JUDEX TARENTINUS

The career of Judex Tarentinus magne curie magister justiciarius *and the emergence of the Sicilian* regalis magna curia *under William I and the regency of Margaret of Navarre, 1156–72*

By EVELYN JAMISON

I

Judex Tarentinus, ὁ κριτὴς τῆς μεγάλης κόρτης ὁ ταραντῖνος, his origins and his activity as envoy to Byzantium and *magister justiciarius magne curie.*

The recent edition in full of one of the earliest records of the *magna curia*, emanating in January 1159 from the three *magistri justiciarii*, among them Judex de Tarento (more frequently Judex Tarentinus),[1] presents a fitting occasion to collect all available

[1] The priority of this record is challenged by a document of *Rainaldus de Tusa magnus Justiciarius Regie magne curie*, who carried out singly a sworn inquest on the precept of King William (I) and the mandate of Great Admiral Maio, during a dispute between the bishops of Cefalù and Patti (C. A. Garufi, *I Documenti inediti dell'epoca normanna in Sicilia*, Palermo, 1899, no. xxxiv, p. 81); the document is dated 20 Jan. 1159, as against the month of January only, without giving the day, which is found in the record of particular interest to us here. This record, formerly in the convent of S. Maria di Messina, now Paris, Bibl. Nat., Nouv. Acq. Lat., 2581, no. 1A, has hitherto been known only in an extract by C. H. Haskins in his remarkable article, 'England and Sicily in the Twelfth Century', in *English Historical Review* xxvi, 1911, p. 642, n. 92, to which he added references to the activity of Judex Tarentinus as master justiciar in the trial in 1168 of Count Richard of Molise, and again in a testamentary suit in 1171 (*v. post*, p. 298, n. 3, and p. 300, n. 1). In 1963, however, the document of Jan. 1159 has been published *in extenso* in: *Les Actes latins de S. Maria di Messina (1103–1250)*, ed. with valuable introduction, indexes, and critical and historical notes; also six facsimiles (on too small a scale unfortunately, and omitting our present record), by L.-R. Ménager, Palermo, 1963, no. 7, pp. 83–93. This edition forms the second part, Testi 9, of the splendid publication: *Atti antichi del Monastero di S. Maria di Messina*, Istituto Siciliano di Studi Bizantini e Neoellenici, Testi e monumenti, publ. B. Lavagnini, Palermo, 1963. The first part, Testi 8, consists of *Les Actes grecs de S. Maria di Messina*, ed. A. Guillou, with important notes and indexes, and a portfolio of two maps and thirteen very fine facsimiles. The document of Jan. 1159 is again published here, *v. post*, Appendix No. 1, from a transcript which I made in 1947, in order

information about this master justiciar, with the addition of an unpublished judgement pronounced by him in July 1168.[1] Much more is known of him than of any other holder of the office, whether contemporary or future. Thanks to the *Testament* with a detailed disposition of all his worldly affairs, which he had drawn up in 1173 at the time of his monastic profession in the Basilian house of S. Salvatore *ad Linguam Phari* (near Messina), we have a vivid picture of his personality and Greek–Apulian background.[2] We learn too that he paid a visit to Constantinople, and, by implication from other passages in the *Testament*, that he was most probably a member of the Sicilian embassy which in 1167 restored peace with the Eastern Empire. Furthermore, there are full records extant to show that in five cases at least brought before the *magna curia* between 1159 and 1171 Judex Tarentinus was present as *magister justiciarius*, whether sitting alone or with one or two colleagues, or else as assessor in an enlarged special session of the court.[3] It may well be that as a trained lawyer he was appointed to the office to provide the truly professional element essential for the emergence of the *regalis magna curia* as it was conceived in Great Admiral Maio's creative mind. Henceforward it constituted specifically the supreme judicial organ of the later Norman monarchy of Sicily, in both criminal and civil cases. Its development during the troubled reign of William I and the regency of Queen Margaret for the young William II may surely be traced in the cases heard by Judex Tarentinus, and his influence cannot have failed to mould the procedure of the *magna curia* no less than the law of property both public and private, in doctrine and practice.

Judex Tarentinus was clearly of Greek descent although his father's name is not known, because he appended his Greek monocondylic signature even to Latin documents,[4] and he had

to present some rectified readings of a certain significance, and to provide ready reference to various passages discussed.

[1] Appendix No. 3.

[2] Ermanno Aar, 'Gli studi storici in Terra d'Otranto', (b) Aggiunte, 3°, in *Archivio storico Italiano*, 4ª serie, t. ix, Florence, 1882, pp. 252–7; also reprinted in a single volume with the same title, Florence, 1888; references in the present article are to the *Arch. Stor. Ital.* The text of the will was communicated to Ermanno Aar shortly after it was discovered by Papas Filippo Matranga as a palimpsest in Cod. MB, 42, f. 23 of the Biblioteca della R. Università di Messina (formerly in the Archive of S. Salvatore *ad Linguam Phari*), and transcribed by him with emendations necessitated by the defective state of the MS., and provided with notes and an Italian translation.

[3] For these cases cf. pp. 297–300 *post*, and the Appendix of Documents.

[4] Three of these signatures are transcribed in the Appendix.

his will drawn up in Greek; he was, moreover, a pious adherent of the Greek rite and, as we have seen, ended his life in a Greek monastery. His culture nevertheless was dual and his speech bilingual; he was therefore as capable of conducting judicial business in Latin as of carrying on intricate negotiations at the Byzantine court. His own name is recorded both in Greek and in Latin, with some variation in form indeed, but in fact presenting difficulties in regard rather to its precise significance. It is hard to decide whether κριτής, Judex, is his Christian name or the title of his office. When he appears for the first time he is called in the Latin judicial record of 1159 Judex de Tarento, and Judex is here comparable to the Christian names of his colleagues, Raynaldus de Tusa and Avenellus de Petralia.[1] On three further occasions, twice in 1168 and once in 1171,[2] the Latin form employed is Judex Tarentinus; and this seems to have a similar equivalence. Moreover, turning now to Greek usage, in his own signature to the *Testament* his name in religion, ὁ μοναχὸς κλήμης, is placed in apposition to his former name in the world, πρὶν κριτὴς ταραντῖνος, thus suggesting once again that κριτής is a Christian name. Nevertheless, in three other Greek signatures from his own hand attached to Latin documents, κριτής seems rather to be the title of office and so to leave ὁ ταραντῖνος as the sole personal name. This is true also of the description of the testator placed by the scribe at the head of the *Testament*: κριτῶν ὁ πάλαι πρόκριτος ⟨ὁ ταραντῖνος⟩ νυνὶ μοναχὸς διατίθεμαι κλήμης, in sharp contrast to his own signature to the same document, mentioned above. Analogous difficulties are raised by the names of some contemporaries. In regard to Judex Maior de Botonto, well known as a constable and a justiciar in the Bari area, *Judex* was almost certainly a proper name, because the form and order of the words never vary at all;[3] the opposite solution, however, seems probable for Geodicus Persicus, the immediate successor of Judex Tarentinus as one of the three *magnae vero et supremae curiae magni Judices*, where the form 'Geodicus' is apparently derived from a Greek attempt to represent the Latin *Judex*.[4]

[1] Appendix No. 1.

[2] For the references to these cases cf. *post*, pp. 297–300.

[3] For a fuller discussion cf. E. Jamison, *Norman Administration of Apulia and Capua* (*Papers of the British School at Rome*, vi. 1913, pp. 311 seq., 345 seq.); to the references may be added Arch. Badia Cava, Arca xxxiv, no. 120, of the year 1175.

[4] R. Gregorio, *Opere scelte*, ed. 3ª Palermo, 1845, p. 153, n. 3, Latin version of Greek original.

This master justiciar is called in several Latin originals up to 1177 simply Persicus, but he has been identified, perhaps erroneously, with *magister Persicus de Benevento*, a judge in 1197 of Brindisi.[1] These analogies nevertheless do not help to solve the problem of Judex Tarentinus.

Whatever the exact significance of his name, Judex Tarentinus was undoubtedly a lawyer by profession.[2] He left his law library of fourteen volumes to his two grandsons, to their profit and his memory. What would we not give to know the titles of these books? He had married his only daughter to a man of law; and he had obtained the king's favour in securing the succession of their elder son, John, to the paternal office. It is clear that Judex Tarentinus belonged to that class of propertied, educated notables and officials which exercised great influence in the South Italian cities, and provided moreover, such eminent royal servants as Great Admiral Maio of Bari, and the members of the Guarna and Mansella families of Salerno. Another example is to be found nearer home in Riccardus de Tarento, a royal knight or baron of Latin culture, who rose to the high position of *logotheta sacri palatii*.[3] He, however, sprang from the military class, while Judex Tarentinus would seem rather to have belonged to the judicial order of society. His property was situated both within and without the κάστρον ταράντης, a description no doubt implying that much of it lay within the large fortified area which formed the great castle of Byzantine construction. The area was much larger in the twelfth century than it subsequently became after the channel was cut to connect the Mar Piccolo with the Mar Grande. It is interesting to note the clear distinction between the *castrum* and the *civitas* of Taranto which is emphasized in Frederick II's 'Statute for the Repair of the Castles'.[4] Here there is mention of *turres quatuor que sunt a parte civitatis*, and again *turrim que est super magnam portam castelli*. All his

[1] D. Girgensohn and N. Kamp, 'Urkunden und Inquisitionen aus Patti', *Quellen und Forschungen aus italienischen Archiven und Bibliotheken*, xlv, Tübingen, 1965, p. 60.

[2] For all the personal information about Judex Tarentinus and his family cf. the *Testament, passim.*

[3] E. Jamison, 'La carriera del logotheta Riccardo di Taranto e l'ufficio del *logothetasac ri palatii*' in *Atti del II Congresso storico pugliese* (*Arch. stor. pugliese*, v, Bari, 1952.)

[4] E. Sthamer, *Die Verwaltung der Kastelle im Königreich Sicilien*, Leipzig, 1914, p. 107, no. 116; cf. G. Robinson, *History and Cartulary of the Greek Monastery of S. Elias and S. Anastasius of Carbone*, Orientalia Christiana, xix, Rome, 1930, p. 24, no. xxxvi–84.

property inside the *castrum* was left by Judex Tarentinus to his younger grandson, Andrew, but the church of St. George outside it, together with land and vineyards in the contrada τοῦ πολυκάμπη (not identified), was bequeathed for the benefit of the church to be administered by the two grandsons. Their sister Ricca had already received land at a place named τράμνης τὴν καλλοῦραν[1] as her marriage portion, and she was now left houses in Palermo, which in contrast to the hereditary property had been obtained by express favour of the king.

Judex Tarentinus makes his earliest appearance at Messina in January 1159 as the junior of the three *magistri justiciarii*, taking cognizance of the case recently published, which gave rise to the present study.[2] They acted on the precept of Great Admiral Maio, the king's chief minister, which in effect constituted the *regalis curia* as a court of first instance, because the plaintiff, Gisulf of Scicli, was a royal justiciar and could not therefore be tried in his own justiciar's court, as would have been proper for the type of case in question.[3] He was bringing a complaint against Robert Brittus in regard to the rights the latter was exercising over two villeins: each litigant asserted that these men were inscribed in his *platea* and urged that he had in his favour the fact of long-standing enjoyment of the rights over them. After the testimony of *probi et legales homines* had been given, the court considered that Gisulf had incontrovertibly proved the justice of his claim in law; but before judicial sentence had been pronounced they acceded to the prayer of Robert and his friends and permitted the case to be concluded, obviously in the interests of equity, by a formal *finis* or *conventio*, analogous to the final concord of Anglo-Norman practice. This was in fact a compromise secured by a series of elaborate tenurial and financial stipulations which Robert and his heirs swore to observe, thus guaranteeing the continued fulfilment of their obligations to Gisulf and his heirs in lieu of

[1] Possibly the *Casale Callurae*, which in 1177 was given to S. Salvatore *ad Linguam Phari* by Vice-Chancellor Mathew of Salerno, M. Scaduto, *Il monachismo basiliano nella Sicilia medievale, sec. XI–XIV*, Rome, 1947.

[2] Appendix No. 1, for the full text of the document with notes and discussion of the legal and constitutional questions raised.

[3] The court is not expressly designated *magna regalis curia*, but there is no doubt that this is intended, and the actual title is used in the document of the same month and year recording the sworn inquest held by Raynaldus de Tusa *magnus* (corr. *magister*) *justiciarius regie magne curie* on the precept of King William (I) and the mandate of Great Admiral Maio, cf. Appendix No. 1, p. 320, n. 1.

enforcement by sentence of the court. A further guarantee was provided by two similar documents, one for each of the litigants, drawn up by Sanctorus, the notary of the *curia regalis*, and corroborated by the testimony of a number of subscribing witnesses. These witnesses, it is important to notice, were men of baronial or at least knightly rank, several of them being also royal officials.

In order to have won the knowledge and experience demanded by the important post of master justiciar of the *magna curia* held by Judex Tarentinus, he must already have spent some time in the royal service, like his colleagues Raynald of Tusa and Avenel of Petralia. They had been *justiciarii domini regis* in Sicily for at least fifteen years,[1] and although there is no direct evidence about Judex Tarentinus it is not improbable that he had held a similar office in the region later known as Terra d'Otranto. It is likely too that at one time he had been a judge of the great demesne city of Taranto; but his connexions definitely extended beyond its limits. Close relations are disclosed in the *Testament* with the archbishops (William II) of Brindisi and (Jonathan) of Otranto,[2] men of culture, who adorned their respective cathedrals with splendid mosaic pavements. To the former he returned a compendium of theology, Δογματικὴ Πανοπλία,[3] which he had borrowed; and to the latter he bequeathed silver utensils four pounds in weight[4] in place of those which had been lost long before during the stay of Judex Tarentinus in Constantinople. The absence of any reference to the archbishop of Taranto is possibly not without significance in the support it gives to the probability that he had held office not only in his own city but also in the wider sphere of royal justiciar in the district.

[1] *V. post*, pp. 303, 304.

[2] Ermanno Aar, *Gli studi storici* (for the *Testament*), p. 254. (ὃν ἐδα)νείσθην δογματικὴ πανοπλία λεγόμενον παρὰ τῆς εὐαγεστάτης ἀρχιεπισκοπῆς βρενδυσίου, ἀντιστραφῆναι τοῦτο πρὸς αὐτὴν διορίζομαι· βακίλια (ἅπερ ἀπὸ) μακροῦ χρόνου ἐδανείσθην ἀπὸ τῆς σεβασμιωτάτης ἀρχιεπισκοπῆς τῆς ἱδρούσης, καμπανοῦ ὄντα τεσσαραλίτρων ἀντιστραφήτωσαν ταῦ(τα διόλ)ου ἐπεὶ ταῦτα ἀπολέσθησαν ὅταν ἐκρατήσθημεν εἰς ῥωμαινίαν ἐς κωνσταντινούπολιν.

[3] Πανοπλία Δογματικὴ Ἀλεξίου βασιλέως τοῦ Κομνηνοῦ (Tergovist, 1710), the chief work of the monk Euthymios Zigabenos, originated in the desire of the Emperor Alexios I Comnenos (1081–1118) for an armoury of orthodox theology against the sectaries of the period (K. Krumbacher, *Geschichte der byzantinischen Literatur*, ed. 2, Munich, 1897, pp. 82–84).

[4] The word used here, βακίλια, is translated by P. Matranga as 'sorta di vasi ?', household utensils; this with the mention of the weight of four pounds suggests that silver plate is intended; but cf. τὸ βακλίον, Lat. *bacillum*, baton (E. A. Sophocles, *Greek Lexicon*, New York and Leipzig, 1893), hence silver wands of office seems a possible meaning.

After 1159 there is no record of Judex Tarentinus until 1168 when he reappears, still as *magister justiciarius magne curie*. In spite, however, of a lack of definitive information, it is very likely that some period at least, during the gap of nine years between January 1159 and January 1168, was occupied by a mission to the imperial court of Constantinople. The *Testament*, as we have seen, provides evidence of a sojourn in that city at some distant previous date. This could not have been as long ago as the embassy of Henry Aristippus in 1158, because Judex Tarentinus when he stresses his great services to the king—services, it will be argued, connected with peace-making—undoubtedly had in mind William II still reigning in 1173, the date of the *Testament*, and not William I deceased in 1166. He implies, moreover, that he was in a responsible position and in no wise subordinate, as he would have been under Henry Aristippus. Very aptly, attention has of late been called by Dr. John Parker to the frequent and secret embassies passing in the earliest years of William II between the courts of Palermo and Constantinople.[1] He adduces specifically a hitherto neglected statement by Archbishop Romuald of Salerno as authority for the emperor Manuel's desire for a renewal of the peace treaty with Sicily after a recent period of tension, and for the marriage of his only daughter and heiress to the young King William *simul cum imperio*, i.e. together with William's succession to the Byzantine throne. This was the corollary of the Eastern emperor's grandiose plans for his own coronation by Pope Alexander III as emperor of the West and the consequent reunion of the two divisions of the Roman Empire. The Sicilian part of the scheme alone was realized, in so far at least as peace was concerned, since in Archbishop Romuald's words *rex . . . pacem cum eo* (Manuel) *pristinam innovavit*; but he goes on to say that the marriage plan remained undecided on account of the many questions involved.[2]

Of particular significance is Dr. Parker's demonstration that the negotiations were taking place during the summer and early autumn of 1167, and this, taken in connexion with the evidence

[1] John Parker, 'The Attempted Byzantine Alliance with the Sicilian Norman Kingdom (1166–7)' in *Papers of the British School at Rome*, xxiv (N.S. xi), London, 1956, pp. 86–93.

[2] *Romualdi Salernitani Chronicon*, ed. C. A. Garufi, Muratori, *Rerum Italicarum Scriptores*, Città di Castello, 1929, t. vii, pte 1, pp. 254–5, *rex . . . pacem cum eo pristinam innovavit, negotio parentele propter multa capitula qui interveniebant, indiscusso manente.*

of the *Testament*, makes it almost certain that Judex Tarentinus was an important, if not the chief member of the Sicilian Legation.[1] A stay in Constantinople at some date before his monastic profession in 1173 is fully vouched for, and in another passage he insists that it is through his toil and labour that the whole land of the king's paternal inheritance has benefited and has been restored to its former condition (i.e. of ?peace),[2] words which stress his own constructive effort, and at the same time echo Archbishop Romuald's statement concerning the renewal of the one-time treaty. Nothing, be it noted, is so much as hinted by Judex Tarentinus of the marriage and succession proposal and its failure. Perhaps the secrecy of the whole business is reflected in the imprecise expressions which he uses, just as it is in the archbishop's dismissal of the matter in the phrase: *indiscusso manente*.[3] The exact date when the negotiations were abandoned is nowhere on record, although the general European situation would suggest the autumn of 1167. In confirmation of this, presuming that Judex Tarentinus was indeed employed on the legation, it is relevant to remember that he was once more in Messina probably by mid December or early January at least, and quite certainly by February.

