

# WYNFLÆD v LEOFWINE: A DATCHET LAWSUIT OF 990

ARNOLD H.J. BAINES

*An original record of a lawsuit in 990 to enforce an exchange of lands at Datchet for two Berkshire estates is edited, translated, annotated and related to contemporary conditions and personalities, to the customary law of the West Saxon shire courts, and to the incipient control of civil suits by the Crown.*

In one of the few peaceful years of the reign of Ethelred II 'the Unready', a well-connected nun called Wynflæd sued one Leofwine for possession of lands at Hagbourne and Bradfield which he had seized after his father Ælfric had agreed to exchange them for her estate at Datchet. A vernacular narrative drawn up for her use has long been available in print, and in Latin and modern English translations, but its sense is somewhat obscure without a knowledge of West Saxon civil procedure, on which indeed it can throw considerable light. It illustrates the earliest stage of the shift from traditional justice, administered with rigid formalism by local thegns, to a more flexible procedure controlled by the king and his council. Wynflæd's case shows that everyone from the king to the men of modest estate preferred an agreed settlement authorised by the shire court, rather than a judgement imposed by it. This preference for conciliation arose from the repugnance with which confrontation in court was still regarded.

The importance of the limited number of surviving vernacular documents prepared by or for Anglo-Saxon litigants is that they put flesh on the bare bones of the law-books, and show us the actual working of the legal system which William the Conqueror found in operation and which he sought to preserve "in lands and in all things"<sup>1</sup>. These documents are not charters or official court records but private memoranda (*notitiæ*) in English rather than

Latin, written *memoriae causa* by or for those who were or had lately been involved in disputes<sup>2</sup>. "Most of them can be described as unilateral narratives, setting out the grounds of a plea, the incidents which had occurred in its course, and the settlement, or at least the stage which it had reached at the time of writing"<sup>3</sup>. The usual term for such a document was *talū* 'tale, narrative'.

A suit for possession of land could be started by a *talū* or statement of claim; this is not mentioned in the laws, but is sufficiently evidenced as an alternative to the more formal procedures by *team* (voucher to warranty) or *ahnung* (formulaic declaration of ownership). In a Kentish *talū* of Ethelred's time<sup>4</sup>, entered in the *Textus Roffensis*<sup>5</sup>, Bishop Ælfstan of Rochester asserted that permission to adopt any one of these three procedures had been granted to the whole population, and it is unlikely that in this respect the law of Kent differed from that of Wessex or English Mercia.

A *talū* was intended for current use, and had little chance of survival unless it ended in an agreement which could serve as a document of title, or unless it was transcribed in a cartulary. The record which is the subject of this paper<sup>6</sup> is remarkable in that the original parchment has survived, even though it does not end in full agreement. It is a single sheet in the great Cottonian collection, now in the British

Library. The text is also evidenced by two 17th-century transcripts from this manuscript, both now at Oxford; one of these appears to have been made before the original was slightly damaged. The three manuscripts will be cited as follows:

- A: B.L. Cotton Augustus ii.15  
 Ja: Bodleian Library, James 24 pp. 99–100  
 Ju: Bodleian Library, Junius 62, fos. 1–2.

MS. James 24 was written by Richard James, who was Cotton's librarian from 1628 until his death in 1638. MS. Junius 62 was copied by Francis Junius (1589–1677) who was in England from 1621 to 1651 and again from 1674 onwards; the Bodleian catalogue ascribes a mid-17th century date to it.

There are five editions, cited as follows:

- H: G. Hickes, *Linguarum Veterum Septentrionalium Thesaurus Grammatico-Criticus et Archaeologicus* (1703), pt. IX (*Dissertatio Epistolaris*) 4–5.  
 K: J.M. Kemble, *Codex Diplomaticus Aevi Saxonici* (1839–48) no. 693.  
 T: B. Thorpe, *Diplomatarium Aevi Saxonici* (1865) 288–90.  
 E: *Essays in Anglo-Saxon Law*, by Henry Adams, H. Cabot Lodge and others (Boston, 1876) 355–6.  
 R: A.J. Robertson ed., *Anglo-Saxon Charters*, 2nd edition (Cambridge, 1956) no. 66.

H gives a Latin paraphrase and commentary, which are of considerable interest as showing the views of a pioneer of Anglo-Saxon scholarship, but they have to be used with caution, as Hickes did not appreciate that the transaction was an exchange, not a sale or gift. The *Victoria County History*<sup>7</sup> also misinterprets A, which it describes as containing grants of land at Datchet by King Ethelred. T, E and R all give translations into modern English. E has not been collated, as its text is dependent on K and T.

#### *The Text of the Narrative*

The text adopted follows A with lacunae supplied from Ja; these are indicated by square brackets. Variant readings in the transcripts and suggestions by past editors are appended.

No capitals are supplied, but all abbreviations have been extended except for the ampersand. The punctuation is that of the original. The lines are the very long lines of A.

