

*A Study of the Charter-Criticism of the Anglo-Saxon Period, its Theory and Practice:  
including an Investigation into the  
AUTHENTICITY OF 'WIHTRED'S CODE'*  
**A PRELIMINARY HANDBOOK**

BEING

SEPARATE VOLUMES OF 'ESSAYS IN  
ANGLO-SAXON LAW AND HISTORY'  
(2 Vols, 1989–1995)

Vol. II. 2nd Ed., Revised and Enlarged

By

**HIROSHI HAYASHI, LL. B.**  
Emeritus Professor of Legal History in Gakushuin  
University; Sometime Research Student of  
Fitzwilliam House, Cambridge University

(under instructions from the late)  
**PROFESSOR D. WHITELOCK**

Thus this whole 'charter', Bi 131, turns out to be a concoction of various materials, pre- and post-Conquest, mainly narratives of former periods, arranged and framed so that the whole might look like an old charter to the eyes of any later user. We consider the 'charter', Bi 131, to be 'spurious' without hesitation.

Our next charter is very short, for a change, Bi 132:—

132. *Grant by Nunna of the South Saxons to Beadufrið,  
Abbot of Selsey, of land at Herotunum, etc., co. Sussex.*

A.D. 714.

✠ Ego NUNNA rex Suðsaxonum aliquam partem terræ juris mei. pro remedio animæ meæ. dabo BEADUFRIDO et fratribus qui habitant in insula quæ dicitur SEOLESIGE. ubi cupio ut corpus meum requiescat. id est. in HEROTUNUM. IIII. manentes. et in BRACLÆSHAMSTEDE. IIII. cassatos. et in SIDELESHAMSTEDE. III. cum omnibus ad se pertinentibus. silvis. campis. pratis. fluminibus. coram episcopo reverendissimo Eollan. necnon et abbatibus comitibusque meis congregatis. libenter hæc perdonavimus.

Si quis vero contra hoc decretum tyrannico fastu [venire] temptaverit. noverit se in tremendo examine coram Christo rationem redditurum. Scripta est hæc donationis munificentia anno ab incarnatione Christi. DCC<sup>mo</sup>. XIII<sup>mo</sup>.

✠ Ego Æðelstan rex consensi et subscripsi.

✠ Ego Æðelðryð regina consensi.

[A.] Reg. B. xviii, f. 4b. Penes [K.] Kemble, *Cod. Dipl.*, No. DCCCXCIX.  
Dec. et Cap. Cicestr. [B.] Dugd., *Mon. Angl.*, vi, 1163; from [A.].

We already saw a (probably) genuine charter of grant of King Nothhelm of the South Saxons (Bi 78). Our present one is from the same Chichester cartulary, but the general look of our present one is more conservative than the former one. The diplomatic details are as follows. There are no (1) Invocation, nor (2) Proem. The (3) Royal title is the same as that found in Bi 78—only the king's name has a shortened form this time, as the king did in the Witness-list of Bi 80 (probably genuine). (4) The Description of the lands to be granted begins with the most authodox 'aliquam partem terræ juris mei'. The (5) Motive of grant is again the authodox 'pro remedio animæ meæ' in the first place. Then the (6) *verba dispositiva* come in consisting of only one word 'dabo', so simply. The (7) Donees are Abbot Beadulfrid and the Brothers who live in the Isle of Selsey—the wording 'in insula quæ dicitur SEOLESIGE' here has an older place-name of the place than the 'ad insulam quæ appellatur Selesey' (Bi 80, probably genuine, but