The winter and spring of 1167–8 was a time of great political stress in Sicily and when the chancellor, Stephen of Le Perche, brought the young king and the court before Christmas to spend some months in Messina, he did but exchange the troubled atmosphere of Palermo for the turmoil of a no less agitated city.[4]

[1] The parallel case of the master justiciar Raynald of Tusa, who was an envoy to Genoa in 1156 (cf. *post*, p. 320, n. 1), makes the employment of Judex Tarentinus yet more probable.

[2] *Testament*, op. cit., p. 253: Judex Tarentinus recalls how his eldest grandson John has been confirmed in his father's office by the grace and favour of the king of Sicily because of Judex Tarentinus's great services: ἕνεκεν τῆς ἐμῆς καὶ τῆς τῶν πολλῶν περὶ τὸ ἅγιον κράτος αὐτοῦ καμάτων πολυμόχθου ὑπηρεσίας μου τὴν πατρικὴν αὐτοῦ ἅπασαν χώραν (διεδέξατο) καὶ ἀποκατεστάθη τοῖς ἰδίοις ἐν ἅπασι. The word here used, ἀποκαθίστημι, means in New Testament usage 'to restore to a former condition', especially of a political restoration when Messiah comes, and in the Fathers, of the restoration of a bishop to his see, or of things to proper order. In the present passage the restoration of a state of peace seems to be indicated, when due weight is given to the statement that the whole land has benefited by the restoration.

[3] *Romualdi Salern. Chronicon*, loc. cit.

[4] Pseudo-Hugo Falcandus states (*Historia o Liber de Regno Sicilie di Ugo Falcando*, ed. G. B. Siragusa, Fonti per la Storia d'Italia, Roma, 1897, p. 130) that the king and court left Palermo for Messina on 15 Nov. (1167);

Crowds of people from all over the kingdom arrived to lay their grievances without delay before the *curia*, and encouraged by the strict justice they obtained the citizens of Messina accused their *strategotus* of every conceivable crime.[1] The case was committed by the chancellor to the *magistri justiciarii*, no names are recorded, but it is more than likely that Judex Tarentinus was among them. It is also very probable that he was engaged on the first of the great political trials during the court's residence in Messina as he definitely was on the second, and by implication on cases connected with it of lesser importance.[2] In both the major cases a count of recent creation was accused by factious rivals of the greatest crimes, with an underlying political significance. Early in January perhaps, Henry, count of Montescaglioso, the half-brother of Queen Margaret, was brought before the *magna curia* constituted to form a court of peers, the unnamed master justiciars being reinforced by bishops, counts, and other magnates. He was charged by another count, Gilbert of Gravina, with taking part in a widespread conspiracy to assassinate the chancellor and with rebellion and contempt for the king's majesty. After long and complicated pleadings in court, Count Henry confessed his guilt and was condemned to imprisonment at Reggio.[3]

A few days later Count Richard of Molise was in his turn tried before the *magna curia* in the king's presence on the same charge of conspiring against the chancellor, a charge which he rebutted as false, challenging his accusers to trial by battle. The further accusation of unlawfully occupying certain royal *castella* was now put forward and sentence was pronounced against him by those members of the *curia* to whom the judgement was committed, six counts as the peers of Count Richard, the royal

they should therefore, on the analogy of the eight days occupied by the return journey, 12–20 Mar. 1168 (op. cit., p. 143), have arrived in Messina on 23 Nov. They may well, however, have taken considerably longer on the journey owing to the floods caused by the unusually heavy rains that autumn (op. cit., p. 130), and an arrival in the early days of December would have justified Romuald of Salerno's phrase: *circa nativitatem Domini* (*Chronicon*, p. 256). In any case the precise date of Hugo is preferable to Romuald's general expression of the time, just as for the return journey the arrival on 20 Mar. is more acceptable than *circa pasca*, Easter falling this year on 31 Mar. In the circumstances it is safer to be satisfied with concluding that the arrival at Messina was some time before Christmas.

[1] Hugo Falcandus, op. cit., pp. 131–2.

[2] Op. cit., p. 142.

[3] Op. cit., pp. 134–7; *Romualdi Salern. Chronicon*, op. cit., p. 256.

constable, and the master justiciars, this time specifically named, Judex Tarentinus and Abdenago Hanibalis, together with Florius of Camerota, well known as a justiciar in the Salernitano, joined with them on this occasion. Richard was adjudged an *invasor* of the *castella* and condemned *in misericordia regis esse* in regard to all the land he had held, because he had occupied the said *castella* on his own authority and contrary to the fidelity he owed the king. At once he proclaimed the judgement of the court to be false, and since in accordance with the royal Assise[1] any demur to the acts of the king's court or officials was equivalent to sacrilege the case was now committed to the archbishops and bishops present. They pronounced the count to be in the mercy of the king *de membris et corpore* and he was imprisoned in the fortress of Taormina.[2] Two further cases connected with the conspiracy against the chancellor were tried shortly afterwards, but while there is every probability that Judex Tarentinus was among the master justiciars, no record has survived concerning the composition of the court or the pleadings.[3]

In February, however, of this same year, 1168, he was again present in Messina, together once more with Abdenago Hanibalis, at the hearing of a case[4] in which Thomas, prior of Bagnara, complained that the men of Landricus, abbot of S. Eufemia, had repeatedly made armed entry into a wood and lands, committing many other specific acts of violence against the property and rights of Bagnara, in breach of the king's peace and contrary to the orders of Count Hugh of Catanzaro, master justiciar and constable of All Calabria. The case was delegated on royal mandate to Archbishop Roger of Reggio and three bishops, on the ground apparently of 'defect of justice', since the prior of Bagnara had obtained previous judgements in his favour not only from Count Hugh, but also in the court of the royal justiciars of Calabria, Andrew Cafurnus and Matthew of Salerno, assembled on the orders of King William [I], the archbishop of Reggio being present. Procedure in cases between ecclesiastics was in a state of flux at this time, but the use of violence by the defendants brought the case before the king's court. Here his delegation to ecclesiastical judges seems to be regarded, in view of the abbot's obduracy, as the ultimate

[1] Assise Regni Siciliae, Cod. Vaticanus, no. xvii in F. Brandileone, *Il diritto romano nelle leggi normanne e sveve del regno di Sicilia*, Turin, 1884, p. 103.

[2] Hugo Falcandus, op. cit., pp. 139–42.

[3] Ibid., p. 142.

[4] Appendix No. 2.

means of enforcing justice. Both the litigants were under the spiritual jurisdiction of Archbishop Roger, for he was the diocesan of Bagnara and the metropolitan of S. Eufemia, and it is interesting to note that proceedings began with the solemn promise of the two parties to abide by the decision of the court. The previous sentence in the justiciars' court was verified *de mandato regio* by application to the justiciars themselves, and after a careful hearing of all the evidence the present court pronounced sentence *concorditer*, restoring everything to Bagnara, except for one tenement, which rightfully belonged to S. Eufemia. The record was witnessed by the four judges delegate, four more bishops, and four other ecclesiastics, besides the royal constable, Roger of Tirone, and the two master justiciars, Abdenago who signed in Latin and Judex Tarentinus as usual in Greek.

When the king and court went back to Palermo on 12 March 1168, Judex Tarentinus as a master justiciar of the *magna curia* would normally have returned with them, and the presumption is, that it was there that he was engaged in July, as he tells us, on the routine business of the *magna curia.*[1] In the course of this business—no royal precept is mentioned committing the case to him—and sitting alone, he pronounced a *diffinitiva sententia* in settlement of a long-standing dispute in which the monastery of SS. Quiricus and Julitta at Atrani[2] claimed that lands belonging for over forty years to their church of S. Maria de Arduino at Collesano in Sicily had been occupied unjustly for ten years and more by Hugo de Sancto Johanne.[3] The case was presumably brought before the *magna curia de defectu justitie.* Hugo counter-claimed that the lands had been given to him and his wife by the Lady Adelicia, niece of King Roger and widow of Raynald Avenel,[4] but the lady, who was present, denied this to his face. The monk Constantine for the monastery then produced the charter of 1091, witnessed among others by Raynald Avenel, in which Arduin of Collesano had given the church to the monastery in fulfilment of a vow made at the moment of imminent shipwreck, most probably off the Amalfitan coast. Hugo now acknowledged that he had only held the church by agreement with the priest on payment of a rent in corn. Judex

[1] Appendix No. 3.

[2] An ancient Benedictine monastery, now ruined, lying above Atrani which is situated on the sea, just north-east of Amalfi.

[3] Hugo was apparently a relative of the more famous Robert de S. Johanne, witnessing a charter of his in 1182, cf. Appendix No. 3 and notes.

[4] Cf. Appendix No. 3 for Adelicia, the lady of Collesano.

Tarentinus then gave sentence, upholding the right of the monastery and ordering reseisin of the church, together with expropriation of Hugo. In corroboration the master justiciar appended his own Greek signature to the record written by John, notary of the justiciarate of the *magna curia*.

One last suit was heard by Judex Tarentinus in November 1171 at Palermo, with two new colleagues, John Burdonis and Bartholomew of Piazza.[1] A certain Adelmesi made *clamor* against his uncle Nicolas for restitution of property at Biccari, asserting that it was a death-bed bequest to him from his grandfather John Ciccari, Nicolas's father. Nicolas countered by insisting that he had previously been instituted by John as heir to all his property, and he produced, moreover, a deed of King Roger's by which John and his heirs were invested with all the property now claimed by Adelmesi. At this point, in order to prevent the risk of litigation between relatives, both parties implored the master justiciars to permit the conclusion of a *concordia*. It was therefore agreed in the presence of the *probi homines* that Nicolas should grant to Adelmesi and his heirs two serfs with the children of one of them, and the arable land they both worked in Palermo in the *ruga* named after John Ciccari, together with an annual payment of corn. Adelmesi for his part should call quit in regard to the property bequeathed by his grandfather, on pain of forfeiting 100 *regales* to the king's *curia*. It should be noted in conclusion that this testamentary case was heard by the master justiciars without any ecclesiastical delegation, and further that the record was not official, being drawn up in Adelmesi's name without, however, the mention of any notary.

In the next year, 1172, Judex Tarentinus was succeeded by Persicus as master justiciar,[2] and in March (or May) 1173 he had embraced the monastic life in the house of S. Salvatore, which no doubt he had come to know in frequent official sojourns at Messina. This Basilian monastery had the same fascination for him that it had for Eugenius of Palermo; but while the admiral in passing contented himself with a poem[3] in praise of the place and its abbot, the same probably as the

[1] G. Battaglia, *Diplomi inediti relativa all'ordinamento della proprietà fondiaria in Sicilia sotto i Normanni e gli Suevi*. Documenti p.s. alla Storia di Sicilia (pubbl. Soc. Siciliana p. la Storia patria), serie I, xvi, pp. 31–32, Palermo, 1896.

[2] *V.* p. 3, n. 4 for the reference to R. Gregorio, *Opere scelte*, p. 153; the colleagues of Persicus were again John Burdonis and Bartholomew of Piazza, who had been acting with Judex Tarentinus the year before in the last case he had heard.

[3] E. Jamison, *Admiral Eugenius of Sicily*, London, 1957, pp. 75–76.

executor of Judex Tarentinus's will, and in praise too of the quietude of the cloister-garth where the departed brethren slept, the master justiciar remained to enter the community. He must have been advanced in years and he was longing to devote himself to preparation for the world to come. His wife, his life's companion, would seem to have become a permanent invalid in S. Stefano,[1] and for her welfare bodily and spiritual he left 1,000 tarenes under the trusteeship of Archimandrite Onuphrius II.[2] As we have seen, he disposed of his property real and personal partly on behalf of the church of S. George, and partly in fulfilment of the anxious care already bestowed on his grandchildren. Finally, he removed an evident burden on his conscience by enjoining the restitution of borrowed plate and a book. In full confidence he left it to the discretion of his executor, the archimandrite, to carry out or to vary the arrangements he had made and now had written down by the archivist (χαρτοφύλαξ) of S. Salvatore, confirming it by his own hand in the presence of witnesses, secular and spiritual.[3]

II

The structure and competence of the *regalis magna curia* in the initial period 1156–72.

With the retirement of Judex Tarentinus from official life, and the coincident expiry of Queen Margaret's regency, the initial phase in the history of the *regalis magna curia* ended. It is therefore fitting to attempt an assessment of the gradual emergence of the high court of Sicily, first through the tentative introduction of a professional judicial element into the *curia regis* under Roger II and William I between 1143 and 1155;

[1] This may possibly be S. Stefano di Messina, an obedience of S. Salvatore, Scaduto, op. cit., pp. 98 seq., 183, 186, 190.

[2] He was archimandrite from 1168 to 1183, Scaduto, op. cit., p. 220.

[3] The names of three witnesses only have survived here, owing to the trimming of the lower margin of the MS.; but those remaining have considerable interest. The first is βαρσακ, who may be identical with 'un certo Varsaco Chaki', the vendor in 1165 of a field to Archimandrite Onuphrius I, Scaduto, op. cit., p. 219, n. 10; the second witness: σεκρετάριος (*leg.* σεκρετικὸς) 'Ιοφὺρ ὁ κεντορόπου is undoubtedly Geoffrey of Centuripe, 'Ιοσφρὲς ὁ σεκρετικός, šayḫ Gāfrāy master of the Dīwān at-Taḥqīq al-Ma'mūr (Duana de secretis), who in 1172 held a sworn inquest at Misilmeri in verification of boundaries, L.-R. Ménager, *Amiratus*—'Αμηρᾶς, Bibl. générale de l'École pratique des Hautes Études, VI^e section, S.E.V.P.E.N., 1960, pp. 214–22.

and next, more decisively, through Great Admiral Maio's establishment in 1156 of a standing college of judges. The institution of three *magistri justiciarii magne curie*, distinct from the local justiciars, was not the least part of the general administrative reform begun probably in the April of this year. It was the essential factor in the differentiation of the *magna curia* with strictly judicial functions from the traditional *curia regis* with all its other multiple duties, political, executive, and advisory. In the sphere of finance, it should be noted in passing, a parallel differentiation was taking place through the development of the *regia duana*.[1] Under Roger II the *curia* had approximated to the normal pattern followed by western European states. The king often in person presided over an assemblage of higher officials and such bishops, counts, and barons who were at hand, as well as the king's sons. Because it was competent to direct every department of government, it varied in size and composition according to the business to be transacted and the personnel available. Notably, when it was engaged in administering justice the *curia* was composed of persons suitable to the hearing of a particular case, especially in certain ecclesiastical causes when the trial was delegated to spiritual persons as judges. Again like other western rulers in the mid-twelfth century, King Roger advanced further on these lines and he was himself responsible for the initial moves in introducing a professional element. In 1143 in both Sicily and on the Italian mainland he added justiciars to the more usual members of the *curia* when it was acting as the supreme court of justice. William of Pozzuoli, μέγας κριτής, recorded in north-east Sicily, was present bearing this title when the king on a hunting expedition in July in the mountains of Linaria heard a suit brought by the bishop-elect of Messina against the royal foresters.[2] In November of the same year 1143 a Calabrian justiciar, as it would seem, Roger filius Boni, with the title of *justificator curialis* made his appearance in courts held by the king in person at Capua and Salerno.[3] Again in 1150 the royal justiciars, Lampus of Fasanella and Florius of Camerota, were members of the *curia* in which King Roger decided a suit in favour of Archbishop William of Salerno.[4] All these men, it must be emphasized, were primarily local justiciars who were seconded to the *curia regis* when it was con-

[1] E. Jamison, op. cit., pp. 40–41, 50–53.

[2] E. Caspar, *Roger II. und die Gründung der normannisch-sicilischen Monarchie*, Innsbruck, 1904, Reg. no. 156.

[3] Ibid., Reg. nos. 158, 159.

[4] Ibid., Reg. no. 224.

cerned with judicial business. A further instance, apparently, of this practice comes from Sicily when in 1153 King Roger committed Philip of Mehdia for trial by the *curia* on a charge of apostacy, and the counts, justiciars, barons, and judges *qui ibi aderant* (and not therefore permanent members) pronounced sentence of death by burning, while the justiciars ordered the execution.[1]

In Sicily also, but not on the mainland, royal justiciars who were undoubtedly local justiciars appear several times in a different relation to the *curia regis*. Without being attributed to it, even in a temporary capacity, they were charged by the king or his *curia* with holding sworn inquests to delimit boundaries within their districts in cases of dispute concerning them, either judicial or administrative. Thus in 1145 William of Pozzuoli, this time as a local justiciar, was engaged in verifying the boundaries between Cefalù and Gratteri. Associated with him were three other *regii justiciarii*, Raynald of Tusa and Avenel of Petralia (both of them later *magistri justiciarii magne curie*), and William Avalerius, who with Avenel was charged in 1150, 1151, 1153, and 1155 with establishing boundaries in a wide area in north-east Sicily roughly equivalent to the ecclesiastical province of Messina.[2] Avenel, furthermore, with a different colleague, Bartholomew of Favara, in July 1154, carried out yet another inquest in the same area, this time in the region of Galiano, Regalbuti, and Centuripe.[3] Their findings were reported to the king, who on some occasions ordered a record in writing to be made. This type of action by the local justiciars continued into the reign of William I as the cases in 1154 and 1155 show. It continued also much later, long after the full establishment of the *magna curia*, since local inquiries were best carried out by local officials.

The first *magister justiciarius regie magne curie* according to extant evidence was Raynald of Tusa. As a local justiciar he had been employed, we have seen, with three colleagues in 1145 to establish the boundaries between Cefalù and Gratteri; but when he reappears in January 1157 among the Sicilian envoys in

[1] *Romualdi Salern. Chronicon*, op. cit., pp. 234–5; the description of the trial has been interpolated in his *Chronicon*, and has been held to date from late Swabian or even Angevin times, but whenever it may have been inserted, its origin was Rogerian, to judge by the terminology employed.

