*

<sup>179</sup> *Ch.L.*

Christ Church. It had first been given by King Egbert of Kent to his thegn Ealdhun, but the latter, before going overseas, had re-granted the estate to Christ Church. Then Offa seized it on the ground that it was wrong that a thegn should have presumed to transfer to someone else, without his lord's consent (*absque eius testimonio*, i.e. without his subscription), a land which his lord had given him. Does this mean that Christ Church had been unable to produce before Offa evidence that Ealdhun had obtained Egbert's consent before giving his estate away to their community? Another Canterbury charter, dated A.D. 811, claims that Offa had acted as if Egbert was not entitled to book land in hereditary right (*quasi non liceret Ecgberhto agros hereditario iure scribere*); in other words, Christ Church thought that in Offa's eyes it was not so much Ealdhun's re-grant which lacked validity as Egbert's original grant.<sup>172</sup> Whichever version is the correct one, the charter of 799 makes it clear that from at least Offa's reign a layman could not alienate his book-land without the king's permission.

The originality of two other Canterbury charters, both of the ninth century, is also beyond question (*B.M.F.* II. 9: *B.C.S.*, no. 326: A.D. 808; *O.S.F.* III. 17: *B.C.S.* 442: A.D. 843). A schedule containing the list of subscribers is attached to each of them, and in both cases the schedule was used as a draft from which the subscriptions on the main parchment were compiled. In one of the two charters, the subscriptions were certainly written later than the text and by the same scribe;<sup>173</sup> in the other, the same procedure may have been adopted, but there is no obvious change, in the appearance of the script, from the text to the subscriptions.<sup>174</sup> If the views which I have expressed on the charter of Æthelræd for Barking Abbey are correct, the custom of attaching to the main charter a schedule containing the list of witnesses would go back to the latter part of the seventh century.

In another famous charter, which records the grant of some land at Stour in Ismere by King Æthelbald of Mercia for the foundation of a monastery, seven subscriptions were written at the same time as the text (nos. 1, 3–8), and seven were added later with a thinner pen (nos. 2, 9–14). As one of the added subscriptions was that of Bishop Wor of Lichfield, it could not be placed below that of a layman (no. 8), and for that reason, it was inserted between the subscriptions of the king and of Bishop Wilfrid of Worcester.<sup>175</sup> Since most of the witnesses have not been identified, it is impossible to say whether the division into two groups had a territorial basis or was purely accidental.

The charter owes its fame not only to the fact that it is written in uncials and on vellum like the charters of Hlothhere and Æthelræd, but also to the titles which it gives to King Æthelbald of Mercia: in the *dispositio* the king is described as *Æthilbalt d[omi]no donante rex non solum Mercensium sed et omnium prouinciarum quae generale nomine Sut Angli dicuntur*, and in the royal subscription as *Æthilbalt rex Britanniae*. For this reason it was rightly given a prominent place in Sir Frank Stenton's discussion of the supremacy of the Mercian kings.<sup>176</sup> No doubt the titles given to the king in the charter reflect accurately Æthelbald's own claims to the supremacy over all the English provinces south of the Humber, but it should be remembered that the charter, like all the other Anglo-Saxon diplomas, was drafted and written in an ecclesiastical scriptorium, possibly at Worcester, and not in a royal secretariat: its script resembles that of the famous Vespasian Psalter,<sup>177</sup> and the document probably comes from the archives of Worcester Cathedral, like another charter in which the king is called *Æthilbalth non solum Mercensium sed et uniuersarum prouinciarum quae communi vocabulo dicuntur Suthengli diuina largiente gratia rex*.<sup>178</sup> Like Hlothhere's charter of 679, the Stour charter of Æthelbald has a postscript explaining that the king made an additional grant to the beneficiary, but here the postscript is written on the dorse and in a different hand from the face of the document.<sup>179</sup>

Among the documents which can be safely regarded as originals, a well-known Sussex charter also deserves a place of honour: it is the charter by which Oslac, ealdorman of the South Saxons,

<sup>172</sup> *B.M.F.* II. 11; *B.C.S.*, no. 332. See *E.H.D.*, i, note on no. 80.

<sup>173</sup> Mary Prescott Parsons, 'Some Scribal Memoranda for Anglo-Saxon Charters of the Eighth and Ninth Centuries', *Mitteilungen des Österreichischen Instituts für Geschichtsforschung*, xiv Erg.-Band (1939), pp. 15–19.

<sup>174</sup> *Ibid.*, pp. 21–2. I am not so sure as Miss Parsons, however, that the whole charter was written without a break.

