

Original Documents.

By the kind permission of C. Winston, Esq., I am enabled to bring before the readers of this Journal a copy of an original document, belonging to C. J. Pocock, Esq., of Bristol, which exhibits a remarkable instance of the use made of the terrors of excommunication in the thirteenth century. All are familiar with the employment of this instrument on many important occasions, and also as an ordinary means of enforcing obedience to the decrees of the ecclesiastical authorities; but to find it introduced by express stipulation as a sort of penalty into a private transaction of inconsiderable moment, is I think sufficiently rare to deserve notice in the *Archæological Journal*.

Hawisia de Wygornia (i. e. of Worcester) was the wife of Peter de Wygornia, and in all probability resided at Bristol in their stone house near All Saints church-yard or cemetery, at the date of this document, the feast of St. Edmund the king, 1254. She appears to have been desirous of confirming a grant that had been made by her husband to Richard de Calna (Calne in Wiltshire) of a piece of land near that church-yard or cemetery, in which both she and her husband were interested: most likely it was her inheritance, and she and her husband held it in her right. To have effected such a confirmation in the then state of the law of this country, either her husband must have joined with her in a species of conveyance called a *fine*, which at that time had not very long been employed for such purposes, and was in fact a compromise, with the consent of the court, of a suit against the husband and wife, commonly fictitious, by acknowledging the land the subject of the suit to be the property of the plaintiff, who was in reality the person to whom it was intended to be conveyed; or, if a custom existed at Bristol similar to what there was in many cities and towns, a remnant perhaps of Anglo-Saxon law, her husband and herself might have accomplished the same object by a deed acknowledged by them before the mayor or other proper officer for that purpose, whose duty it would have been to

have ascertained, by enquiry of her apart from her husband, whether she was a free agent in the matter. However, in either case her husband must have concurred with her; but from some cause, whether unwillingness, absence, incompetence, or what else does not appear, he was not a party to the transaction; and consequently she could not by legal means confirm the grant. Her own deed would have been a nullity, a married woman not being able so to bind either herself or her heirs. It required therefore the ingenuity of a lawyer and an ecclesiastic to devise a substitute for a legal instrument. The expedient resorted to, and which was carried into effect by the document above mentioned, was this; a deed was prepared whereby she in terms confirmed her husband's grant exactly as she might have done if she had been a widow; and then, instead of the usual warranty of the land against herself her heirs and assigns, which would have been of no avail as she was married, she, by a very elaborate clause, a curious example of formal composition in that age, subjected herself her heirs and assigns to excommunication by the Dean of Bristol for the time being, with lighted candles and the ringing of bells, in all the churches of Bristol, in case she or they disturbed Richard de Calna his heirs or assigns in the enjoyment of the land; and for the observance of this she pledged herself by oath to Gilbert the then Dean of Bristol, and Stephen de Gnohussalo (Gnoushall) the then Vicar of All Saints. This deed was sealed in the presence of several witnesses by Hawisia herself, the Dean, and the Vicar. The following is a copy of it, the contracted words being given at length.

“Omnibus Christi fidelibus presens scriptum visuris vel auditoris Hawisia, Uxor Petri de Wygornia, salutem in domino; Noverit universitas vestra me concessisse, et Loc presenti scripto meo confirmasse, Ricardo de Calna omnem donacionem et concessionem quam dictus Petrus de Wygornia maritus meus eidem Ricardo fecit de quadam parte terre illius in villa Bristolli juxta Cimiterium Omnium Sanctorum, que quidem pars terre continet in longitudine quatuor decim pedes a terra nostra ex parte occidentali usque ad terram ejusdem Ricardi de Calna ex parte orientali, et undecim pedes in latitudine inter domum nostram petrinam ex parte boreali et terram nostram ex parte australi, Habendam et tenendam totam dictam partem terre cum pertinenciis sibi Ricardo de Calna et heredibus et assignatis suis adeo libere et quiete prout carta, quam dictus Petrus de Wygornia maritus meus inde dicto Ricardo fecit, melius et liberius protestatur: Promisi etiam pro me et heredibus et assignatis meis per bonam stipulacionem, quod nullus nostrum dictum Ricardum heredes vel assignatos suos aliquo