ill-copied). Next comes in the qualification of the place which has something to do with the Motive of the grant—‘where I desire that my body should find rest’. Then, ‘id est’ in the next part is *not* unnatural, as *was* so in our previous case, because, for one thing, the first Description of land, ‘aliquam partem terræ’ etc., is in this text separated from its place-names and hidage by the two full lines (in Birch’s text) stating the donees and the motive of grant (twice, actually), and for the second, the hidages are put, instead of in Genitive Plurals, in Accusative Plurals—*manentes*, *cassatos*, thus in Apposition to the ‘partem terræ’. Two of the place-names can be identified: BRACLÆSHAMSTEDE is Bracklesham Bay (Sussex); SIDELESHAMSTEDE is Sidlesham (Sussex). Then the ‘cum omnibus’ formula is impeccable. The next part shows the office at this time of the bishop of Selsey, Eolla, which is 716 (725)—716 (726) × 731, and then a second mention of the Donees, ‘also to the Abbots and my companions assembled [there]’, and a second Dispositive words, ‘we [the Royal ‘we’ this time?] have willingly granted this (piece of land)’. So, after all, the donation was done to the abbots and the congregation of Selsey in the presence of their bishop, Eolla. Then, the (8) Sanction is the Negative penal clause of the type used in the eighth century—rather simple and to the point—to the ‘tyrannico fastu’ we already paid due respect some time ago. The (9) Dating clause is a problem. It has later words ‘donationis munificentia’, and only the anachronistic Incarnation date, 714, and no Indiction number. Now, this date 714, furthermore, ill accords with the office of the bishop, Eolla—in 714 he was not yet a bishop. Such features are not shared with by the other part of the text which is rather good and authentic, considering that the text is a later cartulary copy. So we should consider the Dating clause to be a later cartulary interpolation. The two names in the (9) Witness-list are otherwise unknown.

The facts being so, we consider that this charter, Bi 132, is ‘probably genuine’ although it has later interpolation.

Our next charter again is long, Bi 134, and so full of far later words that the text need not be quoted here.

134. *Grant by Æthelbald, King of the Mercians, to Ethom (Evesham) Abbey, of land at Acton, etc., A.D. 716.*

The (1) Invocation 'In the name of the highest and most ancient God' is a tenth-century formula, found, e.g. in a Grant by King Eadmund to the thegn Æthelnoð etc. A.D. 941 (Bi 767, genuine), in a Grant by King Eadmund to Theodred, Bishop of London etc. A.D. 942 (Bi 774, genuine)—here with the addition at the end of 'Jhesu Christi', and in a Grant by King Eadmund to the Earl Æthelstan A.D. 942 (Bi 777, genuine). The (2) Proem is a long one and that the sort not found in the eighth century: 'The holy and just fathers warn us by numerous speeches in definite agreements that God whom we esteem and believe with a deep affection of heart, we should love and maintain Him incessantly by the sincerity of our good deeds. Because He gives back the recompense of all our actions in the day of judgment in accordance with the merit of every single one; therefore, too, we should try our best to imitate that disputation of the most discriminating intelligence; although we should be burdened with the weight of human life and be incited? by the passing possessions of this age, nevertheless, by the generosity of His sympathy we should seek to purchase, by our vain riches, the eternal rewards of the heavenly life."'. Now this type which is unprecedented, too, is found in tenth-century charters; e.g., A Grant by King Eadmund to the Earl Æthelstan, A.D. 942. (Bi 777, genuine) has an almost word for word identical one:—

"Certis adstipulationibus nos sancti et justi patres frequentatis hortationibus admonent. ut Deum quem diligimus et credimus intima mentis affectione cum bonorum operum diligentia incessanter eum timeamus et amemus. Quia retributorem<sup>4</sup> omnium actuum nostrorum in die examinationis juxta unuscujusque meritum reddet. Ideoque subtilissima mentis certatione illum imitari satagamus licet mortalis vite pondere pressi ] labentibus hujus sæculi possessionibus simus infœcati tamen miserationis ejus largitate caducis opibus eterna celestis vite premia mereari queamus".

<sup>4</sup> -tionem, K."

Now this peculiar Proem wording appears also in a Grant by King

Eadmund to the thegn Æthelnoð, A.D. 941 (Bi 767, genuine) in the same identical way, so this wording must be King Edmund's and the writer or copyist of our Bi 134 must have taken its Proem from some such materials of King Edmund's which happened to be near at hand, in or after such dates, needless to say.