Line

- 1 +Her cyþ on þysum gewrite hu wynflæd  
 gelædde hyre gewitnesse æt wulfa mere beforan  
 æþelrede cyninge. þæt wæs þonne  
 2 sigeric arcebiscop. & ordbyrht biscop. & ælfric  
 ealder man & ælfryþ þæs cyninges modor. þæt  
 hi wæron ealle to gewitnesse þæt  
 3 ælfric sealde wynflæde þæt land æt hacceburnan.  
 & æt bradanfelda ongean þæt land æt deccet.  
 þa sende se cyning þær rihte be þæm arce-  
 4 biscope. & be þam þe þær mid him to  
 gewitnesse wæron to leofwine & cyþdon him þis.  
 þa nolde he buton hit man sceote to scirgemote.  
 þa dyde man  
 5 swa. þa sende se cyning be æluere abbude his  
 insegel to þam gemote æt cwicmeshlæwe &  
 grette ealle þa witan þe þær gesomnode wæron  
 6 þæt wæs æþelsige biscop. & æscwig biscop. &  
 ælfric abbud. & eal sio scir & bæd & het þæt hi  
 scioldon wynflæde & leofwine swa rihtlice  
 geseman swa  
 7 him ælfre rihtlicost þuhte. & sigeric arcebiscop  
 sende his swutelunga þærto. & ordbyrht biscop  
 his. þa getæhte man wynflæde þæt hio mos-  
 8 te hit hyre geahnian. þa gelædde hio þa  
 ahnunga mid ælfryþe fultume þæps cyninges  
 modor. þæt is þonne ærest wulfgar abbud. &  
 wulfstan  
 9 priost. & æfic þara æþelunga discsten. &  
 eadwine. & eadelm. & ælfelm. & ælfwine. &  
 ælfweard. & eadwold. & eadric. & ælfgar. &  
 eadgyfu ab-  
 10 budisse. & liofrun abbudisse. & æþelhild. &  
 eadgyfu æt leofecanoran. & hyre swuster. &  
 hyre dohtor. & ælfgy[fu & hyr]e dohtor. &  
 11 wulfwyn. & æþelgyfu. & ælfwaru. & ælfgyfu. &  
 æþelflæd. and menig god þegen. & god wif þe  
 we ealle atellan ne magon. þæt[wæs] forþcom  
 eal se fulla  
 12 ge on werum ge on wifum. þa cæwdon þa witan  
 þe þær wæron þæt betere wære þæt man þene  
 aþ aweg lete þonne hine man scealde. forþan  
 þær syþþan  
 13 nan freondscype nære. & man wolde biddan  
 þæs reafaces þæt he hit sciolde agyfan &  
 forgyldan. & þam cyninge his wer. þa let he  
 þone aþ  
 14 aweg. & sealde æþelsige biscope unbesacen land  
 on hand þæt he þanon forþ syþþan þær on ne  
 spræce. þa tæhte man hyre þæt hio sciolde brin-

- 15 gan his fæder gold & siolfor eal þæt hio hæfde.  
 þa dyde hio swa hio dorste hyre aþe gebiorgan.  
 þa næs he þagyt on þam gehealdan butan hio  
 16 sceolde swerian þæt his æhta þær ealle wæron.  
 þa cwæp hio þæt hio ne mihte hyre dæles ne he  
 his. & þyses wæs ælfgar þæs cyninges gerefa to  
 ge-  
 17 witnesse. & byrhtlic. & leofric æt hwite cyrcan.  
 & menig god man to eacan him.

### Variant Readings

- Line  
 1,3,6,7 wynflæd: wynflede Ja  
 1 ge-lædde H  
 wulfa mere: wulfamere Ju, H; Wulfamere R  
 þonne: þon H  
 2 ealder man: ealderman Ja, R; ældeerman Ju  
 3 wynflæd; wynflade H  
 4 wæron: weron Ja  
 scirgemote: sciregemote Ja, T; scire gemote H  
 5 cwicelmes-hlæwe H  
 6 wæs: wære H, T  
 æscwig: c is interlined in A  
 scir: scir Ju; swa rihtlice: swarihtlice Ju  
 him: hi H  
 8 þonne: þonn H  
 9 discsten: disceten Ju  
 eadgyfu: eadgifu Ja, T  
 10 leofecanoran: leofetan oran Ja, T; leofe can-  
 oran H  
 The bracketed letters are adopted in H and R;  
 K omits the ampersand, but there is room for it  
 11 atellan; atellon H  
 þæt[wæs]: þæt wæs Ja; þæt[...] Ju; þæt wær H;  
 þæt[wære] K, T; þæt[þær] R (omitting  
 preceding stop)  
 forþcom: forð com Ja; forþ come H; forþcom  
 K,T; [aþ] at end of line K,T  
 12 forþan: for þan H  
 13 freondscype; freondscipe Ju, H  
 14 þær on: þæron H, R  
 16 sceolde: sciolde H  
 17 hwite cyrcan: hwitecyrcan R; to eacan: toeacan  
 R

### Notes on the Text

The pictorial invocation is a small Greek cross; this was often retained in less formal documents after solemn diplomas had adopted a decorated chrismon. Writs have no invocation.

Word-division in A is sometimes unclear, and in this respect the text follows R

except where indicated above. Hickes was probably right in taking a slight spacing of the elements in a compound word as the scribe's equivalent of a hyphen.

Ja has some ingenuous informal notes in Latin and English, as follows:

- |       |   |
|-------|---|
| 1     | Modus placitandi antiquus               |
| 2     | placitum comitatus                      |
| 5     | Ethelredi Regis insegel                 |
| 9-10  | A court of Nunnes                       |
| 11    | A gude man                              |
| 12-13 | de praestatione juramenti inter Saxones |

*Praestare* is 'to take upon oneself', and in the Digest<sup>8</sup> *praestatio* means 'warranty', but in the Code<sup>9</sup> *juramentum praestare* is simply 'to take an oath'.

### Translation

The following translation is offered:  
 +Here is made known in this writing how Wynflæd brought her witnesses at Woolmer before King Ethelred, namely Sigeric, archbishop [of Canterbury], Ordbriht, bishop [of Selsey], Ælfric, ealdorman [of the Winchester provinces] and Ælfthryth the king's mother, so that they were all witness that Ælfric granted Wynflæd the land at Hagbourne and at Bradfield in exchange for the land at Datchet. Then the king sent straightway, by the archbishop and those who were with him there as witnesses, to Leofwine and made this known to him. Then he would not (agree) unless the matter were referred to the shiremete. So it was done. Then the king sent by Ælfhere, abbot [of Bath] his writ (*lit.seal*) to the meeting at Cuckhamsley and greeted all the councillors who were there assembled, namely Æthelsige, bishop [of Sherborne], Æscwig, bishop [of Dorchester-on-Thames], Ælfric, abbot [of Malmesbury] and all the shire, and bade and ordered them that they should settle the case between Wynflæd and Leofwine as rightly as ever they could. And Archbishop Sigeric sent his declaration thereto, and Bishop

Ordbriht his. Then Wynflæd was instructed that she must prove it her property. Then she brought her proof of ownership with the help of Ælfthryth the king's mother, namely first Wulfgar, abbot [of Abingdon], Wulfstan the priest, Æfic the athelings' steward, Edwin, Eadhelm, Ælfhelm, Ælfwine, Ælfweard, Eadwold, Eadric, Ælfgar, Eadgifu, abbess [of the Nunnaminster, Winchester], Leofrun, abbess [of Reading], Æthelhild, Eadgifu of Lewknor and her sister and her daughter, Ælfgifu and her daughter, Wulfwyn, Æthelgifu, Ælfwaru, Ælfgifu, Æthelflæd and many a good thegn and good woman, all of whom we cannot tell, so that there came forth all the full number, both of men and of women. Then the councillors who were there said that it would be better to let the oath pass rather than give it, because afterwards there would be no friendship and he (Leofwine) would be ordered to return what he had seized and to pay compensation, and his wergeld to the king. Then he let the oath pass, and handed to Bishop Æthelsige the land uncontested, so that henceforth he should make no claim to it. Then she (Wynflæd) was instructed to bring his father's gold and silver, all that she had. Then she did what she durst to protect her oath. Then he was still not satisfied (*or* Then he was not willing to hold to that) unless she would swear that his property was all there. Then she said that she could not for her part, nor he for his. And to this was witness Ælfgar the king's reeve, Brihtric, Leofric of Whitchurch and many a good man besides them.