<sup>175</sup> *B.M.F.* I. 7 (Lowe, *English Uncial*, plate XXIII; *Ch.L.A.*, no. 183; *B.C.S.*, no. 154; *E.H.D.*, i, pp. 453–4). The subscriptions are reproduced on Plate I (b). Note that each of the first eight subscriptions is followed by a punctuation mark; this is not so for the last six.

<sup>176</sup> F. M. Stenton, 'The Supremacy of the Mercian Kings', *E.H.R.*, xxxiii (1918), pp. 433–52, especially 438–9.

<sup>177</sup> *C.L.A.*, no. 193; Lowe, *English Uncial*, p. 21, no. XXVI and references.

<sup>178</sup> *B.C.S.*, no. 157.

<sup>179</sup> *Ch.L.A.*, no. 183.

granted to the church of St. Paul a piece of land at Earnley in Sussex.<sup>180</sup> The grant is said to have been made at Selsey in 780 (*Factum est in loco que appellatur Siolesaei*), and the charter was probably written there. St. Paul's church has so far defied identification, but perhaps it should be identified with the church of Selsey itself, although the dedication of the church of Selsey is thought to have always been to St. Peter;<sup>181</sup> at any rate, the charter comes from the archives of Selsey. Oslac's grant is written on the face of the vellum, in an extraordinary type of script best described, in Sir Frank Stenton's words, as crude and unpractised.<sup>182</sup> Indeed, if it was not for its endorsements, the charter might well have been branded as suspect on account of its handwriting. Odd Latin forms include *concede* for *concedo* and the usual mistakes of case and gender. Probably written at Selsey, the charter was also presumably drafted there: its anathema is introduced by the curious phrase *Sic et regalis omnis dignitas dicit*; it seems that the phrase was also used in another Sussex charter of a slightly earlier date, but the original of this second charter has not survived and its transcriber probably copied the words inaccurately and incompletely (*Sic est regalis omnis dignitas*).<sup>183</sup>

Oslac's charter has several endorsements, the longest of which consists of a confirmation by King Offa of Mercia made in the next fifteen years.<sup>184</sup> This confirmation appears in the form of subscriptions, those of King Offa, Queen Cynethryth, his wife, King Egcfrið, their son (*Ego Egcfrið rex Merc' consensi et subscripsi*), Brorda, *prefectus*, and Bishop Unwona (of Leicester), followed by the statement that the ceremony took place at Irthlingborough in Northamptonshire (*Hoc rite peractum in loco quæ nuncupatur Yrtinga burg*). According to the words used by Offa in his subscription, it was at the request of Wihthun, bishop of the South Saxons, that the confirmation was made. The arrangement of the subscriptions shows that, when the document was presented to Offa, it had already been folded once vertically and once horizontally: the vertical fold forced the scribe to write the subscriptions in two columns on either side of the crease in the vellum, and the horizontal fold explains the abnormal gap between the subscriptions of Cynethryth and Egcfrið. When the confirmation was recorded, the charter already had one endorsement (*Earnaleah et Tievesora*), which prevented the scribe from writing Brorda's subscription opposite the king's subscription; he had to write it a little lower down.<sup>185</sup>

Neither the subscriptions nor the crosses are autograph; they are in a single, good, contemporary hand, which contrasts sharply with the ugly script of Oslac's original grant. The writer of these subscriptions may have been a scribe attached to the service of Bishop Unwona of Leicester, one of the subscribers, or of the bishop of Worcester, who, however, does not subscribe. The formulae used suggest a Worcester draftsman: this applies for example to the words *deo donante rex*<sup>186</sup> and *peractum*,<sup>187</sup> and to the expression *conroborans subscribo*, which recalls such combinations as *concedens donabo*, *donans donabo* and *tradens donabo* so much in evidence in Worcester charters of the period.<sup>188</sup>

One interesting point which has so far passed unnoticed is that the half sheet of vellum from which the piece used for Oslac's charter was cut was originally meant for a psalter. If we place the charter face down and turn it upside down, the following words can be read just below the upper margin: *non amouit deprecationem [meam] et misericordiam suam a me*, the last nine words of Psalm LXV; a little lower down, on the left: *Deus* (in an abbreviated form: a large uncial *D*; above it, an abbreviation mark; inside it, the letter *s*), the first word of Psalm LXVI. It seems that something went wrong with the writing of the leaf, and that it was discarded before completion of Psalm LXVI. Apart from the word *Deus*, the psalter fragment is written in an insular minuscule of the eighth century. If we were sure that the psalter was being written at the time of Oslac's grant, the fragment could be precisely dated 780. It is possible, however, that the psalter had been written some years before and the partially-blank leaf stored for some time before it was re-used. It seems reasonable to assume that it was written

<sup>180</sup> Chichester, Diocesan Record Office, Cap. I/17; *B.C.S.*, no. 1334; *E.H.D.*, i, pp. 464-5. Extracts are reproduced on Plate III.