Then, the (3) Royal title 'Christi annunente clementia rex Merciorum' also is not an eighth-century formula. A similar formula is found in the tenth century, in a Grant by King Edmund to the thegn Edric, of land at Wudutune, or Wooton, A.D. 940 (Bi 764, genuine)—'ego EDMUNDUS *annuente* omnipotentis Dei *clementia* rex (Anglorum)'; a doubtful charter, a Grant by King Admund, i.e., Edmund, to his vassal Adric, of land at Stoke, co. Dorset. A.D. 941 (Bi 769) has 'ego ADMUNDUS ex regali progenie Deo *annuente* regente' etc. So the Royal title formula also is King Edmund's. Then the (4) Motive of grant has the wording 'pro spe mercedis æternæ' which is later than the date of our charter, Bi 134, and is actually found in a spurious Confirmation by King Æðelstan to the Monastery of St. Paul's, of lands at Sandon, Rode, and other places, written in the charter-form of King Ethelred (accession soon after 18 March, 978 or 9—death 23 April, 1016). Earlier, a similar formula is found in a Grant by Burhred, King of the Mercians and Æthelswyth, his Queen, to Alhun, Bishop of Worcester, of land at Water-Eaton etc., A.D. 864 (Bi 509, genuine)—'(pro redemptione animee nostre et) pro spe eterne salutis'. The (5) Consent formula 'cum concilio' is all right. The (6) Donee who is a church, 'to the church of the Blessed Mary which is founded at Eversham' is all right in itself. The (7) Dating clause 'anno regni mei primo' is all right since King Æthelbald came to the throne in 716. Of the (8) Dispositive words, 'largitus sum' is all right in itself, but 'perpetua hereditate' is later. A similar wording is found in the tenth century: 'in perpetuum jus largitus sum' (Bi 716, a genuine record of the witena gemot at Dorchester, containing a grant by King Æthelstan to Malmesbury Abbey). Of the place-names found in the (9) Identification of the lands to be granted, ACTONA could be Iron Acton (Gloucesters.), HUDICOTA is Hidcote & Boyce (Gloucesters.), and Stoke could be Lark Stoke. Then, the (10) Immunity clause with the three exceptions (trimoda necessitas) is of course later, at least about

two generations later, as we saw before, but here the words used in our clause seem to be still more later than those found in early examples of the genuine immunity clause with the exceptions, the typical ones being 'hanc terram liberam esse ab omni tributo parvo vel majore publicalium rerum et cunctis operibus vel regis vel principis præter instructionibus pontium vel necessariis defensionibus arcium contra hostes.' (Bi 202 a genuine Grant by Uhtred, Regulus of the Huicci, A.D. 767),<sup>(156)</sup> or "(libens concedo), ita ut ab omni tributo parvo vel majore publicalium rerum et a cunctis operibus vel regis vel principis sit in perpetuum libera, preter expeditionalibus causis et pontium structionum et arcis munimentum quod omni populo necesse est ab eo opere nullum excussatum esse' (Bi 274, a genuine 'original' Grant of King Offa to thegn Æðelmund, A.D. 793 × 795 or 6.).

Now, our wording, '(ut habeat) in perpetuam libertatem. et possideat cum omnibus quæ Deus cœlorum in ipso telluris gramine procreavit. campis. pascuis, pratis. silvis. derivatisque aquarum cursibus. Hæc autem prædicta donatio mea et omnium prædecessorum meorum sit libera ab omni mundiali obstaculo tribus exceptis. expeditione. pontis. arcisve constructione.', is far more inflated and decorative. First, the wording 'in perpetuam libertate' is found in the eighth century all right (Bi 274, a genuine 'original' Grant by King Offa to the thegn Æðelmund, A.D. 793 × 795 or 6— 'in libertatem perpetuam (sub hac conditione libens concedo) ita ut ab omni tributo parvo vel majore publicalium rerum ..... sit in perpetuum libera'. But immediately after that the 'cum omnibus' formula has a hitherto unknown wording 'quæ Deus cœlorum in ipso telluris gramine procreavit' which has a definite tenth-century trait and actually finds its parallel in a genuine Grant by King Edmund to his Queen Ethelfled, A.D. 944 × 946— '(cum omnibus utensilibus) que Deus celorum in ipso telluris gramine creavit' (Bi 817) —the latter wording is also found in a genuine Grant by King Eddred to the thegn Wulfric, A.D. 947 (Bi 829), as well as in other charters of King Edmund (i.e., Bi 791, A.D. 944, genuine; Bi 792 'deus cœlorum', A.D. 944, genuine; Bi 795, A.D. 944, genuine). Then, among the enumeration, which is not usually situated in this place, but put