#### *Notes on the Translation*

The language is standard late West Saxon, the tongue of Ælfric the grammarian and of *The Battle of Maldon*. The singular 'þæt wæs' introducing a list of names (line 6) is preceded<sup>10</sup>, though Hickes, followed by Thorpe, emended it to the plural 'wære' (why not also in line 16 ?).

The key word on which the interpretation depends is *ongean* 'in exchange for, in return for' in line 3. Hickes took it as 'against, opposite to' and translated 'omnes testabantur

Ælfricum dedisse [vendidisse] Wynflæd praedium istud, quod est apud Hacceburnam, et istud quod est apud Bradanfeldam è regione terrae, quae est apud Deccettam'. This is grammatically possible, but geographically inappropriate, as Hagbourne and Bradfield are too far from Datchet. In fact *sealde* 'granted' is just as applicable to an exchange as to a sale or gift.

In line 5, *insegel* 'seal' probably stands for *gewrit and insegel*, a sealed writ by which the king communicated his instructions. There are at least twelve references in Domesday Book to writs of Edward the Confessor, in six of which the term used is simply *sigillum (regis)*<sup>11</sup>. Probably the present narrative incorporates the protocol of Ethelred's writ and summarizes its content. Abbot Ælfhere took it to Cuckhamsley and read it to the leading men of Berkshire; they were politely addressed as *witan*, as being the king's councillors on this occasion. Hickes thought that *insegel* might mean no more than *signum* rather than *sigillum*, but this view is unsupported, and Hickes himself quoted Old Norse parallels from the following reign, in which 'bref ac in-segli Einglands kongs Knutur' and 'bref oc incigle Knuta kongs' refer to letters authenticated by Cnut's seal.

*Geseman* (line 6) has different shades of meaning. Bosworth<sup>12</sup> thought that this clause meant 'that they should reconcile Wynflæd and Leofwine'. The verb certainly has this meaning in the Chronicle<sup>13</sup>, (*hi*) *gesemede beon ni mihton* 'they could not be reconciled', but here the probable sense is 'that they should settle the suit as justly as they could', preferably but not necessarily by securing agreement.

*Swutelung* (line 7) is 'evidence, testimony, declaration'. A common opening is 'Her swutelað on þisum gewrite...'<sup>14</sup>.

In line 8, *fultum* probably means simply 'help' though Hickes took it as having the technical meaning *adfulturn* 'scilicet juramentum, quo quis consacramentis in gratiam alterius una cum ille jurat'. Hence he translated 'Illa igitur terras, quam dominam se esse dixerat, con-

sacramentalem habens Ælfthrytham regis matrem, his testibus vendicabit'. This seems unlikely; the king's mother could have been an oath-helper only by attending the shiremote in person. The meaning is rather that she helped Wynflæd by arranging for a sufficient number of oath-helpers to attend, Abbot Wulfgar being the first.

*Discsten* in line 9 is a poor form for *discþegn*, literally 'dish-servant', which came to mean 'steward, seneschal', here the royal officer who administered the estates assigned to the athelings, the king's infant sons.

In lines 11–12 the text and translation both present some difficulty. Dr Robertson reads 'þæt[þær] forþcom eal se fulla ge on werum ge on wifum' and translates 'so that the full number was produced, including both men and women'. However, the best evidence for the word now missing is James' transcript 'þæt wæs forþ com eal se fulla. . .'. K and T read 'wære' and supply 'ap' after 'fulla' at the end of line 11. There are four distinct difficulties in this short clause, though the general sense is clear enough.

(i) The overworked *þæt* could mean 'after that' as often in charters, making this a separate sentence, not a dependent clause, but the usage in lines 2 and 14 would rather suggest 'so that'. The stop after *magon*, omitted by R, can be taken as a comma.

(ii) *forþcom* appears to be a contracted form of the past participle; there is apparently no mark of contraction over the last letter, though James and Hickee both seem to have seen one. Presumably 'com' would be for 'comen'; the construction 'wæs forðcomen' occurs in *Andreas* 3167.

(iii) Is this a clause of result or only of purpose? Thorpe thought that the verb which he tried to supply was subjunctive, and translated accordingly 'Then would have followed the whole full oath both of men and of women'. But the intended result, the production of as many oath-helpers as the court required, was in fact achieved. They were pre-

sent, and ready to swear to Wynflæd's veracity.

(iv) (*se*) *fulla* looks like a weak masculine nominative singular adjective, with a noun such as *ap* 'oath' omitted. *Se fulla ap* would correspond to *pleno juramento* in the laws of William the Conqueror<sup>15</sup>, but we have the authority of Ælfric the grammarian<sup>16</sup> for making *se fulla* the nominative singular of a weak masculine noun, 'the completion or perfection of anything', here 'the full number'. An intolerably literal translation would be 'so that all the fullness was come forth'. Hickee has an interesting rendering 'adeo ut celebritas maxima esset quum virorum, tum mulierum'.