<sup>181</sup> Levison, *op. cit.*, p. 261.

<sup>182</sup> Stenton, *Latin Charters*, p. 37. See Plate III (b).

<sup>183</sup> *B.C.S.*, no. 145.

<sup>184</sup> Plate III (a).

<sup>185</sup> Stenton, *Latin Charters*, p. 37, and see Plate III (a).

<sup>186</sup> *B.C.S.*, nos. 202-4, 240.

<sup>187</sup> *B.C.S.*, nos. 216, 356-7, and compare *ibid.*, nos. 187, 353.

<sup>188</sup> *B.C.S.*, nos. 137-8, 164, 201, 216, 230, 262, 267, 283, 304, etc.

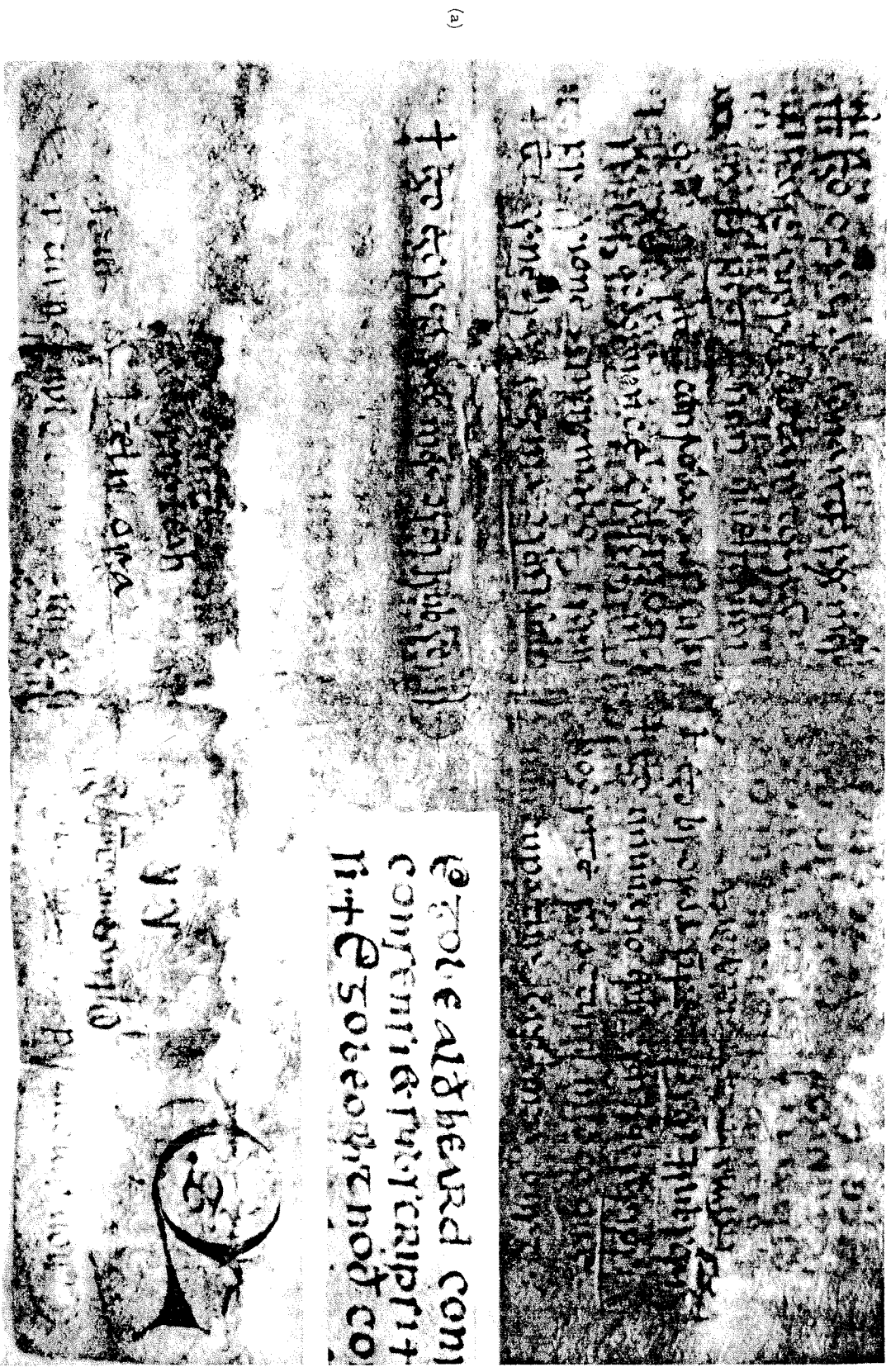
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Plate III