[2] For the references to these acts cf. *post*, Appendix No. 1, n. 2.

[3] Cf. ibid., n. 2, with a discussion of the correct interpretation of the records of the inquests held in 1154 and 1155.

Genoa, he bears the title of *magister justiciarius*.[1] Two years later precisely, as *magister justiciarius regie magne curie*, he was holding a sworn inquest to determine once again a boundary dispute in which the bishop of Cefalù was concerned.[2] This time, however, he was exercising an authority greater than in 1145, since he not only held the inquest on the usual royal precept, here supplemented by that of Great Admiral Maio, but declared also that the record of the findings, drawn up as a *charta partita* or chirograph (i.e. written in duplicate on the same sheet of parchment, which was then cut in two across a line of large letters, one section for each of the parties), should serve as a guarantee of perpetual concord and a safeguard against all future dispute.[3] This declaration is very different from a local justiciar's report to the king. Further illustration of the powers of the new master justiciars is supplied by the very complete and official record in the same year and month of the case concerning the ownership of two villeins and their land which was committed, again on the orders of the king and the great admiral, to the full college of three *magistri justiciarii regalis curie*.[4] The omission from the title of the qualification *magne* was probably a careless lapse on the part of the notary of the court; but it can be explained by the novelty of the institution and the consequent persistence of the older terminology. This would be the more likely in view of the personal link with the former order presented by two at least of the master justiciars. Both Raynald of Tusa, who now appears in the new office for the third time, and Avenel of Petralia had given long service as *regii justiciarii* of the early local type. Judex Tarentinus, moreover, the third member of the judicial college, although a new man in Sicily, may well have served as a local justiciar on the Italian mainland. He continued as a master justiciar of the *magna curia* for the next twelve years and his experience influenced without doubt its development in the first phase up to 1172. It is in fact from the five cases in which Judex Tarentinus is mentioned by name, together with the further five in which he is probably to be sought among the nameless master justiciars present, that the structure and practice of the *magna curia* at this time can be discovered.

[1] Cf. Appendix No. 1, n. 1. [2] Ibid.

[3] For a facsimile of a *charta partita* cf. 'Diplomata Regum Siciliae de gente Normannorum', *Archivio paleografico Italiano* xiv, fasc. 60, no. 7, William I Treaty with Genoa, 1156, notary Sanctorus, who cut the document.

[4] Appendix No. 1.

Of basic importance in understanding its constitution is recognition of the rule that the presence of at least one *magister justiciarius* was essential for a session of the *magna curia* as distinct from the *curia regis* in its other activities, even when these concerned the preliminary inquiries leading to judicial action. Conversely, nevertheless, the master justiciars might be witnesses on solemn non-judicial occasions.[1] Two distinct types of session are clearly distinguishable in the *magna curia*. There was what may be described as an ordinary session, directed by the master justiciars in varying number, and composed of officials, feudal lords, and other persons chosen with reference to the status of the parties to the suit. It was competent to decide civil cases between private persons who appealed to the *magna curia* as a court of ultimate resort. It was also competent to try similar cases committed to it by the king or his deputy when one of the litigants was a royal official of standing; for instance, a royal justiciar, who could not be judge in his own cause. Similarly, the master justiciars in ordinary session were charged with hearing accusations of great crimes committed by a city official of a status equal to that of a local royal justiciar. Of far greater competence and indeed of supreme judicial power was the full session of the *magna curia* directed by the king in person, always in theory and at first in practice, but increasingly during the Regency under the presidency of the chancellor, or the small group of *familiares curie* who soon took his place. This high court took cognizance of great crimes committed by great persons often against the State, and its members were of a rank and office comparable to that of the accused brought before it. It took cognizance also of long-standing and complicated civil cases in which there had been failure on the part of inferior courts to enforce their sentence. But whatever the precise constitution of the court or the nature of the suit, the presence of the master justiciars or of some of them was required for the due exercise of justice.

The competence of the two types of session in regard to the nature of the case and the persons involved differed fundamentally, although both acted as courts of final resort. They differed also in regard to their competence in the various parts of the kingdom. The sphere of the master justiciars in ordinary session was confined to the island of Sicily. Their jurisdiction

[1] All three master justiciars witnessed the solemn privilege of dower bestowed in 1177 on Queen Joanna, *Gesta Regis Henrici II*, ed. W. Stubbs (Rolls Series) London, 1867, i, pp. 169–72.

here over inferior officials and over private persons as a court of last resort was paralleled on the mainland by that of the master constables and master justiciars respectively of Apulia and Terra di Lavoro and of Calabria, Val di Crati and Val Sinni. On the other hand, when the king's majesty received complaints of failure of justice in these provinces, orders for redress were issued to the master justiciars of Apulia or of Calabria, as the case might be, or else the litigants were summoned to appear before the full session of the *magna curia* in Messina or Palermo. Its jurisdiction therefore extended over the whole kingdom.[1]

The number of master justiciars *magne curie* actually at work varied from case to case and it is difficult to discover any clear rule governing the participation of three or two or even of a single member of the bench. In the civil actions between private persons reported between 1159 and 1171 in which the master justiciars were themselves charged with hearing and deciding the suit, all three were present in 1171,[2] whereas one alone was competent to act in a case of apparently similar nature in July 1168.[3] A further instance of a single master justiciar, Raynald of Tusa, acting alone in January 1159[4] has a somewhat different significance, because he was charged with organizing a sworn inquest, and not with hearing a suit. Three master justiciars were engaged in hearing cases, one civil in 1159 and one criminal in 1168, when a royal justiciar and a *strategotus* were respectively involved.[5] On the other hand, in cases, one civil and one criminal, where the hearing and the sentence were committed to special, unprofessional judges, the presence of two master justiciars is on record, thereby constituting the court as a session of the *magna curia*. The further extant instances of this procedure do not, unfortunately, give either the names or the number of the master justiciars who were present.

[1] This distinction between the geographical competence of the ordinary and the full sessions of the *magna curia* makes a correction necessary in the views expressed by Dieter Girgensohn, op. cit., pp. 58–59. He maintains that the ordinary jurisdiction of the *magna curia* was exercised in Calabria as well as in Sicily; of this, however, there is no documentary evidence at all, and he seems unaware of the existence of the master constables and justiciars of Calabria and the Valleys, parallel to the same officials in Apulia and Terra di Lavoro. On the other hand, he has not noticed the appearance of litigants from Apulia as well as from Calabria summoned before a full session of the *magna curia* in Palermo and Messina.

[2] Cf. *ante*, p. 300 and n. 1.

[3] Appendix No. 3.

[4] Cf. *ante*, p. 304 and n. 2.

[5] Appendix No. 1; Hugo Falcandus, op. cit., p. 132.

The *magna curia* had jurisdiction in both criminal and civil cases. In its full session, it took cognizance, as a court of first instance, of all great crimes which had been committed by great persons, and more particularly of crimes directed against the king: sedition, conspiracy, rebellion, fraudulent acquisition, and misuse of royal property, everything in fact which could be construed as treason. It took cognizance too of attacks by word or deed against the king's *curia* and officials which carried the contingent guilt of sacrilege. Furthermore, still as a court of first instance, it decided cases, civil as well as criminal, normally within the competence of the local justiciars or of the *strategoti* with equivalent powers, whenever one of these officials was himself a party to the suit, since no man could be a judge in his own cause. Apart from these special cases, however, the full *magna curia* was constituted in civil matters as a court of ultimate resort charged with hearing and terminating definitively cases *de defectu justitie*. These cases, concerned with proprietary and possessory actions for land, churches, and villeins, arose from complaints of protracted failure to obtain effectual justice and redress after long litigation in a lower court, whether of the local justiciars throughout the whole kingdom or of the provincial master justiciars active only on the Italian mainland.[1] Whereas a decision might have been given, often in more than one of these courts, in favour of the plaintiff, it was frequently rendered nugatory by the defendant's obduracy in refusing to implement it, the plaintiff being therefore left without a remedy. By the procedure *de defectu justitie* a case was taken to the court next above, and ultimately, if need were, to the full *magna curia*, always with an express order for a definitive decision and, by implication, for providing effective means of carrying it out. Besides the fundamental purpose to secure a remedy, there was perhaps the further underlying intention of purging contempt of court by committing to the supreme *magna curia* a case in which the decision of a lower court had been ignored by the losing party.

For the initiation of a suit in the *magna curia* it was essential that an *accusatio* in criminal cases or a *querimonia* in civil cases should be lodged before the king in person, until during the minority of William II it became customary for a single official

[1] Cf. especially the cases of Feb. 1168, July 1168 (App. 2 and 3), and Nov. 1171; reference may be made further to the many instances preserved in the local archives throughout the *regnum*, which have been extensively published.

as chief minister of the crown or the group of *familiares curie* to act in his name. Although at the emergence of the *magna curia* Great Admiral Maio had established his ascendancy to the exclusion of all other advisers, it seems clear from the scanty evidence available that William I, like his father before him, himself received the crowd of petitioners for royal favour or royal justice.[1] In those cases in which it was a question of the king's own gracious action, he acted on his sole royal authority and gave a simple order for the redress of the complaint. There is an instance of this when, in 1157, William received the plaint of the abbess of S. Maria di Messina that royal bailiffs had delivered rotten grain to the abbey, withholding also tunny-fish and salt; he at once issued a mandate that the bailiffs should make good their default.[2] Similar intervention can be traced during the Regency. In March 1171 William II with the Queen Mother issued a mandate to implement the request of Bishop Gentile of Agrigento *familiaris noster*, for licence to rebuild a ruined mill, long in the possession of his church.[3] The king stated with much particularity that the request had been preferred *audientie nostre* during residence 'in our palace' at Palermo, adding that the licence was issued *munificientie nostre* and not on the ground of ancient possession. Equally instructive is the mandate dispatched the previous year to the bishop of Troia in response to a petition presented by the canons of his Cathedral church *ad curiam nostram venientes*.[4] This phrase is in itself ambiguous, but it is evident from the very personal expressions in the mandate that it implied the actual presence of the young king and his mother. The canons begged for compensation for loss of rights incurred by them incidentally, owing to an exchange arranged by King William I between the bishop and the men of Troia. The young king roundly expressed his great astonishment that the bishop had allowed the canons to come to court (bringing this petition), when he knew quite well that he was himself

[1] There are frequent references in the privileges and judgements of Roger II to these crowds of petitioners; cf. also the reference in Hugo Falcandus, p. 131, for the influx at Messina in 1167. For the probable procedure through the logothete, cf. E. Jamison, 'La carriera del logotheta Riccardo di Taranto', cit. *ante*, pp. 15–16.

[2] *Les Actes latins de S. Maria di Messina*, pp. 78–82, no. 6.

[3] K. A. Kehr, *Die Urkunden der normannisch-sicilischen Könige*, Innsbruck, 1902, p. 439, no. 21; and C. A. Garufi, *Doc. ined.*, p. 127, no. lvi.

[4] H. Niese, 'Normannische und staufische Urkunden', in *Quellen und Forschungen aus italienischen Archiven u. Bibliotheken*, ix, Rome, 1906, Separat-Abdr., part ii, p. 26, no. 2.

bound by the terms of exchange laid down by King William, the king's father, to compensate them for any contingent loss. The position then is clear in regard to the matters of royal grace and favour.

On the other hand, in cases when the action of the *magna curia* was required, the king sent a precept to the Great Admiral ordering him to issue his mandate, no doubt with formal mention of the royal precept, to the master justiciars for the assembling of the court duly constituted to take cognizance of the particular case. This is in outline the procedure which can be established from the two cases of January 1159. From our knowledge, moreover, of William I's relations with his confidential ministers, Admiral Maio and for a brief period Henry Aristippus, it may be inferred that the constitution of the court with the appointment of suitable judges was arranged in private consultations, excluding all other advisers. After 1162, however, with the establishment of an inner *curia* of three or (later) more *familiares* it became their duty collectively to settle the constitution of the court on receipt of the royal precept.

With the minority of William II the personal action of the king apparently ceased, and it now fell to the *familiares*[1] or, on the advent of Stephen of Le Perche, predominantly to the chancellor, not only to constitute the *magna curia* but also to receive the accusations and complaints of the parties. Nevertheless, Queen Margaret had a lively interest in the proceedings and took vigorous action to enforce her wishes from time to time. This modified procedure was well illustrated when shortly before Christmas, 1167, the citizens of Messina drew up bills of accusation in writing against their *strategotus* Richard of Aversa and laid them before the chancellor loudly demanding Richard's trial for almost every conceivable crime. When the chancellor procrastinated the Queen intervened with a precept ordering him to accept the accusation and settle the matter without delay. Thereupon, he delegated the cause to the master justiciars, together with his precept that they should inform the *strategotus* of the date of the hearing and bring the case to a legal conclusion without any deviation from the path of strict justice.[2] On occasion, however, the chancellor took advice before committing the accused person for trial, as for instance, when he summoned

[1] On receipt of the plea of Richard de Say for the dissolution of his marriage, the Queen *precepit curie familiaribus, ut convocatis episcopis . . . et auditis . . . allegationibus quod inde dictaret equitas expedirent.* Hugo Falcandus, p. 105.

[2] Ibid., pp. 131 seq.

the notary Matthew, Count Richard of Molise, and Archbishop Romuald of Salerno with other great or reverend persons to a council in his house to consider the case of Salernus the physician, accused of poisoning. On their recommendation the court was assembled, the master justiciars were summoned, and the solemn accusation was quickly laid.[1] In the contemporary civil suits the initiatory procedure is not so explicitly described. While the episcopal judges-delegate in February 1168 refer only to the request and injunction which they had received a *regia celsitudine* to take cognizance of the dispute,[2] there is no reference at all in the cases between private persons of July 1168[3] and November 1171[4] to any royal order or any action by the chancellor or the *familiares*.

It is fully evident that the preliminary inquiry undertaken by the chief minister or the members of the inner *curia*, as the case might be, was concerned to establish the validity and juridical nature of the accusation or complaint, and also the status of the litigants. On the results of the inquiry the composition of the *magna curia* in any particular instance was decided.[5] The master justiciars of themselves were considered competent to hear and conclude civil suits in the island of Sicily when the litigants were not above baronial rank, or if they were royal officials, when they were of no higher grade than local justiciars; the master justiciars furthermore assembled the court, whose members acting also as witnesses were of comparable rank, according to the evidence of the case of Gisulf of Scicli and Robert Brittus.[6] It would appear that the master justiciars were equally competent to try criminals who came within the same categories, as for instance Richard of Aversa, already mentioned. His office of *strategotus* of Messina carried the privilege of exercising higher criminal justice, normally reserved for the royal justiciars, and

[1] Falcandus, op. cit., p. 123.

[2] Appendix No. 2.

[3] Appendix No. 3.

[4] *Ante*, p. 300 and n. 7.

[5] In the two cases of Count Henry of Montescaglioso and Count Richard of Molise, of which pseudo-Falcandus has left voluminous descriptions, it appears that the preliminary inquiry had in fact developed into a trial by the inner *curia*, in which many contentions of the prosecution and the defence were argued, preparatory to the constitution of the *magna curia* for the full judicial hearing. It must also be remarked that the preliminary inquiry seems normally to have been carried out with integrity and in accord with judicial rules; but in certain of pseudo-Falcandus's reports, perhaps tendentious in their presentation, both personal and political considerations seem to have exercised undue and corrupt pressure, in particular in the case of Robert of Calataboiano (Falcandus, pp. 115–17).

[6] Appendix No. 1.

there is perhaps a certain emphasis in the historian's statement that the chancellor *Magistris justiciariis causam delegat.*[1] When, however, an accusation of great crimes, notably crimes against the State, was brought against a count, the constitution of the court most clearly illustrates the principle of judgement by a man's peers. In the trial, for instance, of Count Henry of Montescaglioso counts are expressly mentioned among the *familiares*, the bishops, and other magnates, who together with the master justiciars composed the court.[2] Again, when Count Richard of Molise, a former master constable was brought to justice, sentence on the chief item of the accusation was declared by six counts, the master constable, a royal justiciar from the Salernitano, and, as a matter of course, two master justiciars, all of them being referred to by name.[3]

A parallel procedure was followed in the trial of offences which came within the spiritual category. In accordance with long-standing custom the conduct and termination of such cases was committed to high ecclesiastics as judges-delegate. The trial of Robert of Calataboiano for apostasy and sexual offences by the *familiares* of the *curia*, the bishops, and other ecclesiastical persons is an example;[4] and in the matrimonial suit preferred by Richard de Say two visiting Roman cardinals were called in because of their greater experience in such causes.[5] Of special interest is the transfer in the middle of a suit to ecclesiastical judges, a transfer necessitated by an accusation of maligning the royal officials which was regarded by the law as equivalent to sacrilege.[6] In all these cases it is important to emphasize that the judges-delegate acted on receipt of a royal injunction and the court was the *magna regalis curia*, so constituted by the presence of the master justiciars. It should be noted, however, that testamentary cases and suits concerning the ownership of churches were considered to appertain to the competence of the master justiciars and not to spiritual judges-delegate. One more case must be noticed, that of February 1168, in which the final settlement of the long-standing property-suit between the prior of Bagnara and the abbot of S. Eufemia was delegated to ecclesiastical judges, headed by the archbishop of Reggio.[7] This must be attributed in no wise to the nature of the case; it was

[1] Falcandus, op. cit., p. 132.
[2] Ibid., pp. 134–5.
[3] Ibid., p. 140.
[4] Ibid., p. 117.
[5] Ibid., p. 105.
[6] Ibid., p. 141.
[7] Appendix No. 2; it should be noted that there were at this date no separate ecclesiastical courts.

rather a last effort to compel the abbot's obedience by calling in his metropolitan as judge, after he had defied a series of royal courts, and might well have defied the *magna curia* itself, had the master justiciars pronounced sentence instead of merely being present.