#### *The Participants*

The name Wynflæd occurs three times in other 10th-century records. In 942 King Edmund restored land at Cheselborne in Dorset 'religiose sancte conversacionis monialis femine Wenfleda'<sup>17</sup>, and the charter has a note in Old English of another grant to her of land at Winterborne Tomson. The text survives in a 15th-century copy<sup>18</sup>, but its authenticity is undoubted. In 974 Wynflæd gave 100 acres at Little Mongeham north of Northbourne in Kent to St Augustine's Abbey, Canterbury<sup>19</sup>; this is evidenced by Thorne's Chronicle in the 14th century<sup>20</sup> and by the *Chronologia Augustiniensis*<sup>21</sup>. The undated 10th-century will<sup>22</sup> of a Wynflæd devised estates in Berkshire, Hampshire, Wiltshire, Somerset and Oxfordshire. Professor Whitelock was inclined to identify the testatrix with the grantee, but not with the Wynflæd of the lawsuit. Dr Robertson sought to identify the testatrix with the litigant, since representatives of all the counties where the former devised estates took Wynflæd's side in the dispute<sup>23</sup>. It seems not unlikely that all the records relate to the same woman. A Saxon lady, even a nun, could administer her own property and make and receive grants in her own name. By 990 she must, on this view, have been at least in her seventies, but the religious life is conducive to longevity.

Nothing appears to be known about the de-

fendant Leofwine except that he was Ealdorman Ælfric's son; this is implied by the mention of his father's gold and silver in line 15. The name Leofwine is too common for further identification, though it may be noted that a Leofwine was the atheling's seneschal in 1012<sup>24</sup>.

Ælfric himself signs as ealdorman from 983 onwards; his predecessor as ealdorman of Hampshire, Æthelmær, died on 18 April 982. As Ælfric is described as *Wentaniensium Provinciarum dux*<sup>25</sup>, his jurisdiction would also have included Berkshire and Wiltshire. No royal grants to him are recorded after his elevation, but there would have been comital manors for his maintenance, and he seems to have secured considerable estates of his own in earlier years. King Edwy made grants of land in Hampshire, Berkshire and Wiltshire to an Ælfric described as his faithful *familiar* or minister<sup>26</sup>; he was perhaps one of Edwy's young boon companions whose preferment precipitated the disruption of 957. If so, he must have made his peace with Edgar, who made grants of land to an Ælfric in 963 (Somerset)<sup>27</sup>, 973 (Berkshire)<sup>28</sup> and 977 (Wiltshire)<sup>29</sup>. In 988 Ealdorman Ælfric exchanged land in Sussex with Æthelgar, bishop of Selsey, for land at *Lamburna*<sup>30</sup>. Ælfric's influence at Ethelred's court is evidenced from 985, when he secured the abbacy of Abingdon for his brother Edwin. According to Florence of Worcester<sup>31</sup> he was already *praepotens*, but he still had to pay for the appointment ('hic apud regem pretio exigit'). In 991 the two Wessex ealdormen, Ælfric and Æthelweard the chronicler (the Lady Elgiva's brother) persuaded Ethelred to allow them to buy peace for their provinces<sup>32</sup>, leaving the East Saxons, with some help from Mercia, to face the Danish onslaught led by Anlaf (Olaf Tryggvason). The defeat and death of Ealdorman Byrhtnoth, *dux praeclarus*, at Maldon on 11 August 991<sup>33</sup>, is a story of epic heroism, commemorated by our greatest battle-poem<sup>34</sup>, but one result was that for the rest of his life Ælfric in particular was suspected of treachery whenever things went seriously wrong. Ethelred himself did not blame the West Saxon magnates for their

unheroic prudence, and by 992 Ælfric was one of those in whom the king had most confidence<sup>35</sup>. He was given command of the ship-levies collected at London to engage the Danes somewhere out at sea, but he fled 'to his own great shame' and was accused of having warned the Danes, who got away except for one ship whose crew were slaughtered. The Danes captured the ship on which the ealdorman had been. Much greater blame was attached to his son Ælfgar, who was blinded by the king's orders<sup>36</sup>. Ethelred also apologised to Abingdon Abbey<sup>37</sup> for the simony involved in the 985 appointment, for which he blamed Ælfric together with Wulfgar, bishop of Ramsbury 981–5, whose see included Berkshire. Ælfric soon recovered Ethelred's confidence; after Æthelweard's retirement (c. 998) he was the senior ealdorman, and headed the witness lists in charters until the rise of Eadric Streona, even though in 1003 he was again charged with treachery following another military disaster<sup>38</sup>. When leading the *fyrð* of Hampshire and Wiltshire against Sweyn's host who had sacked Exeter, he was (or perhaps pretended to be) taken ill, leaving his levies leaderless. As they were dispersing, the Danes sacked and burnt the borough of Wilton before returning to their ships. At Ashington in 1016 it was Eadric Streona who set the example of flight; among the slain were Ealdorman Ælfric and the flower of the English nation<sup>39</sup>.

Wynflæd's principal supporter was Ælfhryth, widow of King Edgar, who was very active in the Witan during the earlier years of her son Ethelred. She was the first wife of a West Saxon king to be called 'queen' rather than 'lady'. It is to be feared that as queen mother she was at least cognisant of the conspiracy against her stepson St Edward, king and martyr, who was murdered at Corfe in 978<sup>40</sup>; but she was a strong supporter of the monastic party, and Wynflæd had no compunction in accepting her help in securing the king's intervention and then in assembling a distinguished band of oath-helpers.

Sigeric, a monk of Glastonbury, was elected

abbot of St Augustine's, Canterbury, in 980. It may have carried weight with him that Wynflæd had been a benefactor of that house. He was consecrated bishop of Ramsbury by St Dunstan in 985 and was appointed archbishop of Canterbury in succession to Æthelgar, who died 13 February 990. Later that year he went to Rome to receive his pallium. His participation in Wynflæd's suit must have been soon after his elevation, and before a successor had been appointed to Ramsbury, since the two neighbouring bishops were in charge of the see. During 991 Sigeric joined with the Wessex ealdormen in arranging a general truce with the Danes<sup>41</sup>, but after the battle of Maldon there was no alternative. He was a collector of books, and of great learning. Ælfric the grammarian asked him to correct any errors in two series of homilies, while delicately hinting at his addiction to the pleasures of the table<sup>45</sup>; this is also suggested by Sigeric's own account of his dinner with Pope John XV<sup>44</sup>. In 994 the Danes who were harrying Kent threatened to burn his cathedral. He mortgaged Monks Risborough to the bishop of Dorchester to buy them off<sup>45</sup>, and died, worn out, on 28th October. He left his valuable library to Christ Church, Canterbury, where the archbishop occupied the position of abbot.