Charter of Oslac, ealdorman of the South Saxons: A.D. 780  
 (a) Extract from the obverse  
 (b) Extract from the reverse



by a Selsey scribe; if so, he was certainly trained in a different scriptorium from that which produced the scribe of Oslac's charter.

\* \* \*

The handful of charters which have been considered in this paper deserve to be regarded as originals. Their importance is therefore considerable, not only to the historian, but also to the diplomatist, who can use their formulae as a basis for the discussion of other charters whose text is known from cartulary copies only. The criticism of such copies, however, even with the help of originals, is always a hazardous venture. An alleged seventh-century charter copied in a cartulary may be spurious although all its formulae may appear to be as good as those of Hlothhere's diploma. What are we to think of *B.C.S.*, no. 86, a charter of King Wihtred of Kent for Abbess Æbba of Minster in Thanet, and of *B.C.S.*, no. 296, a charter of King Cenwulf of Mercia for Christ Church, Canterbury? Both charters share practically identical formulae, which can be traced back to reputable Italian precedents. It may be argued that by Cenwulf's time Anglo-Saxon diplomas no longer relied so heavily on Italian formulae and that Cenwulf's charter is spurious, the forger having used the charter of Wihtred, presumed genuine, as his model. There is no doubt that, in the form in which it has come down to us, Cenwulf's charter, a single-sheet document written perhaps in the eleventh century,<sup>189</sup> cannot possibly be regarded as genuine: the name of Cenwulf's wife is given as *Cenegitha*, a woman otherwise unknown; Archbishop Theodore of Canterbury (died 19 Sept. 690) and Abbot Adrian of SS. Peter and Paul, Canterbury (died *c.* 709), could not have witnessed a document together with Cenwulf (796–821) and his son Kenelm ("St. Kenelm"). Cenwulf's charter is dated 16 kal. August [17 July], indiction 7, regnal year 3, all of which dating elements are remarkably consistent with one another, but we become suspicious when we realise that the feast of St. Kenelm, one of the subscribers, was celebrated on 17 July.<sup>190</sup>

If we turn to Wihtred's charter, we find that there the king's wife is also called *Kinigitha*, although the name of Wihtred's wife seems to have been Æthelburh. Like the charter of Cenwulf, Wihtred's diploma is dated 16 kal. August, indiction 7, regnal year 3, and here again all the dating elements fit together in a remarkable fashion. But the date of 17 July is no less suspicious in this charter than in the other: the beneficiary of Wihtred's charter is Abbess Æbba of Minster in Thanet; in the first quarter of the ninth century, Cwenthryth, a woman of doubtful morals, was abbess of both Minster and Winchcombe, and it was at Winchcombe, during her rule, that St. Kenelm was buried.<sup>191</sup> Was it also during her rule that Wihtred's charter was forged? The date of 17 July was certainly more likely to be remembered at Winchcombe than anywhere else.

If neither *B.C.S.*, no. 86, nor *B.C.S.*, no. 296 is genuine, what are we to think of the formula *cartulam scribendam dictavi*, an incomplete version of the Italian *rogatio* clause, found in both charters and in no other early Anglo-Saxon charter?<sup>192</sup> Was it in fact adapted from a formula such as the *Liber Diurnus*? It seems possible that there was a copy of the *Liber Diurnus* at Winchcombe, and that it was from this book that two alleged papal privileges, whose authenticity was defended by Levison, were forged.<sup>193</sup> Levison argued that the privilege of Paschal I copied in the Winchcombe cartulary is genuine: the transcriber would have copied his text from the original papyrus, but this papyrus was then in a bad state of preservation; because the original was damaged, the copyist could not read the names of the lands and possessions confirmed by the pope; he also had difficulty in reading the script of the original and this led him to give a garbled version of the dating clause. By an extraordinary feat of editorial ingenuity, Levison reconstructed what he regarded as the likely dating clause of the original privilege. But Levison did not explain why it was only the dating clause which the transcriber could not read. He should have found the rest of the document just as difficult. Was it because

<sup>189</sup> *B.M.F.* IV. 7.

<sup>190</sup> Levison, *op. cit.*, p. 249.