While it was the duty of the judges, whether master justiciars or judges-delegate, to fix the time and place for the hearing of a cause and to summon the other members of the court as well as the litigants, the king's actual residence at the moment determined the place of session. This rested on the supposition that he would be present to dispense justice in his own court. Roger II undoubtedly presided over the sessions of the *curia* when it met for normal judicial business and equally so when it became a great court for high politics and judicature. This example was followed early in his reign by William I, in the solemn courts held in March 1155 at Salerno; in particular a lively picture has been preserved of the session in which that same year he directed a suit of great ecclesiastical import between the bishop of Melfi and the abbot of Vulture.[1] The king declared that after the complaint and the response had been recited *in auribus splendoris et serenitatis nostre* the *diffinitiva sententia* had been pronounced *secundum preceptam nostre juridicionis* by the archbishops, the bishops elect, and other *principes*, who, together with us, had heard the allegations of the two parties, and had then withdrawn apart *ordine legitimo*, discussed the matter, and finally returned into our presence having decided on their sentence, *que in conspectu glorie nostre lata est*. After the establishment of the master justiciars in the following year, there is no information about any such solemn judicial session during the rest of William I's reign and none therefore about his presence in court. Under the regency, however, there is clear evidence already noted that William II, although still only a boy, was present at least on two occasions in 1168. At the trial of Count Henry of Montescaglioso, Queen Margaret was also there and she and her son were both referred to as taking active interest in the proceedings.[2] Again a short time afterwards the closely argued sentence of the *magna curia* against Count Richard of Molise was set forth by Count Boamund in the presence of the

[1] These solemn courts are known from the records of cases decided in favour respectively of the abbot of Montecassino (cf. L. Tosti, *Storia della Badia di Montecassino*, ii, Naples 1842, p. 96D) and of the bishop of Melfi (A. Mercati, 'Le pergamene di Melfi all'Archivio Segreto Vaticano', v, *Studie Testi*, 125 (Città del Vaticano, 1946). [2] Falcandus, op. cit., pp. 134, 136.

king.[1] While all this is clear, it is equally clear that neither William I nor William II ever sat in the court when it was convened for hearing normal judicial cases. Nevertheless the fiction of their presence was maintained by the identity of their residence at the time and the court's place of meeting. Between 1159 and 1171 the kings were invariably at Messina or Palermo and the *magna curia* was always assembled in one or other city.

The *magna curia* either in full or in restricted session was a court of final jurisdiction, and very great pains were taken to reach a true decision according to fact and law. A case opened with a formal allegation by the accuser or the plaintiff and a formal rebuttal by the accused or the defendant, conformably with the criminal or civil nature of the charge, and both litigants then proceeded to prove their contention by one or more, often by several, of the many methods of proof admitted. They called witnesses to testify on their behalf; they produced the documentary evidence of charters, royal or otherwise; they adduced the decisions of previous courts or the acts of royal officials, and these were duly verified by the present court, at times in virtue of an express royal order. On occasion the litigants urged long-standing prescriptive rights, and the court ordered a sworn inquest in order to obtain the testimony of the neighbourhood on questions of fact, particularly in suits concerning property. In criminal cases an offer was frequently made to prove or rebut the truth of an accusation by recourse to *monomachia* or *singularis pugna, iuxta curie consuetudinem*.[2] On several of these occasions the offers of proof do not seem to have been accepted by the court and implemented, but there is one record that Walter de Moac was ordered to be ready on the day fixed for the battle.[3] There is, however, no example of an appeal to *pugna* in any of the suits regarding property under review; but it should be noted that the solemn royal courts which heard the case of the abbot of Montecassino in March 1155, forbade in anticipation the defendant to impugn the abbot's witnesses in this way, since the matter could not be decided *per guerram*.[4] For an interesting description of an actual proof by *pugna* which was fought *per campiones*, reference may be made to a suit heard in 1183 by the master justiciars of Apulia and Terra Laboris.[5] Apart from all

[1] Ibid., p. 141.
[2] Falcandus, pp. 79, 100, 140, 142.
[3] Ibid., p. 142.
[4] L. Tosti, loc. cit.
[5] F. Carabellese, *Il comune pugliese*, Bari, 1924, app. ix. pp. 183–4. It should be noted that *pugna* could be ordered only by the *magna curia* or the master justiciars and constables of the two mainland provinces.

these methods of arriving at the truth a confession of guilt by the accused was accepted as conclusive. Moreover, it is on record that Salernus the physician instead of being sentenced to capital punishment was committed *in misericordia curie* to prison in order that he might be induced by threats or promises to incriminate the persons really responsible for his crime.[1] In civil suits likewise, the defendant frequently acknowledged the justice of the plaintiff's cause,[2] thus clinching the case for the defence.

Criminal cases in the *magna curia* were necessarily terminated by a *sententia judicialis* or *judicium*, which represented the unanimous opinion of the judges and was pronounced by one of them as spokesman for all. The sentence declared the guilt of the accused and the appropriate legal punishment. Although all the crimes of violence reported, whether against the king or against an individual subject, carried the death penalty with confiscation of property and goods, it is noteworthy that it was never put into effect, because, as the historian explains, the chancellor disliked extreme and cruel punishments in contrast with King Roger's rigorous execution of the law.[3] Instead, the convicted man was adjudged *in misericordia regis* or *curie* and the capital sentence was commuted to imprisonment with confiscation. Alternatively care was taken to bring him to justice only for such offences as were treated as sacrilege, and in consequence were punishable only by ecclesiastical censures.[4] The same penalties were incurred when the *magna curia* heard matrimonial causes through judges-delegate.

Civil actions were concluded either by a similar process of *sententia judicialis diffinitiva*, or else by an agreement between the parties, known variously as *conventio*, *concordia*, *finis*, or *diffinitio* and confirmed by the court's legal authority. The *sententia* was based on the facts of the case as they emerged from the careful weighing of the allegations and replies, and the various types of evidence adduced by the parties, and on the application of the appropriate law, either as it was recognized by legal custom or doctrine, or by royal constitution or edict. The *sententia* carried the sanction of the judge's authority which is expressed unequivocally by Judex Tarentinus in the phrase: *certificatus sum*, in pronouncing judgement.[5] This authority in its turn rested on the royal precept committing the final decision to the judges of the *magna curia* whether master justiciars or judges-delegate. The

[1] Falcandus, op. cit., p. 124.
[2] Appendix Nos. 1 and 3.
[3] Falcandus, op. cit., p. 139.
[4] Ibid., p. 117.
[5] Appendix No. 3.

decision was final, not only because there was no court of higher instance, but also by reason of the multiple methods of guaranteeing its perpetual validity. It was guaranteed in the first place by the record of the court drawn up by the notary, who described himself on one occasion as *regalis curie notarius*,[1] and on another as *notarius justiciariatus magne curie*,[2] men obviously with long experience of the courts. The record could also take the form of a chirograph[3] or else of two identical copies, one for each litigant. An additional guarantee was supplied by the signatures of the master justiciars—there are three extant from the hand of Judex Tarentinus—or of the judges-delegate, and by those of members of the court. Other measures too were adopted to enforce the sentence: an oath to accept the findings of the court could be imposed on both litigants previous to the pronouncement of the judgement;[4] a statement of the defendant's recognition of the plaintiff's legal right could be embodied in the record;[5] and frequently the specific reseisin of the victorious party in a proprietary action was ordered, or in a possessory action possession was restored.[6] The recourse to yet further sanctions may be inferred from their use in not dissimilar circumstances: in a solemn court at Salerno in 1151, before the emergence of the *magna curia*, a money penalty was ordered in case of failure to fulfil the sentence: and in suits terminated by a concord *mediatores* were appointed as pledges for fulfilment, or again sworn witnesses confirmed in court the plaintiff's right.

The alternative conclusion of a suit by an agreement or final concord between the parties, which became in the twelfth century a frequent method of procedure throughout western Europe, was the fruit of an ever-increasing awareness of the claims of equity.[7] It was more and more evident that in many cases the failure to secure the execution of the judicial sentence in property suits with the resultant prolonged litigation, proceeded from the inequitable nature of the sentence. No matter how consonant this might be with strict justice according to the established facts and the law applicable to them, it might yet take no account of a changed situation which has arisen through lapse

[1] Appendix No. 1.
[2] Appendix No. 3.
[3] Inquest of January 20, 1159 cit. *ante*.
[4] Appendix No. 2.
[5] Appendix No. 3.
[6] Ibid.
[7] Reference may be made to the parallel procedure of the *concordia finalis* in Angevin England; Glanvill, *De Legibus et Consuetudinibus Regni Angliae*, ed. G. E. Woodbine, New Haven and London, 1932, lib. viii, cap. 1–4, pp. 116–19.

of time and the impact of fresh personal relationships. It was the recognition that a judgement, however technically just, could never in such circumstances provide a true remedy for a grievance, which caused the immense popularity of the concord or *finis*; it was this and not, as has been often asserted, the necessity to obtain the consent of the parties that was responsible for the new procedure.[1] This is clearly demonstrated by the continuance in use of the procedure *per judicium* whenever a judgement just in law was seen to be equitable also.

The procedure *per finem* or *conventionem* was readily adopted by the *magna curia* when it was desirable in the interests of equity, and the definite rules were followed which had everywhere been established for the conclusion of a valid and binding concord. The court was constituted and the case was opened in the normal manner, but when the initial pleadings and the evidence adduced by the two parties made it clear in the opinion of the court which of them was wrong in law, although there were certain mitigating circumstances in his favour, then at this point and before formal sentence was pronounced it was permitted to this party with the support of his friends, and sometimes indeed of the court itself, to make petition to the justiciars that the case should be settled by a *finis* or concord agreed between the parties. The terms stipulated were duly recited in court and the petitioning party, who stood to benefit from them, gave security for his acceptance and fulfilment of them. This might be effected by his corporal oath, or his guarantee through pledges appointed by him; a monetary penalty might be imposed in the event of failure to fulfil the stipulations, or else the contingent nullity of the whole transaction might be laid down. The entire proceedings were placed solemnly on record by the execution of two similar documents drawn up by the notary of the court, one for each party; finally, confirmation was obtained by the signatures of the justiciars and of members of the court. Good examples of the procedure *per finem* are presented by the two cases of 1159 and 1171 which have been discussed in some detail above.

With the end of the Regency in 1172, coincident as it happened with the retirement of Judex Tarentinus, the first stage in the emergence of the *magna curia* was completed. While its constitution and practice were still fluid in many respects, the main lines of its organization had been firmly traced, and a basis established for further developments. The history of the *magna*

[1] Ménager, *Les Actes latins*, p. 89.

curia in the last quarter-century of the Norman monarchy demands a full investigation. Here attention can be called to three important innovations only: the separation of the secular and the ecclesiastical courts; the presidency of the *magna curia* in important cases by the three or four *familiares curie* at the head of the government, although the presence of one or more master justiciars was still essential, while in routine cases they continued to act and conduct the whole business alone. Thirdly, the practice must be noticed of reciting *in extenso*, in the record of a suit, the royal mandate which committed it for trial. This is the specific procedure adopted with the increasing usage of committing to the master justiciars and constables of the two mainland provinces, Apulia and Terra di Lavoro, and Calabria and the Valleys, the final decision of all cases arising in their provinces of which complaint had been brought before the *magna curia*, rather than, as heretofore, summoning the litigants to Palermo, as Sicilian litigants were always summoned.

III

APPENDIX OF DOCUMENTS

No. 1

Three *magistri justiciarii regalis curie*, Raynaldus de Tusa, Avenellus de Petralia, and Judex de Tarento record their hearing on the precept of Great Admiral Maio of a proprietary action brought by Gisulfus de Siclis, *regius justiciarius* in respect of two Arab villeins and their land, against Robertus Brittus who claimed long possession of the villeins. When Gisulfus had proved his claim to ownership, but before a judicial sentence was pronounced, the master justiciars gave permission, on the urgent prayer of Robertus, to terminate the case by a *finis* or concord. This apportioned equitably between the litigants the rights over the villeins and their service and received the assent of the defendant on oath, with the guarantee of the record drawn up in duplicate, one copy for each party, and witnessed by two of the master justiciars and a number of knights and officials. Written by Sanctorus *curie regalis notarius*.

For the description of the document cf. L.-R. Ménager, op. cit., p. 83, no. 7.

The hand is the characteristic diplomatic minuscule of Sanctorus, but smaller and neater than it appears in the large chirograph of William I's Treaty with Genoa, November 1156 and published in facsimile in *Diplomata Regum Siciliae de gente Normannorum, Archivio*

paleografico italiano, xiv, fasc. 60, no. 7. Many of the signatures are autograph.

The original is preserved: Bibliothèque Nationale, Paris, Nouv. Acq. Lat. 2581. Collection de chartes de l'abbaye des Bénédictines de Sainte Marie de Messine, t. i. 1158–1300, = A.

Edition from A by L.-R. Ménager, *Les Actes latins de S. Maria di Messina (1103–1250)*, Palermo, 1963, no. 7, pp. 83–93 (Istituto Sicil. di Studi Bizantini e Neoellenici, Testi 9) with full notes and commentary = B. References to these are given below in the present edition from A, together with some revised comments and additions = B (2).

Extract and four signatures publ. C. H. Haskins, 'England and Sicily in the Twelfth Century', *English Historical Review*, xxvi, London, 1911, p. 642 n. 92, from A.

† IN NOMINE PATRIS ET FILII ET SPIRITUS SANCTI AMEN. ANNO INCARNATIONIS DOMINICE MILLESIMO CENTESIMO QUINQUAGESIMO[a] OCTAVO MENSE JANUARII INDICTIONE vij, | regni vero domini W(illelm)i Dei gratia gloriosissimi regis Sicilie ducatus Apulie et principatus Capue anno viij°, ducatus vero domini R(ogerii) gloriosi ducis Apulie, karissimi filii | sui anno iij, feliciter, Amen. Nos Raynaldus de Tusa[1] et Avenellus de Petralia,[2] et Judex de Tarento[11] regalis curie magistri justiciarii per hoc presens | scriptum, memorie mandamus qualiter ex precepto domini Ma(ionis) magni ammirati ammiratorum audivimus et intelleximus quasdam controversias que versebantur inter | Gisulfum de Siclis regium justiciarium[3] et Robertum Brittum[4] et eas subscripto fine terminavimus:[5] Videlicet predictus Gisulfus deposuit querimoniam adversus | Robertum Brittum, quod ipse tenebat quosdam duos villanos quos platea[6] sua de Siclis continebat, asserens illos sui juris esse debere. Contra que | predictus Robertus respondebat se villanos illos in casali suo Bessana[7] cum id recepit invenisse et ex tunc eos tenuisse uti eius antecessores[b] eos multo tem|pore tenuerunt, asserens etiam ipsos villanos in sua platea contineri. Cumque hinc inde diu super hoc altercatum fuisset, ad ultimumquam[c] Gisulfus ostendebat | villanos illos in platea[6] sua de Sicli contineri, et predecessores suos versus predecessores Roberti eosdem jam per[d] ipsam plateam convictos habuisse. Super hoc proborum et legalium | hominum testimonio adhibito, cognovit tandem Robertus Brittus villanos illos de platea Siclis esse et Gisulfi juri pertinere. Itaque per intuitum curie Gisulfus | comprobavit et convicit jamdictos villanos. Verum postea tum ipsius Roberti tum amicorum suorum precibus et interventu, ad hunc finem causa hec deducta est:[8] | Videlicet Robertus dedit ei pro ipsis villanis Sicilie tarenos ducentos, et debet ipse Robertus et heredes ejus, quos de sua legitima uxore habuerit, quia soli sibi | Roberto et heredibus suis ex legitima uxore descendentibus hujus modi negotium confessum[e] est, illos villanos tenere

[a] A QINQAGESIMO [b] A āncessores B ancessores [c] B ad testim(on)ium quem: *impossible in palaeography and sense.* [d] B par [e] B concessum

et cognoscere de predicto Gisulfo et heredibus suis, | ita tamen ut unoquoque anno predictus Robertus et heredes sui dent inde pro servicio predicto Gisulfo et heredibus suis bisantios duos, septem tarenorum per bisantium, | et de exfortio quandocumque alii barones integre dabunt illud curie ipse Robertus et heredes sui dabunt Gisulfo aut ejus heredibus alios duos bisantios, | ut sint in duplum; si vero minus quam integrum alii barones exfortium tribuerunt,[f] et ipsi minus dabunt, juxta quod rationi convenerit. Et quotiens | deinde Gisulfo pro negotiis et causis suis oportuerit agere versus aliquem per totam Siciliam cum eo ire debet si summonitus fuerit. Juravit itidem | predictus Robertus ad sancta Dei evangelia quod non queret nec aliquo modo nitetur seu indagabit qualiter hoc predictum servicium Gisulfo vel ejus heredibus subtrahatur. Et hoc idem juraturi et observaturi sunt heredes Roberti eidem Gisulfo vel heredibus suis. Et donec omnia que | predicta sunt predictus Robertus [et here]des [i]ll[iu]s observaverint[g] Gisulfo et heredibus suis, debent habere et tenere ipsos villanos sicut suos demanios,[9] | [nec][h] liceat Gisulfo sive suis heredibus villanos ipsos eis ullo modo auferre vel eos contra hec inde inquietare. Quod si predictus Robertus aut sui heredes | noluerint jamdicto Gisulfo et heredibus suis hec u[t][i] predicta sunt observare, liceat Gisulfo et heredibus suis villanos ipsos capere et ad suum jus integre revocare. Nomina autem villanorum sunt hec: Hahamut eben Chasin et Machlubf eben Chasin. Ut autem pacti hujus diffinitio et conventio[5] in nullo | minui vel ampliari posset, duo similia scripta subscriptorum virorum testimonio corroborata facta sunt, quorum alterum Gisulfo de Siclis, | alterum vero Roberto Britto attributum est; que scripsit Sanctorus cu[rie regalis][j] notarius[10] anno mense et indictione predictis.