Of the other bishops mentioned in the narrative, Ordbricht became abbot of Chertsey in 964 and was consecrated to Selsey in 989. Æthelsige had been bishop of Sherborne since 978, and Æscwig bishop of Dorchester since 979. Later in 990 the vacancy at Ramsbury was filled by yet another Ælfric, 'than whom there was no wiser man in England'; he was a leader of the English fleet in 992, and archbishop of Canterbury from 995 until his death in 1005.

#### *Datchet*

In 990 Datchet included Fulmer and part of what is now Gerrards Cross. In the Confessor's reign this estate was divided into halves, each of 6 hides and 3 virgates, held by two brothers. Datchet proper was held by Sæwulf, Earl Leofwine's man, as one manor, while Siward, Earl Harold's man, held the northern half. Both could sell<sup>46</sup>. By 1086 both estates

were held by Giles de Pinkney; they retained their identity, though they were in the same ownership until 1331<sup>47</sup> and under the same overlordship until 1472<sup>48</sup>. The name *Fugelmere* 'fowl-mere' is found from 1198 onwards, though the manor is first so named, as *Fulmere*, in 1254<sup>49</sup>.

#### *The Course of the Suit*

Leofwine was aggrieved because his father had disposed of land in which he had an interest, and had moreover made a substantial payment to Wynflæd. He seized possession of the estates at Hagbourne and Bradfield. If these were folkland, there was at least a general conception that the possessor of such land should not alienate it to the disadvantage of his expectant heirs<sup>50</sup>. In matters of succession and disputed title, folkland was subject to generally accepted folk-custom<sup>51</sup>. On the other hand, these estates could have been bookland; the holder could normally dispose of such land as he pleased, at least *inter vivos*, unless there was an explicit restraint upon alienation in his *bóc*<sup>52</sup>. There was much more bookland than is evidenced by surviving records. Of some 29 places called Buckland, the relevant documentation has survived for only 4; this is evidence of the rate of loss of Anglo-Saxon royal diplomas.<sup>53</sup>

Leofwine's position is further discussed below, but by seizing the land, without first declaring his claim to the king and the bishop<sup>54</sup>, he put himself seriously in the wrong. Edmund had made *hamsocn* a plea of the Crown<sup>55</sup>, and this may have covered all cases of forcible entry<sup>56</sup>.

The next step would normally have been for Wynflæd to sue Leofwine in the Berkshire *scírgemot* (henceforth 'shiremote'). Her claim was obviously based on the principle that if a grantor of real estate, before delivery, was dispossessed by a third party, the grantee had an action against that party to obtain the land<sup>57</sup>. Under Edgar's code enacted at Andover, no one was to apply to the king in any suit unless he could not obtain justice at home<sup>58</sup>, but Wynflæd may well have considered that she

should not be expected to sue Leofwine on his own ground, in his father's province. Moreover, the normal procedure was strangely one-sided to the modern mind. The court had first to decide who should have the advantage of possession, applying the rule *melior est conditio possidentis*<sup>59</sup>. Possession gave the right to prove title to possession, by producing a specified number of oath-helpers, varying with the seriousness of the case and the standing of the parties. These consacramentals swore that the possessor's claim of right was to be believed, and this was regarded as sufficient proof of his claim. However, the law came to take a very unfavourable view of forcible entry, so that the forcible holder could be denied the advantage of seisin; then the party displaced was 'nearer the proof' and was given the oath<sup>60</sup>. Such a judgement almost amounted to a decision of the case, though the formalism of the proof was most severe, and the sanctity of an oath was more highly regarded in 990 than a thousand years later.

The law did not always clearly separate a claim to possession from a claim to ownership. If Wynflæd could put forward a claim which would negate Leofwine's right to possession, and if Leofwine advanced no relevant objection to this, the procedure went straight on to her proof of ownership<sup>61</sup>. It was an unsafe and unilateral means of proof, but the shiremote could do no better, once its judgement had settled how the proof should be decided and what should happen once it was completed.

Wynflæd's initial difficulty was that she had never been in physical possession of the land she claimed, nor had she enjoyed its revenue and fruits. Even had the possessor not been the son of the previous owner (the ealdorman of the shire) it was not clear whether the shiremote would regard her as having been forcibly dispossessed, and therefore having a potential right to prove her title. She therefore approached the king at his royal manor of Woolmer<sup>62</sup>, with the aid of four powerful intercessors: Sigeric, just appointed to Canterbury, but latterly the shire-bishop; Ordbriht, recently appointed to Selsey; Ealdorman

Ælfric himself; and, not least, the king's mother. All these testified to the exchange.

Ethelred sent the archbishop, with others to act as witnesses, to ask Leofwine whether he would concede the estates peacefully. He would not, unless the case was first referred to the shiremote. The king allowed this, and sent his writ to the meeting at Cuckhamsley. Normally, the joint presidents of the court would have been the ealdorman and the bishop of the shire<sup>63</sup>, but the see was vacant and the ealdorman was disqualified from acting, on at least three grounds. The writ was therefore addressed not to him but to the bishops of Sherborne and Dorchester, the abbot of Malmesbury and the whole shire, represented by its leading men, directing them to settle the case as rightly as they could.

There is another reported case, *Godwine v Leofwine* (not the same Leofwine) in or soon after 995<sup>64</sup>, when Ethelred received a *talū* from Bishop Godwine claiming land at Snodland, and sent a sealed writ to Archbishop Ælfric, Sigeric's successor, directing him and his thegns in East Kent and West Kent to settle the dispute justly, weighing both claim (*ontalu*) and defence (*oftalu*). The king's wish was that the court should bring the parties to a just compromise, and in fact an agreement was reached by which Leofwine was granted a life interest with remainder to Godwine, to the gratification of all the councillors there assembled ('on ealra ðæra witena ðone ðe ðær gesomnode wæron'). This has been claimed as the first recorded occasion on which the king's writ can be seen directing the procedure in an English court of law<sup>65</sup>, but it was anticipated in Wynflæd's case, except for the express mention of a written defence to the statement of claim.

The Berkshire shiremote had before it declarations (*swutelunga*) made by Sigeric and Ordbriht, but not those of the ealdorman or the king's mother. These declarations were no doubt read to the court, though Hicces' 'Quibus lectis testimoniis' is not in the original. The shiremote decided that this testimony was

sufficient to invalidate Leofwine's right to defend his possession by the oath. Clearly the stage had been reached when a court was prepared to investigate the material rights of the parties on the basis of written evidence, though not yet by oral examination of witnesses. *Inquisitio per testes* was as yet no part of the procedure.