tempore futuro super tota dicta terra vel aliqua sui parte inquietabit vel molestabit coram aliquo iudice; Quos si inquietaverimus contra dictam meam promissionem, concessi pro me heredibus et assignatis meis, ad simplicem denunciacionem dicti Ricardi heredum vel assignatorum suorum, sine juramento vel alia probacione eorundem, et sine aliqua vocacione mihi heredibus vel assignatis meis facienda, et sine aliquo strepitu judiciali, quod Decanus Bristolli, qui pro tempore fuerit, nos omnes et singulos nostrum publice et sollempniter candelis accensis et pulsatis campanis in omnibus ecclesiis Bristolli excommunicari faciat, et denunciari ut excommunicatos ab omnibus arctius evitandis donec a dicta inquietacione cessaverimus, una cum omnibus dampnis et expensis dicto Ricardo heredibus vel assignatis suis, quas occasione ejusdem inquietacionis fecerint, a me heredibus vel assignatis meis refundendis; quas simplici verbo dicti Ricardi heredum vel assignatorum suorum concessi declarari: Et subjeci me heredes et assignatos meos sponte et pure jurisdictioni et cohercioni dicti Decani ubicunque fuerimus ad dictam excommunicationem in personas nostras fulminandam cum opus fuerit: Et ne contra predictas promissionem et stipulacionem venire presumamus, affidavi in manus dominorum Gilberti tunc Decani Bristolli et Stephani de Gnohussalo tunc Vicarii Ecclesie omnium Sanctorum Bristolli, qui una cum sigillo meo presenti scripto sigilla sua apposuerunt. Actum Anno gratie M^o. CC^o. L^o. quarto circa festum Sancti Eadmundi Regis. Hiis testibus Paulo de Corderia, Martino de Corderia^a, Roberto Pikard, Adamo Snel, Waltero de Monte, Reginaldo Golde, Willielmo Halye, Johanne de Templo et aliis^b."

L.S.

L.S.

L.S.

The seal of Hawisia, which is the middle one, is a pointed ellipse, and upon it the device of a flaming star (or a star with wavy rays) above a crescent, and round it S' HAWISSIE D E. The letters between D and the final E are broken off. The last letter is certainly E, though I suppose that DE WYGORNIA was intended^c. On the seal of the

^a Corderia, a ropery. The business of rope-making must have been of some importance in a maritime town like Bristol.

^b I have not been able to find any of these witnesses mentioned elsewhere; but the names of Halye, Golde, and Snel occur at different times in the thirteenth and fourteenth centuries among the propositors and bailiffs of Bristol. A William de Halyes, who was a propositor in 1229, may have been the witness William Halye.

^c I have not been able to discover any thing certain of this lady or of Peter de Wygornia her husband in addition to what this document furnishes. Rymer mentions a Phillip de Wygornia who was in the service of King John, and sent by him in 1208 to Ireland associated with two

justiciaries, and in 1213 to Rome on business with the pope, and was a witness to the charter granted by John in the seventeenth year of his reign to the city of Dublin; also a William de Wygornia, called "Magister Willielmus de Wygornia," who was one of the two persons named in the letters of Henry the Third in 1265, for annulling the grant of the treasurership of York made to Almeric de Montfort while the king was a prisoner in the hands of the earl of Leicester, Almeric's father. This William was, I think, the nephew of Phillip; but I have not been able to trace any connexion between either of them, and Peter or Hawisia; it is nevertheless worthy of notice, that the device on the seal of Hawisia closely resembles a

Dean, which is also a pointed ellipse, is a bird resembling a crow, and round it S' DECANI BRISTOLLI^d; and on the seal of the Vicar, which is round, is a human head, and about it S' DNI STEPNI DE NOVSHAL'. Noushall was probably Gnoushall, now Gnosall, in Staffordshire. The spelling of this name in the document as compared with the seal is a curious instance of unsettled orthography^e. All the seals are of green wax, and those of the Dean and Vicar perfect.

The excommunication, to which Hawisia agreed to submit, was of the more formidable kind; for there were two kinds, the greater and the less. The latter merely excluded from the rites and sacraments of the Church; but the former had not only that effect, but was pronounced with more affecting solemnities, and prohibited all dealings and intercourse with the excommunicated person; which was no light matter in an age when such sentences were carried into execution with considerable rigour.