+Signum proprie manus Raynaldi de Tusa regalis curie justiciarii[1]

[+ὁ τῆς] μεγάλης κόρτης κριτὴς ὁ ταραντῖνος ὑπέγραψα προσεπικύρω οἰκειοχείρος+[k 11]

[+ Eg]o Matheus de Partenico testi sum[l 12]

+ Signum proprie manus Guidonis Marsalis[n]

[+]Matheus domini regis notarius[p 15]

+[Ego . .] W(illelmus) de Periole testi sum[m 13]

+Signum proprie manus Raynalt de Muntfort[o 14]

+[Signum proprie manus] Burgundii regii justiciarii[q 16]

[f] B tribuerint [g] B [de predicto] *in place of the undoubted reading*: observaverint, *in spite of a horizontal abrasion in the MS.* [h] B [et non], *a suggested reading for which the space is too small.* [i] B q(ue); A *clearly has* u[t] [j] B [domini regis]: *this form is not used in judicial acts, and moreover the reading* cu[rie] *is certain* [k] *autograph signature* [l] *probably autograph, cf. n. 12.* [m] B Periolo: *the hand, probably autograph, resembles n.* k, *but with some differences* [n] B Marsal(ie) [o] *remarkable autograph in French*; B *unaccountably reads* Raynaldus de Nocera [p] *Mathew's characteristic cross has disappeared from this autograph signature, and the monogram for* subscripsi *was perhaps always lacking.* [q] B Burgundi: *autograph signature*

+Signum proprie manus Pandul(fi) de Larotunda[r17]

+Signum proprie manus Roberti Gulpilii qui et testis[r18]

Notes

1. Raynald of Tusa (Tusa, prov. Messina) has been identified by Professor Ménager (p. 84, n. 1) with *Raynaldus Arnaldi filius* who in 1123 made a grant to the church of Lipari of land on the site of the old city of Tusa for the souls of the Great Count Roger and his heirs, and of his own brother Hugh, and for his own soul and body (L. Townsend White, *Latin Monasticism in Norman Sicily*, Camb. Mass. 1938, App. x, pp. 251–2). If this identification is correct Raynaldus, who was already a knight and capable of making this grant on his own account, must have reached mature years when he appears as *regius justiciarius* in 1145, engaged with three colleagues, William of Pozzuoli, William Avalerius, and Avenellus de Petralia, in holding an inquest into the boundaries of the lands of the church of Cefalù and those of Gratteri (Garufi, *Doc. ined.*, p. 57, no. xxiv). But there may have been two different men, probably relatives. Our Raynald, the royal justiciar, was appointed *magister justiciarius* as soon as the new office was established, because on the evidence of a hitherto unnoticed source he was in Genoa in January 1157, bearing the title, as a member of the Sicilian legation charged with taking the text of the commercial Treaty (dated November 1156) for ratification by the consuls and citizens of the Genoese commune. (*Atti della Soc. ligure di storia patria*, i, p. 282 seq.; pub. G. Siragusa, *Il regno di Guglielmo I di Sicilia*, ed. 2, Palermo, 1929, p. 397.) Before the autumn of the same year he is recorded, but without any title, as imploring Daniel, bishop-elect of Cefalù to grant the church of S. Maria Montemaggiore (Belsito) to the abbey of Cluny (A. Bruel, *Recueil des chartes de l'abbaye de Cluny*, v., Paris, 1894, no 4191, p. 538–9, cit. Ménager, p. 84, n. 1). For the record of Raynald as *magister justiciarius magne regie curie* on 20 January 1159 cf. Garufi, *Doc. ined.*, p. 81, no. xxxiv, cit. Ménager, and for discussion of his activity cf. *ante*, *passim*.

2. Avenellus de Petralia (prov. Palermo) is well known as a local *justiciarius regius* both before and after his appearance in the present document. He was active, generally engaged in directing inquests, in the dioceses of Cefalù, Patti, Messina, and Catania, a region corresponding roughly with the later Val Demone, although it was somewhat larger. He is first mentioned in the inquest of 1145 referred to above in n. 1, and it is interesting to notice among the royal justiciars acting with him not only Raynald of Tusa, but also William Avalerius, who was his colleague as a local justiciar on several further occasions. Together they condemned a certain Aychard to confiscation and fine in

[r] *Both signatures are in the same hand, not that of the document; both crosses are elaborate, but entirely distinct from each other.*

a suit brought in 1150 (before September) by Daniel bishop-elect of Cefalù, and then after judgement had been given they went on to initiate an amicable settlement, a procedure of much interest already discussed (*ante*, pp. 315–16; Garufi, op.cit., p. 62, no. xxvi, cit. Ménager, p. 84, n. 2). The same two royal justiciars were charged with carrying out extensive inquests on King Roger's order in December 1150 and December 1151 to re-establish the boundaries of the Sicilian lands of S. Maria Latina of Jerusalem, on which S. Filippo of Agira was dependent; they performed a similar task for S. Filippo itself in 1152 or early 1153. All this is recorded in a great confirmation of rights and privileges to S. Filippo in April 1153 (Caspar, Reg. no. 232, citing K. A. Kehr, *Die Urkunden der normannisch-sicilischen Könige*, Innsbruck, 1902, p. 430, n. 14; R. Pirro, *Sicilia sacra* ed. 3, Palermo, 1733, ii, p. 1131; cf. also P. Sinopoli, 'Il tabulario di S. Maria Latina di Argira', *Arch. Stor. siciliano orientale*, xxii, Catania, 1926, p. 141, no. 10). At this point in his career Avenellus suffered, according to Professor Ménager, 'une longue période de disgrâce' (p. 84, n. 2) because in July 1154 he and a colleague, Bartholomew of Favara, as 'simples juges de Castrogiovanni' were holding extensive boundary inquests on oath at the king's order, on behalf of the 'bishopric of Troina' (Messina), and not as incorrectly stated the church of Centuripe (Ménager, p. 84, n. 2). Again Avenellus, described as 'juge, notaire et stratège de Petralia', a year later was directing similar inquests at Gangi, 10 km. east of Petralia, for the same bishop. In both these instances the documents on which Professor Ménager has relied have been preserved only in garbled copies of the seventeenth and eighteenth centuries, and as a result they present in certain respects a frankly impossible record from the administrative standpoint. In the first place, it was highly unusual, except in the greater cities and *castra*, to find two judges in office at the same time; again it is abnormal to find a judge of one *castrum* transferred the next year to another, as Avenellus appears to have been, since judges were appointed for life, or at least served in the same place for long periods. More important perhaps is the fact that judges and notaries were never charged with directing sworn inquests, for they were not executive officials, as were the royal justiciars and the *strategoti*. They belonged to an ancient professional order, exercising highly technical functions such as voluntary justice or production of written records; in a Greek-speaking community they would be men of Greek origin. Finally, an impossible accumulation of distinct offices is attributed to Avenellus. The two documents demand a closer examination. To begin with the record of July 1154, it should be noted that it has been transmitted in no less than three late copies, and it has been edited three times, with certain significant variants. In the edition of G. Spata, 'Diplomi greci siciliani', in *Misc. di Storia italiana*, xii, Turin, 1871, p. 46, no. viii, the document is issued by: ἐγὼ ἀβινέλλης, καὶ βαρθολομεος φαβαράς οἱ κριταὶ τοῦ καστρουἰωάννου; but in the editions of S. Cusa, *I diplomi*

greci ed arabi di Sicilia, Palermo, 1868–81, p. 317; and of R. Starrabba, *I diplomi della cattedrale di Messina raccolti da Antonino Amico* in Doc. per servire alla storia di Sicilia, ser. 1, Palermo, 1876–90, p. 384, we find instead: οἱ κριταὶ τοῦ κραταιοῦ 'Ιωάννου. The attribution to Castrogiovanni (Enna) has found favour with historians generally, because towards the end of the record the road to Castrogiovanni is mentioned and also two witnesses from the same place. The reading κραταιοῦ, however, in place of καστροῦ, would seem to provide the key to the problem and to make it probable that the word ἰωάννου, although present in all the editions, is at fault. Since κραταιοῦ is never to my knowledge used except of the king and his *curia*, some word must be sought of which κραταιοῦ would be the fitting corollary. The obvious suggestion ῥηγός is unlikely to have been misread as ἰωάννου, and a more probable emendation is αὐθέντου, lord, a term very usually applied to the king. It must be noted further that the designation οἱ κριταί, although strictly signifying judges, is often used at this time for justiciars in place of the more accurate μεγάλοι κριταί. If these considerations are valid the officials holding the inquest are, in fact, 'the justiciars of the mighty Lord' (our king). Further support for the emendation is found in the authentication by the notary Nicolas son of Gregory, who wrote the document and states that he was present: ὄντως μοῦ σὴν τῶν ῥηθέντων κριτῶν καστρουιοάννου (corr. τοῦ κραταιοῦ αὐθέντου) νοτάριου ἐπὶ τῶν κρισμάτων ἐγράφει καὶ ἐκυρώθη (Cusa, op. cit., pp. 320–1). Notaries of justiciars are often mentioned, among them two notaries of Avenellus himself in 1170 (cf. *post*, and cf. also Appendix No. 3), but never of judges, since notaries belonged to the same professional order as judges. Avenellus and Bartholomew may then be regarded with some reason as royal justiciars.

Less conjectural is the emendation of the title given to Avenellus in the document of July 1155. In the relevant passage as printed by Cusa, op. cit., p. 361, King William gives his order: παρὰ τῶν ἐμῶν ἐξουσιαστῶν γουλιέλμου βαλιέρι καὶ ἀβανέλη τῶ κριτῆ καὶ νοταρίω στρατηγοῦ πετραλῆς καὶ τῆς λοιπῆς γερουσίας τῆς ῥημένης χώρας πετραλῆς διαχορίσθησαν. The passage from ἀβανέλη to στρατηγοῦ is so corrupt that it has no intelligible meaning, and as the basis for its rectification the following considerations must be urged. First of all it should be remembered that William Avalerius was the colleague of Avenellus on several occasions when they were acting as *regii justiciarii*. Furthermore, the title of κριτής, here applied apparently to Avenellus alone, can and does frequently signify *justiciarius*, as has been already noted. Finally, it should be observed that in January 1159, only three and a half years after the document now under discussion was issued, the name of the *strategotus* of Petralia was Nicolas according to the judicial record issued by Raynald of Tusa as *magister justiciarius* (Garufi, *Doc. ined.*, p. 83, no. xxxiv). With all these facts in mind the true reading of the passage can be restored: παρὰ τῶν ἐμῶν ἐξουσιαστῶν γουλιέλμου βαλιέρι καὶ

ἀβανέλου τῶν κριτῶν καὶ νικολάου τοῦ στρατηγοῦ πετραλῆς καὶ τῆς λοιπῆς γερουσίας. . . . Undoubtedly the royal orders were issued to 'our officials, William Avalerius and Avenellus the justiciars, and Nicolas the *strategotus* of Petralia and all the other ancient worthies . . .'. The ground is thus cut away from any suggestion that Avenellus suffered any period of disgrace. His official career proceeded smoothly until he reached the highest office of *magister justiciarius*. The appointment may perhaps have ended in 1166 when with his wife and two sons he sold his house in the Galka quarter of Palermo to the royal castellan Ansaldus. It may have been that he no longer needed a residence in the capital, a residence recalling the house granted to Judex Tarentinus by the king, which was at his full disposition when his term of office was over. In any case Avenellus was again acting in his earlier employment as a local justiciar, when in 1170 (Garufi, op. cit., p. 118, no. li), he was ordered to verify the boundaries he had delimited previously with William Avalerius in the time of King Roger, a reference probably to the inquest for S. Filippo in 1150 (Garufi, op. cit., p. 62, no. xxvi). In April 1173 there is a last mention of Avenellus when in a sale of land at Petralia the vineyard of the ἄρχοντος κυρίου ἀβινέλλας is referred to, his title suggesting that he was still in office as a justiciar (Cusa, op. cit., p. 653).

3. In March 1156 Gisulf appears concealed as 'Gandolfo [corr. ? Giusolfo] Regio Giustiziere e Contestabile', the donor of certain lands at Scicli to the church of S. Lorenzo, a dependence of S. Maria Latina of Jerusalem (P. Sinopoli, 'Il tabulario di S. Maria Latina di Agira', *A.S.S.O.*, xxii, Catania, 1926, p. 159, no. 128—a register with innumerable faults of transcription as printed. *Gisolfus miles de Sicla* is among the *homines Siracuse* in 1172, when Geoffrey de Moac, master justiciar of the Val de Noto, assembled witnesses from Syracuse who had been present in King Roger's time at the delimitation of the same boundaries as were now the subject of verification by Geoffrey de Moac (Garufi, *Doc. ined.*, p. 153, no. lxii, cit. Ménager, p. 85, n. 2). This Gisulfus may well be identical with the royal justiciar, but he could not have been in office at the time of the original inquest under King Roger, because in the same document of 1172 there is mention of Odo de Manso, who is expressly stated to have been justiciar when the boundaries were first traced, and to be old and ill in retirement on the second occasion. It may be suggested that Odo's successor was Gisulf, who in his turn was replaced by Geoffrey.

4. For a possible but, as Professor Ménager rightly shows, an unlikely identification of Robertus Brittus with the son of William of Hauteville, mentioned in 1082–3, cf. Ménager, p. 85, n. 3, and again appearing in 1133 in his mother's grant of land and villeins at Messina, op. cit., no. 5, pp. 71–77, but with no known connexion with Scicli. In the present document our Robertus Brittus seems to be of medium standing,

perhaps a knight with a small estate. The attribution to him in the above n. 3 of the justiciar's office is due surely to mere inadvertence.

5. This case heard before the master justiciars is of great legal interest on several grounds. For the constitution and jurisdiction of the *magna curia*, and for the procedure by which a lawsuit could be terminated not by a *judicialis sententia* pronounced by the court, but by a *finis* or concord agreed between the parties and ratified by the court, reference should be made to the discussion *ante*, pp. 315–16. It remains, however, to consider the case as an example of the frequent conflict of proprietary rights and possessory rights and in particular as the record of a proprietary action. The suit was initiated by the complaint lodged before the master justiciars by the plaintiff, Gisulf of Scicli. Normally this type of case would be brought before the local justiciars, but since the plaintiff was himself the justiciar appointed in the region concerned, the hearing was of necessity transferred to the master justiciars. In his complaint Gisulf asserted that two Arab villeins *sui juris* and inscribed in his *platea*, i.e. the official list of his servile tenants, were being detained by the defendant, Robert Brittus. As proof of his ownership Gisulf produced the *platea* in court and supported its evidence by the testimony of the *probi et legales homines*, i.e. the men of credit and standing in the neighbourhood qualified in the eyes of the law to be called to witness to facts and customary usage. Robert countered by claiming for himself and his predecessors long-standing possession of the villeins who were inhabitants of his *casale* of Bessana, and were moreover inscribed in his *platea*. The court considered that Gisulf had made good his claim to the villeins after Robert himself had admitted that they were Gisulf's of right. But at this point, before the judicial sentence was pronounced, Robert and his friends entered a plea that the case should be brought to a *finis* or agreed conclusion on the detailed terms submitted by them and accepted, as it appears, by Gisulf and confirmed by the court. The terms which secured to Gisulf the proprietary right to the villeins and to Robert *de facto* possession received the assent of Robert and his heirs by oath on the Gospels. The whole transaction was guaranteed by two similar copies of the record made by the notary of the court, one copy for each litigant, and corroborated by the signatures of two master justiciars and eight witnesses. For a discussion of the terms and their significance, cf. *post*, n. 8.

6. Cf. Ménager, op. cit., p. 85, n. 4, who refers to several important notices of the *platea*, πλατεία or inventory of villeins, notices which may be greatly extended; cf. S. Cusa, op. cit. *passim*; C. A. Garufi, 'Censimento e catasto della popolazione servile', *Arch. stor. siciliano*, xlix, 1928.

7. Bessana, not identified, presumably near Scicli, prov. Ragusa.

8. The terms of the agreement demand some examination in view of the many legal and tenurial questions involved. It must be clearly understood that the prime object was to secure the equitable settlement between the two litigants of their respective proprietary and possessory rights over the two villeins; and resulting from this, the concern is in the first place with the allocation of the *servicium* owed by the villeins, and next the adjustment of the contingent feudal obligations to the royal *curia*. Robert Brittus, of unknown, but probably of knightly status, acknowledged Gisulf's proprietary right explicitly, and also tacitly through consenting to hold the villeins from him and his heirs, and through paying over 200 tarenes as a premium for Gisulf's transfer to him of the possessory right. Gisulf, a baron holding a 'quaternated' military fief, for his part granted possession to Robert and his legitimate heirs exclusively, in return for certain specified pecuniary dues and personal attendance. He thus instituted a conditional gift dependent on (1) the succession of legitimate heirs, and (2) the continued fulfilment of the definite obligations undertaken on corporal oath by Robert and the said heirs. In case of failure to observe the conditions, and only then, could Gisulf and his heirs re-enter on possession. Professor Ménager rightly points out that there is no mention of any bond of fealty and homage between Robert and Gisulf, and it is abundantly clear that Robert's tenure of the villeins in no wise constituted a fief. Rather did it arise from a simple contract between the parties, guaranteed by the oath of Robert and his legitimate heirs and by the sanction of the *magna curia*.

The agreed conditions fall into three categories. In the first of them there is provision for the annual payment by Robert and his heirs of 2 besants (= 14 tarenes) in compensation for the villein service now lost to Gisulf. This is described as *inde pro servicio*, i.e. from the two villeins on account of the service due. This villein service might well have included some or all of the following: agricultural and other labour, carting and messenger duties, and payments in money or kind, among them the aid or *adjutorium*, which the lord had the customary right to exact for certain purposes. There is no question of any type of military service, and no justification for Professor Ménager's tentative suggestion (p. 99) that the *servicium* mentioned in the agreement could refer to Robert's tenure of the villeins *in servicio*, i.e. as a military sub-fief, exemplified in the *Catalogus Baronum*. Equally impossible is any analogy with the English scutage, a payment made in certain conditions by way of military service.

The second category of conditions concerned the obligations to the *curia* in so far as their fulfilment by Gisulf was dependent on the possession of the two villeins. Gisulf as a 'baron' holding a military fief was bound by feudal usage to pay to the *curia* as occasion required an aid or *auxilium*, here called *exfortium*. The chief occasion was presented by military requirements (*auxilium exercitus*), and for some other purposes recognized by custom, generally the ransom of the king's person, the

knighting of his eldest son, and the marriage of his eldest daughter. In order to fulfil this obligation the baron had the recognized right to levy an *adjutorium* or tallage on all his subtenants except those who were themselves directly liable to pay *exfortium*. Reference may be made to the Sicilian *Assisa*, in which the king urges all his greater tenants, ecclesiastical and lay, specifically including the barons, to levy only a moderate *adjutorium* from their subjects (*subditi*), among them the villeins (*rustici*) being expressly mentioned, F. Brandileone, *Il Diritto Romano nelle leggi normanne e sveve*, Turin, 1884, p. 97, Cod. Vat. III.; cf. also the case of disputed *adjutorium* an. 1185 in E. Jamison, 'Administration of the County of Molise', *Eng. Hist. Rev.* xliv, 1929, pp. 557 seq., Appendix 3.