Wynflæd was now treated as having the seisin, and was told to proceed to *ahnung*, the proof that the land was her own. This meant that she had first to pronounce an ancient formula<sup>66</sup>, partly alliterative, partly rhyming, asserting her right, and then had to bring a specified number of oath-helpers, apparently 24, as 11 men and 13 women are named, and she had others available should they be required. After the Norman Conquest, if not before, there was a rule that oath-helpers should be of the same tenurial status as the claimant ('*pares de eodem tenemento*', '*pers de la tenure memes*') but in any event they were likely to be kinsfolk and friends of the claimant, or at least his or her social equals<sup>67</sup>. Wynflæd's helpers included Wulfgar, who had just succeeded Ælfric's brother Edwin as abbot of Abingdon; Eadgyfu, abbess of the Nunnaminster at Winchester, who is described elsewhere<sup>68</sup> as *þæs cinges dohter* (she may have been a daughter of Athelstan or Edmund, but hardly of any later king); Leofrun, abbess of Reading; and Æfic, the athelings' seneschal, probably identical with the king's high-reeve who was killed by Ealdorman Leofsige in 1002<sup>69</sup>. It is noteworthy, and was perhaps deliberate, that the women outnumbered the men.

The councillors of Berkshire were reluctant to proceed to the oath, because thereafter friendship between the parties would be at an end. Further, if there were no amicable arrangement, Leofwine would not only have to give up the land which he had seized (*reaflac* is a strong word, 'spoil, plunder', glossing *rapina*) but would also have to compensate Wynflæd for loss of rents and other dues, and to pay the king his wergeld, the highest sum that could be demanded as compensation by or

for anyone (Hickes renders it *capitis aestimatio*). This last point may have been made in the king's writ, or orally by Abbot Ælfhere who brought the writ to the shire-mote. Under Ethelred's weak government the threat was perhaps less formidable than might appear; we read elsewhere<sup>70</sup> of one Wulfbold whose wergeld was assigned to the king four times, but who died (c. 989) without paying attention to the king's command. In this case, however, the pressure on Leofwine was sufficient to secure his agreement to let the oath pass. He handed over the estates to the bishop of Sherborne, presumably in his capacity of acting president of the court. Leofwine undertook to make no further claim to the land, but his agreement was somewhat provisional, since he demanded that Wynflæd should account for his father's gold and silver which she had received, presumably to secure her agreement to the exchange. The court directed her to produce the money, and she did as much as she thought necessary to protect her oath. Leofwine was dissatisfied and was unwilling to be held to the settlement unless she could swear that all his father's money (given to her) was there. She made a reply before Ælfgar the king's reeve and other witnesses that she could not swear such an oath, and neither could he.

At this point the narrative terminates, with Leofwine's demand for an account still unsettled. The document would serve as Wynflæd's *talū* for further proceedings, and was probably drafted for this purpose. Hickes pointed out that it was the top half of a chirograph, and suggested that the other half was meant to be delivered to Leofwine<sup>71</sup>. This would account for its reticence on certain points.

#### *Leofwine's Side of the Case*

Dr Robertson comments that 'apparently there was something to be said on Leofwine's side as well as Wynflæd's'. Indeed there was. The immemorial Anglo-Saxon (indeed primitive Germanic and Indo-European) view was that land, or at least inherited land, belonged to the kindred and ought not to be alienated without their consent. In Brunner's words 'das

Germanische Erbrecht war ein Familienrecht'.<sup>72</sup> 'Chez les Germains . . . la famille forme une association, une sorte d'être collectif armé des droits inconnues des jurisconsultes de l'Empire'.<sup>73</sup> By the late 10th century these traditional rights had been eroded. The Church's Romanising view was that the intentions, especially the pious intentions, of the landholder should not be overridden by the claims of his kindred in blood. Further, in the Danelaw there was something approaching a free market in land, and in what was becoming Buckinghamshire the Danish influence was strong. Of the 13 estates in the hundred of Stoke, at least 8, including both halves of Datchet, could be sold by their holders in the Confessor's time. In Wessex, on the other hand, the head of a landholding family was still seen as the *landrica*, a managing director who had wide powers, but who could not dispose of folkland by testament, and hardly by conveyance *inter vivos*. The Anglo-Saxon will of land was not an indigenous institution, but a magnate's privilege, involving the consent of the king and his council. Even grants of land to the Church, which were favoured and facilitated by the Crown, were not safe without a solemn charter, and it was prudent to secure and record the consent of the kindred. The lordship of bookland could usually (not always) be freely alienated, but it is not clear that Hagbourne and Bradfield were bookland, or that the exchange was intended to benefit the Church, or that the consent of the Crown had been obtained, though perhaps the king's mother thought that she could take it for granted. When Leofwine agreed to abandon his claim to the land, he still asserted his vested interest in the money paid by his father to Wynflæd.

#### *Some Aspects of the Suit*

Wynflæd's case illustrates the reasons for the decline of the civil jurisdiction of the shire courts in the 11th century. The magnates who (in Norman terms) held of the king in chief naturally wished to bring their cases directly before the king, and would not wish him to refer them back to the shire-mote unless, like Leofwine, they thought that their chances

there were better<sup>74</sup>. That ancient court was also being undermined by the growth of private jurisdiction, since tenants of the same lord would settle their disputes in his hall. In the shire-mote delaying tactics were only too easy, since the court met only twice a year<sup>75</sup>, at fixed times and places. The shire-bishop and the ealdorman were expected to expound ecclesiastical and secular law (*tæcan ge Godes riht ge woruldriht*)<sup>76</sup>, but decisions were taken not by them but by the chief men of the shire, subject to any procedural directions received from the king.