The peculiarity in the form of the instrument may, I think, be to some extent accounted for. In the twelfth century a great contest commenced between the secular courts and the ecclesiastical authorities. Among other things in dispute was a practice, which had sprung up, of the ecclesiastical courts assuming to take cognizance of contracts, and to enforce the performance of them by excommunication, where the contracting parties had sworn to observe them, whatever may have been the case where there was not an oath. This the

royal badge, which appears on the great seals of Richard the First and Henry the Third, and is said to have been borne by the servants of King John, and though not on his seal, is found on his Irish coins. It is not however an uncommon device. Many have supposed it to be referrible to the crusades; but this is very questionable. Probably it had some symbolic or emblematic meaning as it occurs so often, and it may on that account have been assumed by this lady. From the Rot. Hundred. I learn there was a Henry de Wygornia in Wilts, temp. Hen. III., and a Rich. de Wygornia was sheriff for that county temp. Edw. I. A John de Wygornia was rector of St. Michael's Bristol, in 1313. It is possible further research might identify Phillip, William, Peter, Henry, Richard, and John as members of the same family; but if William of Worcester, surnamed Botoner, a scholar and antiquary of the fifteenth century born at Bristol, was of the family of Peter, they were of humbler

grade probably than the others; for according to Tanner, Botoner's ancestors were engaged in trade. Richard de Calne may not have been of higher rank, for a Richard de Calne was one of the bailiffs of Bristol in 1335.

^d The present deanery of Bristol was created by Henry the Eighth. The Dean above mentioned was in all probability the Dean of the Christianity (court Christian) of Bristol. Barrett in his History of Bristol, p. 451, gives a document partly in the original Latin and partly translated, relating to the Kalendaries in All Saints parish and dated about 1318, wherein "Robertus Hazell rector ecclesiæ de Derham et decanus Christianitatis Bristollie," is mentioned; and in the translated part he is called Dean of Bristol.

^e According to Barrett, p. 458, Stephen Gnowshale gave to the parish of All Saints a tenement in All Saints-lane about 1350. Query, should it not have been 1250?

secular courts firmly, and at length successfully, resisted. The general reader will find as much probably as he will be curious to learn on this subject in the second volume of Mr. Hallam's *View of the State of Europe during the Middle Ages*, pp. 310 et seqq. The practice was based on the doctrine of the spiritual courts, that they act *pro salute animæ*; and the prevention of injustice and perjury, particularly the latter, was alleged as a justifiable ground for their interposition. This contest was continued, with more or less energy, till after the date of the above document, though the ecclesiastical tribunals had sometime before been driven from many of their positions. A great effort was made on their behalf by Archbishop Boniface, who issued his canons and constitutions in 1258, and afterwards there was an appeal to parliament, but without success; and the statute or ordinance intitled 'Circumspecte agatis,' commonly referred to the thirteenth year of Edward the First, shews within what limits their authority was then reduced. However, contracts concerning lay-fees, i. e. in popular language, the lands of lay persons, were never suffered to be brought under their cognizance; and therefore this case was clearly out of their general jurisdiction, and hence the endeavour to give the Dean a special jurisdiction and coercive power by means of an express stipulation for the purpose, and an oath taken for the observance of it; a contrivance which after all, I have no doubt, would have been found unavailing if the lady had sought the protection of the common law court; and an apprehension of this, I conceive, induced the framer of the instrument to provide so carefully that she should submit to excommunication on the bare allegation of Richard de Calna that he had been disturbed, without oath or other proof being required, and without any judicial fuss (*sine aliquo strepitu judiciale*).^f

W. S. W.

^f This is not a solitary instance of such a phrase in a document of that period. A similar one occurs in an agreement between the abbot and convent of St. Mary Oseney and the prior and convent of Burncester (Bicester) respecting some tithes, which is recited in an agreement between the same parties dated 1300; see *Paroch. Antiq.* 344. It has some other points of resemblance to the document above mentioned; for the prior and his convent agreed to submit to the "coercion and discretion" of the official or chancellor of the bishop of Lincoln, or any other judge the abbot and his convent

should choose, that the observance of the agreement might be enforced by ecclesiastical censures "absque articuli seu libelli petitione et quocunque strepitu judiciali." A stipulation of this kind was probably not uncommon when parties engaged to submit to the decision of a person who had no other authority to adjudicate between them in the matter; as appears to have been the case in the agreement referred to, though the subject of it and the parties were, for most purposes, within the jurisdiction of the bishop of Lincoln.