In view then of this right to take an *adjutorium*, the agreement laid down that Robert Brittus was to pay Gisulf, whenever the *curia* demanded an *exfortium*, the sum of 2 besants, an amount equal to the agreed annual payment in lieu of the former villein service, so that in any year in which such a levy should be made there would be payment of two separate sums of 2 besants, one for the normal villein service and one for the *exfortium—ut duplum sint*, i.e. 4 besants in all. There is no basis for the suggestion that this *duplum* was the *augmentum* or additional military service equal in most cases to the original *servitium debitum* in the *Catalogus Baronum*, and that the duplication constituted the *exfortium integrum* described in the present document (Ménager, op. cit., p. 91). On the contrary the *exfortium integrum* was calculated on the normal amount of the *servitium debitum*; and this determined the amount of *adjutorium* passed on to the subtenants. When, however, the *curia* demanded only some fraction of this sum, the baron in his turn, as the agreement was careful to stipulate, should levy only an amount reduced in proportion by way of *adjutorium*. The *augmentum* in fact was equivalent to the non-feudal military service due when the *magna expeditio* was called out in a national emergency. (Cf. my forthcoming edition of the *Catalogus Baronum*, pub. Istituto Storico Italiano per il Medio Evo, Rome.)

In the third category of conditions Robert promised on receipt of a summons to accompany Gisulf anywhere throughout Sicily whenever the latter had occasion to take action against anyone on account of his business and lawsuits. Escort duty was normally performed by freemen, and here it is definitely the subject of a separate clause distinct from those dealing with the villeins' service and applicable to Robert himself. It may be surmised that Gisulf, in order to provide for his own needs, was taking advantage of Robert's urgent desire for possession of the two villeins and was exacting his promise to fulfil a fresh duty independent of any previous obligation. As a royal justiciar and constable Gisulf would be constantly on the road inspecting arms and horses in the constabulary; rounding up criminals; making arrests on behalf of the *curia* (cf. the capture of villein murderers beyond Salerno, *Romualdi Salern. Chronicon*, p. 296; and the political arrest of the

bishop of Agrigento by the justiciar Burgundius, a witness in the present document); visiting the *curia* at Palermo or Messina; travelling on circuit to hold courts or inquests and so forth. There is, however, no possible ground for Professor Ménager's assertion (op. cit., p. 90) that Robert's assistance was needed by Gisulf 'lorsque ce dernier se verra imposer un conflit armé en Sicile'. Private war was unequivocally prohibited throughout the kingdom.

9. This passage signifies, in accordance with both grammar and sense, that Robert was to have and to hold the two villeins as men of his demesne, i.e. that he was to receive the whole of their service for as long as he and his heirs observed the terms of the agreement. Only if they failed in this was it permitted to Gisulf and his heirs to seize them and recover completely his right to them. It is clear that they did not and could not continue to belong to Gisulf's demesne, as has been incorrectly asserted, since possession had been expressly transferred to Robert by the terms of the agreement. Examples of this use of the word *demanii* with the meaning 'men of the demesne' are cited by Ughelli, *Italia Sacra*[2], i, col. 784 and ix, cols. 45 and 99. *Demanium* in Sicilian-Norman and also in Anglo-Norman usage is found in two distinct senses. It may signify those fiefs of a military tenant-in-chief of the king owing *servitium debitum* to the king which have not been sub-infeudated to another military tenant with the same obligation; this is designated as tenure *in demanio* in the *Catalogus Baronum*, while the fiefs which are held by a subtenant are stated to be held *in servitio*. The word *demanium* may, however, also signify on the level of the *terra*, whether *castellum* or *casale* in Sicily and South Italy, or *manerium* in England and Normandy, that part of his land which any lord keeps in his immediate control and exploits by the labour and money services of his non-military tenants, his *homines*, whether *villani* or *liberi homines*. It is in connexion with this second use that the *demanii*, 'the men of the demesne', in the present document must be understood.

10. The designation of Sanctorus in the present document as *curie regalis notarius* is an interesting example of the practice of attaching notaries specifically to courts of justice (cf. *post*, Appendix 3 for *Johannes notarius de Justiciariatu Magne Curie*). His connexion with judicial affairs is evident from his first appearance as the king's notary who drew up and wrote the important judgement pronounced in March 1155 by William I in person at Salerno (A. Mercati, 'Le pergamene di Melfi all'Archivio Segreto Vaticano', doc. v, pp. 23–25, in *Miscellanea Giovanni Mercati* vol. v, *Studi e Testi*, 125, Città del Vaticano, 1946, Estratto). The experience of the courts thus gained led eventually to Sanctorus's promotion by the year 1185 to the office of *magister iusticiarius magne curie*, C. A. Garufi, 'Per la storia dei sec. XI e XII, IV', in *Arch. stor. per la Sicilia orientale*, an. x, Catania, 1913, App. i. pp. 358–9. He had, however, been employed concurrently in the normal duties of a royal notary. In

November 1156 he drew up and set out in his characteristic handwriting the *charta partita* which embodied one part of William I's Treaty with Genoa, *ante*, pp. 304, 320. In 1167 he was responsible for a document issued by the Ten Familiares for the Cappella Palatina; in August 1169 his name appears on a privilege of William II and his mother for S. Maria at Traina, a document falsified in its present form; and in September of the same year he wrote the grant of the same donors for Archbishop Walter of Palermo (for all these cf. K. A. Kehr, *Die Urkunden*, pp. 55, 58). In 1187 Sanctorus is recorded for the last time as one of the *magistri justiciarii magne curie* with the enigmatic appellation of *Sanctorus amiratus*, Garufi, op. cit., App. ii, pp. 360–1. His sons in due course make their appearance as *Eustasius filius quondam Sanctori ammirati* and *Rainaldi filii quondam domini Santori regii ammirati*, Ménager, *Amiratus*—Ἀμηρᾶς, pp. 72–73. The documents themselves and the appelation of *Amiratus* applied to Sanctorus raise many difficulties which are briefly discussed by Professor Ménager. Here two points only can be mentioned: the opinion he puts forward that *Amiratus* was at this time a mere title of honour conferred on a retiring official cannot be accepted because Sanctorus was in full activity as a master justiciar. The same is true, it may be remarked in passing, of Eugenius who as *amiratus* carried out lengthy royal fiscal inquiries. There is no space to consider the problems of the documents, except to note that *Cancellaria* granted by the Empress Constance to Eustasius was no 'chancellerie', but in fact the *castellum* of Cancellara (province of Potenza).

11. This autograph signature should be compared with that of February 1168 (Appendix 2) and the imitative copy of July 1168 (*v. ante*, p. 300 and Appendix 3).

12. Matheus de Partenico witnessed in December 1157 William I's privilege for Archbishop Hugh of Palermo (Ménager, *Amiratus*—Ἀμηρᾶς, p. 68 n. 1), and took an active part in April 1162 in an exchange of fiefs on behalf of John Malconvenant (Ménager, *Les Actes latins de S. Maria di Messina*, p. 87, n. 2, quoting G. B. Siragusa, *Il regno di Guglielmo I*, App. viii, p. 428); the document is also published by C. A. Garufi, *Catalogo illustrato del tabulario di S. Maria nuova in Monreale*, Doc. p.s. alla Storia di Sicilia, serie 1ª, Dipl. xix, Palermo, 1902, p. 6 and App. i, pp. 161–3, with facsimile, Tav. v, of the autograph signature very similar to that found in the present document.

13. Willelmus de Periole (or Periolo) appears in Sicilian documents for the first time in 1133, when as Guillelmus Perollus he witnessed a grant of land at Messina by Galgana, lady of Sperlinga and widow of William of Hauteville, and her sons (*Les Actes latins*, no. 5, pp. 71–77); in May 1142 he is among the ἄρχοντες who are hearing a suit brought by his brother γηπέρτος πιρολλίου lord of Gagliano (prov. Enna), against Bishop

Robert of Messina (Caspar, Reg. no. 145). The document raises some doubts, but is substantially authentic. In July of the next year, 1143, the presence of γουλιέλμου πυρόλη is recorded as a member of the court trying a complaint lodged by the bishop-elect Gerard of Messina against the royal foresters (Caspar, Reg. no. 156). He is not again mentioned until in 1157 he witnessed at Palermo a grant of William I for Archbishop Hugh of Palermo (*Les Actes latins*, p. 87, n. 1); and he is found for the last time in the present document. His brother Gilbert, however, appears in February 1169 with his wife Agnes, under the disguise of 'Jolberto Duca di Gagliano', and again in August 1176, this time with his son Goffredo, as 'Jolberto Signore di Gagliano' (Sinopoli, *Tab. S. Maria Latina di Argira*, p. 159, nos. 129, 130). Professor Ménager identifies Willelmus with Guillelmus de Perolio, who in 1097 held a fief in the neighbourhood of Aversa from Count Robert of S. Agata (A. Gallo, *Codice diplomatico normanno di Aversa*, Naples, 1926, i, p. 15, no. x). The identification is not possible, because this Guillelmus de Perolio had died by 1131 (op. cit., p. 44, no. xxix). He left, however, two sons, Alexander and Matthew, each of whom had a son named William after his grandfather. Alexander's son, a knight of Aversa, made a donation of land in 1134 to the monastery of S. Maria *ad Capellam* outside Naples (Ughelli, *Italia sacra*[2], vi, col. 228), a donation confirmed by King Roger in 1143 (Caspar, Reg. no. 159). This secundus Willelmus de Peroleo, so described in a document issued in 1131 by his uncle Matthew (Gallo, loc. cit.), cannot be our Sicilian Willelmus de Periole, because when he gave consent in the same document to a grant of land by Matthew he was acting clearly as the head of the family and the tenant of the ancestral fief at Aversa. Consequently the Sicilian identification would imply an incredible programme of travelling back and forth across the sea in order to give his consent in 1131 at Aversa; to act as witness in 1133 to Galgana's Sicilian donation; to make his own grant of land in 1134 at Aversa; and then to carry out important duties for many years, once again in Sicily, where he had an established position and where his brother Gilbert was lord of Gagliano, although there is no mention of him at Aversa. A more likely candidate for a Sicilian career is perhaps Matthew's son Willelmus (III), who appears in his father's charter of 1131, and never again at Aversa. But he too, like his cousin Willelmus (II), is never credited with a brother there. It may well prove that the Sicilian Willelmus de Periole and Gilbertus of Gagliano had a completely different background from the Aversa family.

14. This autograph signature has a special interest because of its rare French form and the peculiar shape of the initial capital R. The language used betrays the Norman origin of the writer and suggests moreover that he or his ancestor brought this toponym of Muntfort to Sicily and passed it on to the place still known as Monforte San Giorgio (prov.

Messina). This reason for the name is the more probable because there is no mountain at Monforte. Raynalt de Muntfort is not again on record until July 1173 when he appears under the Latin guise of Raynaldus de Monteforti, engaged together with Persicus as *magne curie magistri justiciarii* in settling a dispute between the churches of S. Maria de Georgio Amirato and S. Maria de Campogrosso. A third master justiciar, Frederisius (*al.* Fredericus), is also mentioned as their colleague during the proceedings (Garofalo, *Tabularium regiae ac imperialis capellae collegiatae divi Petri in regio Panormitano palatio*, Palermo, 1835, p. 33, no. xiv and elsewhere). Raynald probably received the office at Easter (8 April), 1173, because in March of this year he is not found among the master justiciars (R. Gregorio, *Considerazioni sopra la Storia di Sicilia* in *Opere scelte*, ed. 3, Palermo, 1845, lib. ii, cap. ii, p. 153). He appears next in July 1176, with the additional office of constable of Palermo, as witness to a declaratory act of Count William of Marsico, Persicus again being his colleague (C. A. Garufi, *Catalogo illustrato del tabulario di S. Maria nuova in Monreale*, Palermo, 1902, doc ii, pp. 163–5. Doc. p. servire alla storia di Sicilia, 1ª serie, dipl. xix). Finally, in February 1177 Raynald is one of the many witnesses to the great privilege in which William II constituted the dower of Queen Joanna. Here his name has been transmitted in the extant near-contemporary copies of the document, in garbled shape as Bainal(is), Bainaldus, Bamal(is), Bamalus de Monteforti *magister justiciarius*. These variant forms may be explained by reference to the autograph signature in the present document where the initial letter R closely resembles the letter B and might well have been mistaken for it. For the MSS. and the editions of the Dower-privilege cf. E. Jamison, 'The Sicilian Norman Kingdom in the mind of Anglo-Norman Contemporaries', Annual Italian Lecture, 1938, *Proceedings of the British Academy*, London, vol. xxiv, note 63. The most accurate printed version is in *Gesta Regis Henrici Secundi (Benedicti Abbatis)*, ed. W. Stubbs (Rolls Series), London, 1867, i, pp. 169; cf. also *M.G.H. SS.* t. xxvii, Hannover, 1885, p. 945. Errors, however, remain. It should be noted furthermore that in Thomas Hearne's edition, *Benedictus Abbas Petroburgensis de Vita et Gestis Henrici II et Ricardi I*, Oxford, 1735, i, p. 219, based on Wanley's transcripts from the two Harleian MSS. of the British Museum, also used by Stubbs, the name under discussion is given somewhat surprisingly in the correct form of Rainaldus.

15. Mathew *cives Salerni*, often but incorrectly described as *de Ajello*, is well known for the great part he played in contemporary politics and in administration as notary, master notary, vice-chancellor, and finally as chancellor (1156–93), K. A. Kehr, *Die Urkunden der normannisch-sicilischen Könige*, pp. 54–58, 62, 88–92 (cit. L.-R. Ménager, *Les Actes latins*, p. 88, n. 1). To the references of Kehr, p. 88, may be added the documents of May 1173 (E. Jamison, 'La carriera del logotheta Riccardo di Taranto' (cit. *ante*), App. ii); and December 1182 (*Codice dipl. barese*, v,

Bari, 1902, no. 147). Mathew's characteristic autograph signature in the present document may be compared with the facsimiles in C. A. Garufi, *Catalogo illustrato* (cit. *ante*, n. 14), tav. v, vi, although the highly individual cross has been rubbed away, and the usual *subscripsi* in monogram form may always have been lacking.

16. For Burgundius cf. L.-R. Ménager, loc. cit., n. 2, citing pseudo-Falcandus, *Historia*, p. 146.

17. Not identified; the Lombard name suggests a possible connexion with Guaymarius de Rotunda (near Acerno prov. Salerno), *Catalogus Baronum*, ¶¶ 448, 477.

18. Robert Gulpilius cannot be identified; Professor Ménager calls attention to a probable relative, Alexander Gulpillis, who in April 1162, like Mathew de Partenico, signed the document issued on behalf of John Malconvenant (*v. ante*, n. 12). The same Alexander Gulpill(is) was also among the witnesses to the Dower-privilege of Queen Joanna (*v. ante*, n. 14), in 1177.

No. 2

1168, February, Ind. 1 Messina

Definitive sentence pronounced by Archbishop Roger II of Reggio (Calabria), Bishop William of Anglona, Bishop John II of Malta, and Bishop Tustan of Mazzara on receipt of a royal injunction to act as ecclesiastical judges delegate in the *magna curia* (there being present two master justiciars, Judex Tarentinus, and Abdenago filius Hanibalis in order to constitute a session of the *magna curia*, and Roger of Tirone the master constable, and a large number of bishops and other clerics), in settlement of a long-standing case between Prior Thomas of S. Maria of Bagnara and Abbot Landricus of S. Eufemia. The prior had lodged a complaint before the bishops that on the abbot's orders the men of the monastery had made armed entry into the canons' wood at Corona and land at Sparta, seizing the pigs and cutting down the trees. This had occurred, frequently, against the king's peace and against the orders of Count Hugh of Catanzaro, master justiciar and constable of All Calabria. In reply to the abbot's counter-claim that the property belonged of right to the monastery, the prior stated that the case had already been brought against a previous abbot, Philip, in the court of the royal justiciars of Calabria, Andrew Cafurnus and Mathew of Salerno, on the precept of the late King William (I), and that Abbot Philip had admitted his claim to be invalid, before the court had pronounced sentence. Since the present Abbot Landricus denied this, the case had been committed to the four bishops and they now issued

a definitive sentence, in the presence of many ecclesiastical witnesses and the three laymen mentioned above, adjudging the property to Bagnara, except for one small piece of land.

Original document, Archive of the Lateran Basilica, Rome, Q. 7. C. 3 = A; for permission to copy the judgement my respectful thanks are offered to the Rev. mo. Capitolo Lateranense, and in particular to the kind assistance of the Rev. mo. Canonico Mons. Pio Paschini.

A copy of the document by Galletti exists in the Vatican Library; Cod. Vat. Lat. 8034, f. 30–f. 31 = B.

The original is written in an elegant diplomatic minuscule on fine white-faced parchment; the name of the notary is not given.

Measurement: 77×43 cm.

Edition: E. Jamison, 'Note e documenti per la storia dei conti normanni di Catanzaro' in *Archivio storico per la Calabria e la Lucania*, i, Rome, 1931. It is published again here in view of its great interest for the history of the *magna curia*, the former edition having an entirely different context.

For the history and bibliography of the abbey of S. Maria of Sant' Eufemia; L.-R. Ménager, 'Les fondations monastiques de Robert Guiscard, Duc de Pouille et de Calabre, I. S. Maria di Sant'Eufemia', Off-print of *Quellen u. Forschungen aus italienischen Archiven und Bibliotheken*, vol. 39, Tübingen, 1959, pp. 4–22. E. Pontieri, 'L'abbazia Benedettina di Santa Eufemia in Calabria e l'Abate Roberto de Grantmesnil' in *Tra i Normanni nell'Italia meridionale*, 2nd ed. revised, Naples, 1964, pp. 283–319; L. Townsend White, *Latin Monasticism in Sicily*, Camb. Mass., 1938, pp. 48 and n. 1, 56, 79 n. 2, 80, 105–7, 114, 184. For the Augustinian priory of S. Maria of Bagnara, B. Capasso, *Le fonti della storia delle provincie Napoletane del 568 al 1500*, ed. O. Mastrojanni, Naples, 1902, p. 96 n. 1–97; L. Townsend White, op. cit., pp. 49, 56, 66 n. 1–69, 72, 114, 184–6, 189, 194–5, 201, 275, 279.