In Wynflæd's case the ealdorman (*comes*) took no part after giving his testimony to the king, and there is no mention of a sheriff (*vicecomes*) taking his place. Probably that office did not yet exist in Wessex, though Hicces was bold enough to translate *cyninges gerefa*, king's reeve, as *regis vicecomes*. Kent had a sheriff, under the name *scirigman*, who presided at a shire-mote held not later than 988; he was a priest called Wulfsgie<sup>77</sup>. In or soon after 995 his successor Leofric was negotiating the settlement of a suit as *sciresman*,<sup>78</sup> and by 1016–20 the Kentish title had become *scirgerefa* 'shire-reeve, sheriff'<sup>79</sup>. In the emerging Mercian shires the term was probably *scirgerefa* from the first, as the king's reeves in what became the county towns were already exercising judicial functions. In the great Mercian ealdormanry, the ealdorman or earl could hardly have presided in all the shires, and in 995 we find the king's reeves at Oxford and Buckingham acting judicially outside those towns and reporting directly to the king.<sup>80</sup> In Wessex the sheriff does not seem to be mentioned until Cnut's reign; the ealdorman had had a deputy in Alfred's time<sup>81</sup>, but he was equated only with a king's priest and would not have presided in the shire-mote.

There was clearly a general wish that a suit should if possible be ended by an agreement – it would hardly be anachronistic to call it a final concord. Further, direct confrontation between the parties was sedulously avoided. There is a parallel in modern Japan. "Confrontation in a courtroom is not the Japanese way

... if hard words were exchanged in front of witnesses it would become impossible for the two parties to become permanently reconciled"<sup>82</sup>.

The archaic mode of proof by oath-helpers was at any rate superior to the ordeal or the duel, but one recalls Athene's rebuke to the Areopagus in *The Eumenides*: "You seek the form of justice, more than to be just. Injustice must not win the verdict by mere oaths"<sup>83</sup>. Though such cases as *Wynflæd v Leofwine* we see how ancient formalism was giving way to a closer examination of the rights of the contestants through the admission of written, if not as yet of oral evidence. The influence of the church is evident here, and also in the insistence that self-help was so objectionable that anyone dis-seised by violence should not have to face the

procedural difficulties of a normal plaintiff. What is generally regarded as the Angevin leap forward in providing possessory remedies had a basis in late Anglo-Saxon practice, as well as in imperial and papal legislation.

The king's intervention in the normal judicial process, after an informal hearing, was in 990 an exceptional course. It soon became more frequent, but royal writs were still "documents of great weight and of considerable cost to the recipient"<sup>84</sup>. The writ 'of course' or 'of right' was unknown before the 12th century. No register of writs was kept, and the writ was not returnable to the secretariat which issued it; but increasingly the king's writ would come to be seen not as a special favour or an act of arbitrary power, but as an instrument of justice, not to be sold, delayed or denied.<sup>85</sup>

## APPENDIX

### *The place-name Datchet*

The name *deccet* for Wynflæd's Buckinghamshire estate is almost certainly Celtic. It would be a twin of the Gaulish Decetia<sup>86</sup>, a town of the Aedui in Gallia Celtica, now Decize. The spelling *deccet* points to a first element \**dek-*, cognate with Latin *decus* 'splendour, honour, beauty', Irish *dech* 'best'. The second element is Celtic \**ceton* 'wood', giving Primitive Welsh *ced*, Modern Welsh *coed*. Hence the meaning would be 'the finest of woods'. In 1086 there was woodland for 300 pigs, and in later years parts of Datchet and adjoining parishes were within the royal forest of Windsor<sup>87</sup>, which here extended north of the Thames, although elsewhere in the Chiltern Hundreds the rights of the chase belonged to the citizens of London<sup>88</sup>. It is suggested that Datchet represents the British name for the forest, and that the name was borrowed in the 6th century by Middle Saxon settlers and applied by them to their own part of it. At the same period

Bernwood Forest was almost certainly *Penced* 'chief wood', which Saxon settlers heard as Penchet; the final consonant in *ced*, *coed* was and still is only slightly voiced, so that the Welshman Asser c. 893 wrote it as *coit*<sup>89</sup>. As second element in a borrowed compound a short *e* is normal, though as first element the vowel would at first be long. It has been suggested in a discussion of Chetwode (*Cétwuda* 949, *Ceteode* 1086, but *Chettewuda* by 1167) that the conjunction of Welsh and Saxon phonology needed to produce an ultimate Chet rather than Chid or (Anglian) Cheet suits a 6th-century date<sup>90</sup>. Mawer and Stenton<sup>91</sup> considered that Panshill (better Pansole as in Moule's map, 1848) was the *healh* or corner of Penchet, with final *t* lost as in Penge from Penceat, and that in both cases British *penno-* 'chief' was combined with very early forms of *ceton* 'wood', so that the borrowing would go back to the settlement period. The same would hold for Datchet.

## REFERENCES

1. F. Liebermann, *Die Gesetze der Angelsachsen* (1903) i. 488
2. See D.H. Hazeltine, Introd. xv, in A.J. Robertson ed., *Anglo-Saxon Charters* (2nd edn., 1956)
3. Doris M. Stenton, *English Justice between the Norman Conquest and the Great Charter* (1965) 8
4. P.H. Sawyer, *Anglo-Saxon Charters* (1968) no. 1457
5. (cited as S 1457)
6. Textus Roffensis, fo. 162 b. S 1454; accepted as contemporary, E.A. Bond, *Facsimiles of Ancient Charters in the British Museum* (1878) iv. 7, and W.H. Stevenson, *Engl. Hist. Rev.* (1912) 5 and n. 13
7. *Vict. C. Hist. Bucks* (1925) iii. 251