<sup>191</sup> *Ibid.*, pp. 249–52, 257.

<sup>192</sup> *Journal of the Society of Archivists*, III, 2 (Oct. 1965), p. 50. The statement regarding the absence of the clause in papal documents requires a slight modification: the clause is found in at least three documents of a special type issued by Gregory I; one of them is a manumission (*M.G.H., Epistolae*, i, p. 391), and two are appointments of a *defensor ecclesiae* (*ibid.*, i, p. 307; ii, p. 107).

<sup>193</sup> Levison, *op. cit.*, pp. 255–8.

the "original" was damaged that the scribe had to leave out the names of the possessions granted by Paschal I, or was it simply because the *Liber Diurnus* model used by the forger (Codex Vat., no. 93)<sup>194</sup> did not give names either? The text of the privilege of Paschal I ends with the words *sicuti inferius asscripta eadem loca atque agrorum prædia continere monstratur*; then comes the dating clause.<sup>195</sup> In the *Liber Diurnus*, the formula no. 93, which is for the most part reproduced in the privilege of Paschal I, also ends with the words: *sicuti inferius adscripta eadem loca atque agrorum prædia monstratur scilicet*. I am convinced that the so-called privilege of Paschal I is a forgery: for the text the forger used the formula no. 93 of the *Liber Diurnus*, and for the date he used an original which he could not read. Since the formula of the *Liber Diurnus*, copied from a privilege of Pope Adrian I for King Offa of Mercia,<sup>196</sup> was the only one in the book which could be definitely connected with England, it was the obvious model for any forger to use.

<sup>194</sup> *Liber Diurnus Romanorum Pontificum*, ed. H. Foerster, pp. 172-3.

<sup>195</sup> See Levison, *op. cit.*, p. 256; *B.C.S.*, no. 363.

<sup>196</sup> Levison, *op. cit.*, p. 255. If all the Winchcombe charters perished in the fire of 1151 (*Ibid.*, p. 253), the extant forgery is unlikely to have been made before the second half of the twelfth century. The majority of the charters mentioned in this paper are also discussed by Dr. Albert Bruckner, 'Zur Diplomatik der älteren angelsächsischen Urkunde', *Archivalische Zeitschrift*, LXI (1965), pp. 11-45.

## AN EARLY 16TH CENTURY ACT BOOK OF THE DIOCESE OF LONDON

BY COLIN A. McLAREN, B.A.

THE London Record Society has recently published a volume of early 16th-century wills selected from records of the Consistory Court of the Diocese of London now in the custody of the Greater London Council Record Office. Another record of the court from the same period is also the subject of research at present; this is the act book of the vicars general, known as 'Foxford', 1520/1-1538/9,<sup>1</sup> which is being edited by the writer as a London University thesis.

### Physical Description

'Foxford' comprises 270 paper folios; these are numbered in a later hand from 1 to 268, two folios are numbered 137, and the last folio is un-numbered. The folios were apparently trimmed in gathers during a rebinding and now measure 8½ ins x 12 ins. Preceding the numbered folios are seven smaller sheets, un-numbered, of a lighter-weight paper, and in a later hand than the rest of the text; six of them contain lists of probate acts and marriage licences in the volume, and one is blank. Eleven documents have been bound in with the text. In each case they have been assigned the number of the folio they precede, except for a double folio between ff.149 and 152 where the leaves have been numbered in sequence. In the course of editing, however, the second of each pair of duplicated numbers has been given the letter A.

The folios have been extensively and badly repaired with a 'toned' paper slightly heavier than the original. In most cases the repairs have been confined to the inner margins, presumably to strengthen them for rebinding. The outer margins of ff.1-16 and the inner and lower margins of ff.258-268, however, seem to have been in very bad condition, for portions of them have been replaced entirely by repair-paper. The lower margins of ff.238-268 were apparently exposed to damp; where un-repaired they are extremely brittle. The unequal weight of the repair-paper and the clumsiness of the repairs has caused the original paper to tear in many places and the centres of some folios to cockle. In ff.1-6 this presents a considerable hazard and has impeded transcription.

<sup>1</sup> G.L.R.O., DL/C/330.

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<sup>2</sup> W. H  
<sup>3</sup> See e  
<sup>4</sup> J. Fo  
<sup>5</sup> *Ibid.*,  
<sup>6</sup> B.M.  
<sup>7</sup> A. &  
<sup>8</sup> J. &  
<sup>9</sup> J. Le  
in *Fasti*.  
<sup>10</sup> G. F  
<sup>11</sup> A. &