✠In nomine dei eterni et salvatoris nostri jhesu xpī; Anno incarnationis eiusdem m°c°l°xviii, Rogerius Dei gratia Regius archiepiscopus,[1] W[illelmus] Anglonensis,[2] et Johannes Maltensis,[3] et Tust[anus] Maz[ariensis][4] episcopi: Quoniam sicut ait Apostolus servos Dei litigare non oportet, demandatum et injunctum nobis est a regia celsitudine, ut de lite et controversia que erat inter viros venerabiles, canonicos videlicet Balnearie, et monachos Sancte Euphemie, studiose cognoscere-mus et eorum altercationes per diffinitivam sententiam sopiremus. Venientes ergo ante nostram presentiam viri venerabiles, Landricus abbas Sancte Euphemie,[5] et Thomas prior Balnearie,[6] primo uterque cavit et sollempniter repromisit nostro judicio sisti et judicatum solvere; quo facto, prenominatus prior adversus prefatum abbatem querimoniam deposuit, quod scilicet precepto et jussione ipsius abbatis homines monasterii cum armis intraverunt silvam ęcclesię que vocatur

Corona,[7] et terram que dicitur Sparta, et alia tenimenta adjacentia, que prefate ęcclesię de privilegiis retro principum pertinebant, et per violentiam ceperunt porcos ęcclesię; et ab aliis hominibus qui licentia ipsius ęcclesię animalia pascebant in eisdem tenimentis herbaticum violenter tulerunt, arbores inciderunt. Nec hoc semel sed sepius fecerunt, et eorum justam possessiones homines monasterii abbatis jussione sepius inquietabant contra pacem regiam, et contra quod jussum fuerat ab illustri comite Hugone Catanzarii, magistro justiciario et comestabulo totius Calabrie.[8] Ad hanc querelam predictus abbas respondit: jamdicta tenimenta ad jus monasterii pertinere privilegio retro principum monasterio fuisse oblata tam silvam predictam quam cetera tenimenta non tantum ęcclesię Balnearie, sed etiam monasterio Sancte Euphemie; denique se jussisse hominibus et foresteriis suis de predictis silvis herbaticum tollere, et ligna incidere, sicut predecessores sui fecerant et sicut in rebus que ad jus monasterii pertinebant. Ad quod item respondit pars canonicorum dicens, monasterium nichil juris habere in prefatis tenimentis. Precepto namque bone memorie Regis W[illelm]i de hac eadem controversia curia celebrata fuit a justiciariis Calabrie, Andrea Cafurno[9] et Matheo Salerni;[10] interfuit etiam ibi vir venerabilis Rogerius Reginus archiepiscopus et alii multi. In eadem ergo curia precepto regio ad hoc ipsum congregata, bone memorie Philippus abbas Sancte Euphemie[11] priusquam ad calculum diffinitive sententie veniretur, videns se in prefatis possessionibus nil juris habere, remisit ęcclesię Balnearie predicta tenimenta in perpetuum quiete et tranquille possidenda secundum quod in eorum privilegio continetur, sine ulla sua suorumque successorum contradictione vel molestia. Quod cum ab altera parte negaretur, placuit nobis communicato consilio consulere justiciarios predictos, Andream Cafurnum et Matheum Salerni, ut eorum testimonio rei veritatem cognosceremus. Consulti ergo justiciarii de mandato regio, dixerunt rem ita fuisse sicut canonicorum allegatione asseveratum est, curiam videlicet in Calabria precepto summi tunc principis celebratam, dominum Rogerium archiepiscopum et multos alios interfuisse; satis superque de predictis tenimentis questionem inter monachos et canonicos agitatam, abbatem denique Philippum cum videret monasterium in prefatis rebus nichil juris habere, non expectasse sententiam, sed remisisse eas ęcclesię et canonicis in perpetuum liberas et quietas possidendas secundum quod in eorum privilegio continetur. Cui testimonio cum a regia curia et a nobis creditum esset, presertim cum ego qui supra Rogerius archiepiscopus Reginus sicut allegatum est interfuissem, tandem communicato consilio concorditer sententiam dictavimus, et eam deinde sollemniter pronunciavimus: supradictam silvam et cetera tenimenta debere esse in possessione ipsius ęcclesię et canonicorum in perpetuum liberas et quietas; et res ab abbate et ab hominibus ejus injuste captas, ligna injuste fuisse incisa, porcos sive ipsorum canonicorum, sive ab aliis herbatici nomine captos canonicis integre debere restitui. Sane intra ipsa tenimenta in

loco qui vocatur Glazanó[a] est quidam ager laboratorius usque ad mare descendens, et quedam vinea in eodem agro quam ex utriusque partis asseveratione constat esse juris monasterii, et ad ipsum monasterium sine aliqua contradictione pertinere, sicut continetur in privilegio Balnearie de divisis. Est autem tam prefata silva quam et cetera tenimenta Balnearie his circumdata finibus, sicut in canonicorum ut dictum est privilegio continetur: sicut ascendit Vallis Rocchú et vadit usque ad divisas episcopii ubi est regia via, deinde in loco qui dicitur Corona, et inde per viam vadit in Sabuccá ubi est aqua, et vadit usque ad flumen quod vocatur Vathí et inde descendit Vathí flumen usque ad mare, et vadit per litus maris usque ad Vallem Rocchú ubi cepimus, et ita clauditur. Et sicut superius dictum est infra ambitum horum finium, et intra terminos supradictos, predicta vinea et prefatus ager sationarius continetur, que ut diximus nullus ambigit ad jus predicti monasterii pertinere.[12] Actum mense Februarii, indictione prima, in civitate Messana, regnante gloriosissimo Rege W[illelm]o secundo una cum matre sua domina Margarita gloriosissima regina, anno regni ejus secundo feliciter.. AMEN..

(column 1)

+Ego Rogerius Reginus archiepiscopus his omnibus interfui et subscripsi.[1]

+Ego [Willelmus] Dei gratia Anglonensis ecclesie episcopus interfui et subscripsi.[2]

+Ego Johannes Dei gratia humilis ecclesie Melitane minister interfui et subscripsi.[3]

+Ego Tustanus Dei gratia Maz[ariensis] episcopus interfui et subscripsi.[4]

+Ego Ard[uinus] Dei gratia Militensis ecclesie electus interfui et subscripsi.[13]

+Ego W[illelmus] Dei gratia Neocastrensis episcopus testis sum.[14]

+Ego G[ualterus] Dei gratia Aversane ecclesie episcopus testis sum.[15]

+Ego Rogerius Cathaniensis archidiaconus interfui et subscripsi.

+Ego Riccardus canonicus Regii subscripsi.

(column 2)

+Ego Johannes Dei gratia Cathaniensis ecclesie electus his omnibus interfui et subscripsi+[16]

[ ][b]

[a] the original document = A has an acute accent or abbreviation sign on the final vowel of the place-name Glazanó and the subsequent names Vallis Rocchú, Sabuccá, and Vathí; for this reason Rocchú has been transcribed Rocchu and not as in B, and by K. A. Kehr, *Die Urkunden der normannisch-sicilischen Könige*, Innsbruck, 1902, p. 414, no. 2. Rochii, and the place has been identified tentatively with Piano Don Rocco, cf. *post*, n. 12. [b] The original A shows here and p. 335, n. b these slits with traces of the red wax of the seal, or alternatively of the red cord.

+Ego Abdenagus filius Anibalis regie curie magister justiciarius interfui et subscripsi.[17]

+ὁ τῆς μεγάλης κόρτης κριτὴς ὁ ταραντῖνος παρὼν αὐτός τῇ ἄνω γεγραμμένῃ ἀπόφασει ὑπέγραψα τῇ αὐτοῦ χειρί+[c 18]

+Ego Rogerius de Tyrone incliti regis magister comestabulus hujus rei testis sum.[19]

[ ][b]

+Ego G. canonicus Regii interfui et subscripsi.

+Ego Stephanus cappellanus domini Regis interfui et subscripsi.[20]

Notes

1. Roger II archbishop of Reggio; F. Ughelli², *Italia sacra*, ix, col. 325; Hugo Falcandus, *Historia o Liber de Regno Sicilie*, ed. G. B. Siragusa (Fonti per la storia d'Italia, Rome, 1897, pp. 88, 91–92, 94–95); C. A. Garufi, *Documenti inediti*, Palermo, 1899, pp. 61, 117.

2. Willelmus, bishop of Anglona; Ughelli², vii, col. 79.

3. Johannes II, bishop of Malta; R. Pirro, *Sicilia Sacra*, ed. Mongitore, Palermo, 1733, ii, p. 907; Hugo Falcandus, op. cit., pp. 111, 122, 160–1; Garufi, op. cit., p. 117.

4. Tustan or Justin, bishop of Mazzara; R. Pirro, *Sicilia sacra*, ii, p. 844; Garufi, op. cit., pp. 116, 158, 271; Hugo Falcandus, op. cit., pp. 31, 91, 114. *Romualdi Salern. Chronicon*, ed. C. A. Garufi, R. I. SS, new ed. Città di Castello, [1930], vii. 1., pp. 247, 269.

5. Landricus was Master of the Hermitage of S. Stefano del Bosco, according to Tromby, *Storia del patriarca S. Brunone e del suo Ordine Cartusiano*, Naples, 1773, and became abbot of S. Eufemia in 1166 or 1167 (A. di Meo, *Annali critico-diplomatici del Regno di Napoli*, Naples, 1819, xii, pp. 61–62). The monastery, now a ruin, was situated at S. Eufemia Lamezia, map, Istituto Geografico Militare, F. no. 241, scale 1 : 100.000.

6. For the Augustinian Priory of S. Mary at Bagnara cf. the references given by B. Capasso, *Le fonti della storia delle provincie napoletane dal 568 al 1500*, ed. O. Mastrojanni, Naples, 1902, p. 96 n. 1; and L. Townsend White, *Latin Monasticism in Norman Sicily*, Camb. Mass., 1938, p. 184, nn. 1–4. The priory was at Bagnara Calabra, map, Istituto Geografico Militare, F. no. 254, 1 : 100.000.

7. The Piani della Corona are situated to the east of Bagnara.

[b] See note b, p. 334. [c] This signature is omitted in B.

8. Hugh Lupin the elder must be identified with Hugo de Rupeforti, who is stated by Hugo Falcandus (*Historia*, 108), on the occasion of his creation as a count (no title is given) in the spring of 1167, to be the cousin of Queen Margaret, *hominem omnis virtutis expertem, qui de Francia nuper advenerat.* The exact relationship awaits fuller investigation. Hugh's next appearance is in the present document of February 1168 when he is called Count of Catanzaro and master justiciar and constable of All Calabria. His comital title is therefore clearly established, but the description of his office is abbreviated, the full form being *magister justiciarus et magister comestabulus totius Calabrie et Vallis Gratis et Vallis Signi et Vallis Laini.* It is not known how long he held the office, because it is not mentioned again until December 1194, when Lambert was master justiciar, and Hugh had died before April 1195 without any doubt (Jamison, *Admiral Eugenius of Sicily*, London, 1957, pp. 106, 159 and n. 3). Count Hugh was a cousin too of the Chancellor Stephen of Perche and one of his ardent supporters during the violent opposition he encountered. Hugo Lupinus, we learn from Falcandus (op. cit., pp. 157–8), and other newcomers with some members of the Norman nobility took refuge in a near-by church tower during an armed attack on the chancellor; but on the final expulsion of Stephen the victorious *magnates curie* allowed *Hugo comes Catacensis* to remain in Sicily, because he was not a man likely to plan bold action or secret plots, and might well help to mitigate the queen's anger at the chancellor's exile. Count Hugh is mentioned once again, this time among the important bishops, counts, and high officials who witnessed the privilege of dower bestowed on Queen Joanna in February 1177. Probably at the time Hugh Lupin received his county he married the famous Clementia, Countess of Catanzaro in her own right. The daughter of Count Raymund, who had succeeded his brother, Count Geoffrey about 1144/1145, she has nevertheless been persistently confused with a daughter of Roger II, Adelasia, the ex-wife of Count Hugh of Molise. All Clementia's connexions were with Central Apulia and Calabria, and she played an important part in the Calabrian revolt of 1160 when she was actively supported, according to Hugo Falcandus (op. cit., p. 77) by her *avunculi Thomas* and *Alferius*, a support which brought them terrible punishment. They were, however, not uncles but first cousins, being the illegitimate sons of Count Geoffrey of Catanzaro. This appears as regards Thomas by a document issued by Countess Bertha, the widow of Count Geoffrey, in 1145, in which another son of Geoffrey's is also recorded, by name William. There is no mention of Alferius, whose relationship depends on the statement of Hugo Falcandus. (*Carte latine di abbazie calabresi*, ed. A. Pratesi, *Studi e Testi*, 197, Città del Vaticano, 1958, p. 41, doc. 14). *Thomas filius comitis Catacensis* held three knight's fees in Monticchio dei Normanni and three in Carbonara (now Aquilonia) (*Catalogus Baronum*, ¶ 699) and he was evidently succeeded by his son *Goffridus de Carbonara, dominus Lucii* (Pratesi, op. cit., pp. 79,

95–96, 113, 118, 123, 134, 148, 154, 262, 311), who likewise succeeded his uncle William as lord of Luzzi in Calabria (Pratesi, op. cit., pp. 42, 67–68, 87, 93, 118, 123, 134, 138, 148, 154). Moreover, in the *Commemoratio* of the benefactors of the abbey of Sambucina (G. Marchese, *La Badia di Sambucina*, Lecce, 1932, pp. 247–8, fig. 46) and the confirmation to the abbey by the Empress Constance (*Documenti originali dei re normanni di Sicilia in facsimile*, ed. A. de Stefano and F. Bartoloni, Rome–Palermo, 1954, *Arch. paleografico italianio*, fasc. 60, no. 13), William de Luzzi appears as the son of Geoffrey late count of Catanzaro, together with his nephew Geoffrey of Carbonara.

The sons of Count Hugh and Countess Clementia were the twins Hugh and Jordan, who began their career as members of King William II's bodyguard. They rose to important positions under Tancred and then went over to the Emperor Henry VI, still prominent at court. Eventually, however, they seem to have revolted against the emperor, Jordan being crowned anti-king of Sicily, an act which brought on him a horrible vengeance. (Cf. Jamison, 'Note e documenti per la storia dei conti normanni di Catanzaro', *Arch. stor. per la Calabria e la Lucania I*, 1931; the same 'I conti di Molise e di Marsia', *Atti del Congresso abruzzese-molisano*, Casalbordino, 1932, pp. 89–91; *Admiral Eugenius of Sicily*, London, 1957.)

9. Johannes Cafurnus, clearly a relative of Andreas, appears in 1176 at Reggio bringing a suit against the Archimandrite Onufrius II of S. Salvatore *ad Linguam Phari* at Messina, the same who was executor of the will of Judex Tarentinus, *ante*, p. 301 (Vatican Library, Cod. Vat. Lat. 8201, f. 234).

10. Mathew of Salerno is found in the same document, together with a different colleague, Nicolas of Gerace, acting as οἱ μεγάλοι κριταί of Calabria.

11. This abbot Philip is apparently unknown hitherto.

12. If the reading suggested *ante*, p. 334, n.[a], be accepted, it is not improbable that Vallis Rocchú should be identified with the Piano Don Rocco, south-east Bagnara (*Ist. Geog. Milit.*, F. 254), while the next point reached, *ad divisas episcopii ubi est regia via*, may be explained as the dividing line between the archdiocese of Reggio and the diocese of Mileto, which passes just east of Bagnara, and cuts across the road from Bagnara to Sinopoli. After reaching this point on the king's highway the boundary of the property apparently continued in a north-east direction, running parallel with the sea coast, and arrived immediately at the place called *Corona* in the document, and represented by the present Piani della Corona, a somewhat extensive area; thence *per viam* (it is not clear whether this is the same or a different road) the boundary reached *Sabuccá ubi est aqua* (not identified), and then the river called *Vathí*, its course being then followed down to the sea. It is tempting to see in the

river *Vathí* the Torrente Vasi, but this is too distant, and moreover it does not flow down to the sea, but in an opposite direction to join, together with other tributaries, the river Petrace, which does eventually empty itself into the sea, but many kilometres away to the north. The *Vathí* then must be some small nameless stream which makes its way from the Piani della Corona by cutting through the coastal line of cliffs to enter the sea north of the Torre Rosci. Thence, we are told, it followed the coast till it again came to the starting-point in the *Vallis Rocchú*. This raises a further difficulty, because the town of Bagnara interrupts the coast line between Torre Rosci and Piano Don Rocco, a distance of a little over 2 km. In this unsatisfactory attempt to trace the boundary, it may be noted that on the early seventeenth-century map of Magini-Hondius a large wood is shown close to Bagnara on the south-east and Corona on the north, but the map's projection is unreliable.

13. This bishop appears in Ughelli², i, col. 954 merely as ARD, with a reference to the present document preserved in the Lateran Archive.

14. W[illelmus] is not recorded as bishop of Nicastro by Ughelli², ix, col. 403, in his list of occupants of the see.

15. For Bishop Gualterus of Aversa cf. Ughelli², i, col. 489.

16. Johannes II, bishop of Catania, was the brother of the master notary Mathew, later vice-chancellor and chancellor of Sicily, a citizen of Salerno, who played an important political role under William I, William II, and Tancred, as did his brothers and sons. John was elected at least as early as November 1167 (cf. Hugo Falcandus, op. cit., p. 120) and is found for the first time in documents in the present judgement, where he is described as *electus*. He had been victorious against another candidate, William of Blois, abbot of Mattina, and his election was confirmed by Alexander III on 26 July 1168. The following year, on 4 February 1169, he was crushed with forty-four monks of the cathedral church of S. Agatha under the collapse of the building in the great Sicilian earthquake (L. Townsend White, op. cit., pp. 114, 115).

17. For Abdenagus or Abdenago as *magister justiciarius magne curie* (cf. *ante*, pp. 298–9). His identity is obvious with a man of the same very unusual name, *Abdenago filius Hanibalis*, who is found giving information in the county of Molise in the *Catalogus Baronum*, paragraphs 726, 743, 752, 761, 803. He was, it would seem, charged with the administration of the county between the death of Count Hugh II, and the investiture of Count Richard of Mandra in the spring of 1167 (Hugo Falcandus, op. cit., p. 108). For the *Catalogus Baronum* cf. my forthcoming edition.