8. Julius Paulus in *Digest* 45, 1, 2
9. *Cod. Justin.* 2, 56, 4
10. B. Mitchell, *A Guide to Old English* (2nd edn., 1978) 104 (s. 187, 3(c))
11. Domesday Book i. 50 (bis), 60 b, 169, 208, 374; cf. i. 59, 78 b, 208 b, 310 b, ii. 360 b, 379 c
12. J. Bosworth, *Anglo-Saxon Dictionary* (1898) 439
13. A. S. Chron. (E) s. a. 1094
14. Examples from the time of Ethelred include S1219, 1420, 1422, 1455, 1459
15. Laws of William ii. 3
16. *Ælfric's Metrical Lives of Saints*, ed. W. W. Skeat, no. 23, l. 104
17. S 485
18. B. L. Harley 61, fos. 7–8
19. S1653 (listed among lost and incomplete texts)
20. William Thorne's Chronicle, printed by R. Twysden, *Historiæ Anglicanæ Scriptores X* (1752) col. 1779
21. *Chronologia Augustiniensis*. s. a. 974
22. S1539
23. A. J. Robertson ed., *Anglo-Saxon Charters*, 379–80
24. S1422
25. S891, dated 997
26. S589, 590 dated 956; S640 dated 957. The relation between a king and his *familiaris* "probably involved a formal undertaking by both parties"; S. Keynes and M. Lapidge, *Alfred the Great* (1983) 260 n. 173, commenting on Asser, c. 79
27. S709
28. S790
29. S831
30. S869
31. *Florentii Wigorniensis Monachi Chronicon ex Chronicis*, ed. B. Thorpe (1848) i. 147
32. II Ethelred c. 1; Thorpe, *Ancient Laws* i. 284
33. C. Plummer, *Two of the Saxon Chronicles Parallel* (1899) ii. 175
34. H. Sweet, *Anglo-Saxon Reader* (13th edn., 1954) 111–120, from Bodl. MS. Rawlinson B. 203; trans. Gavin Bone, *Anglo-Saxon Poetry* (1943) 27–36, M. Alexander, *The Earliest English Poems* (2nd edn., 1977) 111–123
35. A. S. Chron. (F) s. a. 992 ('an of pam pa se cyng hfæde mæst truwe to')
36. A. S. Chron. (E) s. a. 993
37. S879. The charter restored freedom of election to Abingdon, and the abbot subscribed it with 'hoc sintagma triumphans dictavi'
38. A. S. Chron. (C, D, E) s. a. 1003
39. A. S. Chron. (C, D, E) s. a. 1016
40. An early account is in the *Vita Oswaldi*, i. 449–50
41. II Ethelred c. 1 provided that the terms negotiated by Sigeric, Æthelweard and Ælfric for Wessex should apply to the general peace
42. 'Siricius Danegeld': *Anglia Sacra*, ed. Wharton, i. 4. From this period the Danegeld became a normal tax.
43. *Ælfric's Homilies*, ed. Thorpe, ii. 1–5
44. Sigeric's itinerary is printed in *Memorials of St Dunstan*, ed. Stubbs, 391–5
45. S882; the substantial authenticity of the record is defended by A. H. J. Baines, "The Boundaries of Monks Risborough", *Recs. Bucks* xxiii (1981) 76–101, at p. 91. The nature of the earliest English mortgages is discussed at p. 93
46. Domesday Book, i. 152c
47. *Cal. Pat.* 1330–4, p. 51
48. *Cal. Pat.* 1467–77, p. 368
49. *P. N. Bucks*, 237; Chan. Inq. p. m. 38 Hen. III, no. 19
50. F. M. Stenton, *Anglo-Saxon England* (2nd edn., 1947) 314
51. Stenton, *op. cit.* (3rd edn., 1971) 307–12
52. Laws of Alfred, c. 41
53. A. R. Rumble, 'Old English *Bóc-land*' in *Leeds Studies in English* xviii (1987) 219–229, at p. 220
54. See note 52
55. II Edmund c. 6 (939–946; this was new law)
56. *Engl. Hist. Docs.* (1955) i. 392 n. 3
57. J. L. Laughlin, 'The Anglo-Saxon Legal Procedure' in *Essays in Anglo-Saxon Law* (1876) 228. The principle did not apply to moveables.
58. III Edgar c. 2 (959–963)
59. Perhaps not in this precise form; but the maxim is represented by 'agnung bid ner dam de hæfd donne dam de æftersprecd' ('propriatio propinquoior semper est possidenti quam repetendi'): II Ethelred c. 9. 4
60. *Essays in Anglo-Saxon Law*, 245–7
61. *Essays in Anglo-Saxon Law*, 246: "no separation of the possessory from the petitory claim"; but cf. 233. The law was already capable of separating the idea of protection in possession from consideration of right over the thing.
62. Identified by Robertson, *op. cit.*, 380; *V. C. H. Hants* iii. 16
63. III Edgar c. 5. 2
64. S1456
65. Doris M. Stenton, *op. cit.*, 10
66. Liebermann, *op. cit.*, i. 400 (the treatise beginning 'Hit becwæd')
67. cf. F. M. Stenton, *op. cit.*, (2nd edn.) 313
68. S1449
69. A. S. Chron. (E) s. a. 1002; S 926
70. S877
71. In S1216 (B. L. Cotton Claudius C ix fo. 202), a vernacular document of 971–980, such a counterpart is called 'pysses gewrites geclofan'
72. Brunner, *Grundzüge der deutschen Rechtsgeschichte*, s. 56
73. Auffroy, *Evolution du testament en France* (1899) 173–4; cited in Sir Frederick Pollock's notes to Sir Henry Maine, *Ancient Law* (1906 edn.) 225–6
74. Even a holder of bookland might choose trial in a local court. A. G. Kennedy, 'Disputes about *bocland*: the forum for their adjudication', *Anglo-Saxon England* xiv (1985) 175–95
75. III Edgar c. 5. 1. Under II Cnut c. 18 the shiremote could be held more often if strictly necessary
76. See note 63
77. S1458
78. S1456
79. S1461
80. S883. For the emergence of the sheriff, see E. Viney,

- The Sheriffs of Buckinghamshire* (1965) 13
81. Laws of Alfred c. 38. 2
  82. *The Guardian*, 3 March 1986, p. 11
  83. P. Vellacott trans. , *Aeschylus: The Oresteian Trilogy* (1956) 162
  84. F. E. Harmer, *Anglo-Saxon Writs* (1952; 2nd edn. , 1989) 56
  85. Magna Carta (1215) c. 40
  86. Caesar, *De Bello Gallico* 7, 33, 2; E. Ekwall, *Concise Oxf. Dict. of Engl. Place-Names* (4th edn. , 1960) 139; K. Rutherford Davis, *Britons and Saxons: the Chiltern Region 400–700* (1982) 155
  87. *Vict. C. Hist. Bucks* (1908) ii. 131
  88. *Engl. Hist. Docs.* (1953) ii. 961
  89. Asserius, *De rebus gestis Ælfredi*, c. 55
  90. A. H. J. Baines, "The Chetwode-Hillesden Charter of 949", *Recs. Bucks* xxiv (1982) 1–33, at p. 16
  91. A. Mawer and F. M. Stenton, *The Place-Names of Buckinghamshire* (1925) 117–8