18. Note the autograph signature of Judex Tarentinus.

19. Roger of Tirone was appointed *magister comestabulus* by the Chancellor Stephen of Le Perche in 1167 in succession to Berengar de Gisay (Hugo Falcandus, op. cit., p. 120), and he was a member of the *magna curia* in the trial of Richard of Mandra, ibid, p. 140, early in 1168; cf. also pp. 145, 158. He was appointed a royal justiciar by December 1172 (L. Townsend White, op. cit., pp. 101, 271–2), and was succeeded as master constable by Berard Gentilis.

20. It is not improbable that the royal chaplain Stephen should be identified with Bishop Stephen of Patti, 1179–1200 (L. Townsend White, op. cit., pp. 98–99, 284–5, 288; and D. Girgensohn and N. Kamp, 'Urkunden und Inquisitionen aus Patti' in *Q. und F.* xlv, 1965, Regesten, nos. 55, 58, 59, 60, 61, 64, 66, and p. 35).

No. 3

1168, July, Ind. 1 [Palermo]

Judex Tarentinus sitting alone pronounced a *diffinitiva sententia* to terminate a protracted suit now brought before him, without express mention of the royal precept, by Constantine, monk of SS. Quiricus and Julicta at Atrani, acting for the abbot [Pardus] against Hugo de Sancto Johanne for unjustly occupying during ten years and more the church of S. Maria de Arduino at Collesano in Sicily, an obedience for over forty years of the monastery. Hugo countered by asserting that he had received the church from the Lady Adelicia, niece of King Roger. She being present in court flatly denied making any gift; Constantine produced the original charter of 1091 (given *in extenso*) recording the grant of the church by Arduinus of Collesano; and finally Hugo admitted that ten years before he had rented the church and its land by agreement with its former priest, Abram. Judex Tarentinus adjudged the church to belong *jure* to the monastery of SS. Quiricus et Julicta and ordered reseisin of the monastery represented by Constantine. A guarantee for the future was made by the present document written by John the notary of the justiciarate of the *magna curia* and corroborated by the autograph in Greek of Judex Tarentinus.

The source of this unedited document is a transcript made in 1906 under my direction (= D) of a copy (= C) executed by the erudite historian of Amalfi, Matteo Camera, from the Inventario della SS. Trinità p. 482 (= B), at that time still preserved in the convent of the SS. Trinità outside the city gate of Amalfi. The original (= A), as it would seem, had already been lost. I should like here to record my thanks to the Signori Camera, who sixty years ago on my first 'Iter Italicum' generously allowed me to consult the MSS. of their late uncle in Amalfi.

At the dissolution of the monastery of SS. Quiricus and Julicta in 1269, its buildings and possessions, including the archive, were transferred to the Benedictine nunnery of S. Maria de Fontanella with its two annexed convents. The group was united in 1581 with three other convents including the SS. Trinità, where in the eighteenth century the documents of all seven houses were copied in arbitrary numerical order to form the Inventario della SS. Trinità. On the extinction of this convent, the whole surviving archives, both originals and cartularies, were removed in 1910 to the Archivio di Stato of Naples, and all perished in 1943 in the destruction of the contents of the Naples Archives at S. Paolo Belsito. The originals, but not the cartularies, had been transcribed by Conte Riccardo Filangieri di Candida for publication in the *Codice diplomatico amalfitano*, vol. i, Naples, 1917, but vol. ii, Trani, was not published until 1951, after the documents themselves had been destroyed; cf. M. Camera, *Mem. storico-diplomatiche dell'antica città e ducato di Amalfi*, i, p. 149 seq., ii. App. pp. iv–vii; R. Filangieri, op. cit. i, pp. xii–xvi.

An. 1168
No. 266

Copia estratta dal protocollo esistente presso il monistero SS[a] Trinità d'Amalfi

In nomine domini Dei Salvatoris nostri Jhesu Christi, Anno ab Incarnatione ejus millessimo centessimo sexagessimo octavo mense Julii Indictione prima, Regni vero domini nostri magnificentissimi Regis[a] W: (Vilielmi) anno secundo feliciter Amen. Residente me Judice Tarentino magne Curie magister Justiciarius[a] pro diffinienda lite que longa tempora fuerat inter Hugonem de Saniohan[1] et Constantinum monachum monasterii sanctorum martirum Quirici et Julicte de Atrano,[2] Presente nobilissima domina Adelicia nepte gloriosissimi[b] domini Regis[a] Roggerii dive memorie,[3] Constantinus ipse monachus per suum advocatum pro parte jam dicti monasterii[c] de Hugone de San Joanne et eius uxori[d] injuste occupavere et tenent jam sunt anni decem et amplius Terras quasdam de proprio tenimento ecclesie sancte[e] Marie de Arduino[4] obbedientia predicti monasterii, quas videlicet terras predicta ecclesia quiete possedit per annos quadraginta et amplius. Ad que prefatus Hugo respondit dicens quod ille terre supradicte, dono et concessione jamdicte domine Adelicie neptis olim domini gloriosissimi Regis[a] Roggerii, sibi et uxori sue pertinebant. Cui cum ipsa honesta domina in facie restitisset dicens se numquam de tenimento aut de rebus jamdicte ecclesie sancte Marie de Arduino donasse alieni vel concessisse, prefatus monachus Constantinus pertulit quandam chartulam ydoneis testibus roboratam[f], quam Arduinus de Gulisano[5] sua donatione ipsi ecclesie et de eius tenimento et divisis fecerat, cuius equidem continentia hec est = Anno ab Incarnatione d. n. J. C.

[a] MS. Regii [b] gloriosissima [c] *the words*: querimoniam deposuit *or a similar phrase appears to have been omitted here.* [d] *the corresponding word*: quod *or* quia *has likewise been omitted.* [e] MS. sancta [f] MS. roboratum

millessimo nonagesimo primo Indictione xjjjj[e] (sic)—Quum nostrum mare miserie plenum semper tempestabibus atteritur[g], et numquam alicui adest ortus, cum postmodum non adsit occasus evadendi huius periculum, naufragium magnumque decursum summo nobis conatu procurandum est illique adherere patrie ubi[h] semper vita diuturna et mors numquam adest sita, igitur ego Arduinus hoc naufragium evadere cupiens nostri[i] redemptoris verba dicentis: facite vobis amicos de mammona iniquitatis, ad mentem reducens, dedi Deo sancteque[j] ecclesie que sita est in suburbio Amalfi civitatis[k] in honorem sancti Quirici et Julicte[l] martiris[m] ejus quandam ecclesiam Dei genitricis in honorem sacratam,[n] que est juxta Castrum Raynaldi Avenelli[o] quod vocatur Colossensis,[6] ipso concedente ex cujus erat honore; dedi etiam eis duos rusticanos; et dedi terram divisatam[p] de via Calabutori[7] usque ad montem et de monte usque ad viam que pergit ad Alcose ad laborandum; dedi hinc[q] pro amore Dei et facinorum meorum relaxione quadraginta inter oves, boves, porcos et arietes. Hec omnia supradicta dedi pro Investitione[r] vestri cultri. Testes sunt isti qui infra subtitulantur: Tebaldus cappellanus, Rogerius procurator castri, Gualterius, Manfredus; Signum Raynaldi Avenelli[o];[3] Signum Arduini; Signum W. ejus filius.[8] Lectaque charta ut predictum est, predictus Hugo de San Johan confessus[s] dixit: Revera, terra ista de qua controversia est de tenimento Sancte Marie de Arduino est, sicut[t] ego tenui eam et totam ipsam ecclesiam cum ejus tenimentis jam sunt anni decem ex eo pacto et conventione ut annis singulis darem parti jamdicti monasterii de frumento salmas decem. Extra[u] quibus dedi huic monacho Constantino ad opus ipsius monasterii frumenti salmas triginta; et hoc pactum contraxi et feci cum Habraam sacerdote, qui tunc ipsius ecclesie sacerdos erat. Igitur ex continentia prenominati privilegii et attestatione[v] prenominate nobilissime domine Adelitie, et confessione ejusdem Hugonis[w] de San Johan, certificatus ego Judex Tarentinus magne Curie magister Justiciarius quod certe[x] ipse jamdicte ecclesie sancte Marie de Arduino jure pertinebant, per judicium et diffinitivam sententiam de omnibus tenimentis[y] ipsius, pro ut in prenominato privilegio continetur, jamdictum monachum Constantinum[z] pro parte predicti monasterii de Atrano jussi resasiri et Hugonem de San Johan ab eis expoliri. Hugo itaque suam injustitiam recognoscens, noluit ulterius ecclesiam Dei injuste persequi et de sua justitia molestare, sed sponte sua per ipsum privilegium et precepto promulgate sententie pro parte sua et uxoris sue et heredum suorum sasivit prefatum monachum Constantinum loco Abbatis sancti Quirici pro parte ipsius monasterii

[g] MS. acteritur [h] MS. uber [i] MS. nisi [j] MS. santeque
[k] MS. civitate [l] MS. Judicte [m] *sic.* [n] MS. in honore sacrata
[o] MS. Anenelli [p] MS. di isatam [q] MS. hunc [r] *sic.*
[s] MS. confexus [t] MS. si [u] MS. Ex [v] MS. actestatione
[w] MS. Strugonis [x] MS. quam [y] MS. testimentis [z] MS. jamdictu monachus Constantinus

cui ecclesie sancte Marie de Arduino subjecta [est]. Seu aliquis pro eorum parte possit quolibet tempore justitiam[aa] aut querimoniam[bb] movere contra predictum monasterium de Atrano de tenimentis et possessionibus ipsis, hoc presens scriptum per manus Johannis notarii de Justiciariatu[cc] magne Curie[9] fieri feci et mea propria manu consignando roboravi:—

+ὁ τῆς μεγάλης αὔλης τοῦ κραταιοῦ ῥηγὸς κριτὴς ὁ ταραντινὸς ὑπέγραψα προσεπικύρωσε τῇ αὐτοῦ χειρί[dd]

///Questa carta fu probabilmente stipulata a Palermo. Benchè scritta in latino, la socrizione del prefato giudice Tarentino è in greco.

Notes

1. *Hugo de Sancto Johanne* witnessed the deed of January 1182, Ind. XI, by which *Robertus de Sancto Johanne* granted the church of S. Pietro in Collesano to Bishop Guido of Cefalù (C. A. Garufi, *Doc. ined.*, p. 173, no. lxxii, and Roberto di San Giovanni, 'Maestro Notaio e il "Liber de Regno Sicilie" ' in *Archivio storico per la Sicilia*, viii, Palermo, 1942, pp. 33–128, App. ii, no. iii, p. 127). For the *de Sancto Johanne* family cf. also E. Jamison, *Admiral Eugenius of Sicily*, pp. 211, 212, 213 and notes.

2. No trace remains today of this very ancient Benedictine monastery which was situated *intus hanc civitate Atrano a subtus Monte maiore*. It was founded about the year 980 by *Leo*, an Amalfitan priest and monk of holy life, son of *Sergius de Urso Comite Scaticampulo*, and the first abbot of the new monastery. In 987 he was acclaimed as the first archbishop of Amalfi, and he combined both offices until his death on 25 April 1030. The abbot at the time of the present document was Pardus who ruled the monastery from 1146 to 1174, a period of prosperity to judge from the many donations received. A century later, however, owing apparently to diminishing numbers or perhaps total lack of monks, the monastery was suppressed in 1269 by Archbishop Filippo Augustariccio and its buildings and possessions were transferred to the Benedictine nuns of S. Maria de Fontanella, or as it came to be known in its new habitat S. Maria *Dominarum*, the transfer being confirmed by Pope Gregory X in 1273 (M. Camera, op. cit. loc. cit.; R. Filangieri, op. cit. i, pp. xii–xvi, and many documents of the monastery, *passim*, but the present judgement is not included).

3. Great interest attaches to the presence in the master justiciar's court of the Lady Adelicia, now advanced in years, after the hitherto latest record of her activity in 1161 when she was interceding with William I for her grandson Roger *de Aquila* Count of Avellino (Hugo Falcandus,

[aa] MS. justam aī̄ [bb] MS. qui moniamus [cc] MS. Justiciaratus
[dd] cf. autograph in Appendix 1 and 2.

op. cit., p. 68). Adelicia, who habitually described herself as *neptis gloriosissimi domini Regis Rogerii*, was the daughter of the king's sister Emma and Count Radulf Maccabeus of Montescaglioso. In July 1119 she witnessed a privilege (L. Tansi, *Historia Chronologica monast. S. Michaelis Archangeli Montis Caveosi*, Naples, 1746, p. 149), issued by her mother and her brother Roger Maccabeus at Civitas Severiana, an alternative name for Montescaglioso, and not San Severino Lucano, as Garufi supposed ('Per la storia dei secoli XI e XII, I conti de Montescaglioso, ii Adelicia di Adernò', in *Arch. stor. per la Sicilia orientale*, ix, 1912). Since she witnessed no later privilege of her mother's, not even that of August 1119, Garufi concluded that her marriage with Raynald Avenel, as his second wife, took place later in 1119 or early in 1120. He was a powerful Sicilian baron, brother of Robert Avenel, and lord of Adernò (now Adrano, prov. Catania), and of Collesano, Scillato, Polizzi (all prov. Palermo), territories which seem to have constituted Adelicia's dower. He must, however, presumably have had other lands as well in order to have provided an inheritance for his children. Raynald died on a certain 30 November, probably of the year 1133, leaving Adelicia with a son and a daughter. The daughter was Magalda or Matilda (undoubtedly variant forms of the same name in spite of F. Scandone's denial (*Storia di Avellino*, II, i. Naples, 1948, p. 40)), the wife of Richard de Aquila, count of Avellino and mother of Roger de Aquila, who succeeded his father in the county in 1152. Adelicia's son was Adam Avenel, a witness to his mother's charters in 1140 (Garufi, *Doc. ined.*, p. 38, no. xv) and 1156 (ibid., pp. 76–78, no. xxxi). He had died before 1161, when the young Roger de Aquila was described as his grandmother's sole surviving heir (Hugo Falcandus, loc. cit.). A hypothetical identity with Adam, King Roger's son-in-law, must be dismissed as impossible because Adam Avenel would have been too young in September and October 1135 to have taken his turn as commander of the royal army at Aversa, as did Adam the king's son-in-law, according to the chronicler Alexander of Telese (*De rebus gestis Rogerii regis Siciliae*, ed. G. Del Re, III, c. 32). Adelicia with her extensive dower-lands and a house in Palermo (L. Townsend White, *Latin Monasticism in Norman Sicily*, Camb. Mass. 1938, p. 289, App. no. xlvi) passed her long widowhood in Sicily. In 1158 she founded the Benedictine nunnery of S. Lucia near Adernò and between 1134 and 1160 made many other pious donations, the records of eight of them having survived, as well as five posthumous notices. Her benefactions were frequently inspired by her solicitude for the souls of her husband and of her royal relatives, and on occasion, as in 1140, for the peace and glory of King Roger, and in 1160, for the safety of King William I and his sons (cf. for her life and donations R. Pirrus, *Sicilia sacra*, ed. Mongitore, Palermo, 1733, pp. 528, 655, 799; C. A. Garufi, *Doc. ined.*, pp. 38, 76, 173, 235, 256, 258, 268; id., 'Per la storia . . .,' I. ii, Adelicia di Adernò; id., 'Roberto di San Giovanni', *passim*; L. Townsend White, op. cit., *passim*; E. Jamison,

op. cit., pp. 211–13). In conclusion a protest must be entered against the impossible opinion urged by F. Chalandon, *Hist. Domination normande en Italie et en Sicile*, Paris, 1907, ii, pp. 49, 62, n. 2, and by F. Scandone, op. cit., pp. 39–50, that Adelicia, after the death of Raynald Avenel, married the father of Richard de Aquila, count of Avellino, and thus became the grandmother of Roger de Aquila who succeeded Richard in the county. The arguments urged by the two historians differ considerably, but since a full discussion is not possible here, it can only be said that they are based on confusions and misunderstanding of the facts.

4. This church is apparently recorded only in the deed of gift of 1091, given below.

5. An important Avenel tenant at Collesano, who does not appear elsewhere; but cf. *post*, n. 8.

6. Collesano, prov. Palermo; the form *Golisanum* or *Gulisanum* is more usual than this *castrum Colossensis*.

7. Caltavuturo, prov. Palermo.

8. Almost half a century later this son of Arduinus attests as: *Ego Warduini*, corr. *Ego W. Arduini interfui*, the endowment of the church of S. Pietro at Collesano in 1140 by the Lady Adelicia and its recent dedication by Bishop Drogo of Squillace on behalf of Jocelin, bishop-elect of Cefalù, Garufi, *Doc. ined.*, pp. 38–40, no. xv. *Martinus de Arduino*, who is among the witnesses of Adelicia's donation in 1156, to the church of S. Nicola di Malvicino, was probably his son, Garufi, op. cit., p. 76 seqq., no. xxxi.

9. The notary *Johannes*, attributed to the *magna curia*, is to be identified with *Johannes regius notarius*, no. 4, among the notaries of William II, and active from 1167 to 1170, K. A. Kehr, *Die Urkunden der normannisch-sicilischen Könige*, Innsbruck, 1902, p. 58. Of special interest here is the donation of William II and Queen Margaret written by *Johannes* in March 1168 only three months before the present judgement of Judex Tarentinus, Garufi, *Doc. ined.*, p. 101, seq., no. xliv. It is furthermore possible that this *Johannes*, who was described as the notary of the justiciarate of the *magna curia*, should also be identified with *Johannes de Melfia* who wrote out the concord agreed between the bishops of Segni and of the Marsí and the canons of Celano on the one side and Odo of Celano on the other, in termination of the suit brought in 1174 before the three royal *familiares*, cit. K. A. Kehr, op. cit., p. 60, no. xvi, from the faulty edition of M. Phoebonius, *Hist. Marsorum*, p. 221; but cf. the facsimile of the document as contained in a bull of Lucius III and published by E. Celani, 'Doc. Vaticani per la storia della contea di Celano' in *Arch. stor. per le provincie Napoletane*, Anno xviii, Naples, 1893.