(156) Concerning this text and other earlier features of the immunity clause with the three exceptions, cf. W. H. Stevenson, in *supra* note (150), at p. 695 and note 37.

immediately after the identification of land, connected by 'cum' in early charters, a rather peculiar wording, 'derivatisque aquarum cursibus.' This wording, however, is found in several charters of King Edmund, e.g., '(Campis. Pascuis. Pratis. Silvis.) derivatisque cursibus aquarum.' (Bi 763, a genuine Grant of King Eadmund to the religious woman Ætheldryð, A.D. 940.— the same wording in Bi 767 (King Eadmund, A.D. 941, genuine), in Bi 776 (King Eadmund, A.D. 942, genuine), in Bi 781 (King Admund, A.D. 943, 'Silvis. in modicis et in magnis. derivatisque cursibus aquarum', genuine), in Bi 788 (King Eadmund, A.D. 943, 'Silvis in notis. in modicis et in magnis. derivatisque cursibus aquarum', genuine) and in Bi 801 (King Eadmund, A.D. 944, 'silvis derivative. cursibus aquarum', genuine). A similar wording '(pratis.) derivatisque cursibus aquarum' is found in Bi 759 (King Eadmund, A.D. 940, genuine). The next formula 'Hæc autem prædicta donatio mea' is all right, but the following 'et omnium prædecessorum' is too much. The rest of the sentence, 'sit libera ab omni mundiali obstaculo' has another tenth-century trait, and is found in several charters of king Edmund and King Eadred; e.g., 'Si[t] (hoc prædictum rus) liber ab omni mundiali obstaculo' (a genuine Grant by Edmund to the thegn Elswith, A.D. 940, Bi 749), the same wording in Bi 753, a genuine Grant by King Eadmund to Æðelswith, A.D. 940, in Bi 756 a genuine Grant by King Eadmund to the thegn Garuf, A.D. 940, in Bi 758, a genuine Grant by King Eadmund to the thegn Æthelgeard, A.D. 940, in Bi 759, a probably genuine Grant by King Eadmund to the royal matron, Ælfhild, A.D. 940, in Bi 761, a genuine Grant by King Edmund to the thegn Edric, A.D. 940, in Bi 767, a genuine Grant by King Eadmund to the thegn Æthelnoð, A.D. 941. A slight variation of the formula, 'ut omnibus mundialibus coangustiis sit libera', is found in a genuine Grant by King Eadmund to Theodred, Bishop of London [pontifex Lundonensis], A.D. 942 (Bi 775). Another variation is found, 'Sit autem pretitulata donatio libera ab omni regali servitio et ab aliena ambitione mundialium curarum' (a genuine Grant by King Eadmund to the thegn Ælfstan, A.D. 943, Bi 780; the same in Bi 799. A.D. 944, genuine). Still Eadmund's former formula appears in a genuine Grant to the thegn Eadric, A.D. 943—'Sit autem predictum rus liber ab omni mundiali obstaculo' (Bi 789). Now the same and identical formula is found in a

genuine Grant by King Eadred to the thegn Eadmund, A.D. 947—'sit autem predictum rus liber ab omni mundiali obstaculo' (Bi 821); a similar wording is in a Grant by King Eadred to the Earl Edrig, A.D. 947—'Sit hoc predictum rus liber ab omni mundiali obstaculo' (Bi 828); the former formula is found again in a genuine Grant by King Eadred to the thegn Wulfric, A.D. 947 (Bi 833).

The last part of the Immunity-'trimoda necessitas' formula in our charter, 'exceptis expeditione. pontis. arcisve constructione', of course, is anachronistic, but from the comparison of the formulæ of the 'trimoda necessitas' we can tell how much so. The word introducing the exceptions seems to be 'præter' governing Ablatives in early days, as was in the first authentic example W. H. Stevenson quoted—Bi 203, or rather Bi 202 (both are the copies of one and the same charter) a Grant of Uhtred, Regulus of the Hwicci, to Æthelmund, (son of Duke Ingeld), A.D. 767<sup>(157)</sup>. Then, a Grant by King Offa to the thegn Æðelmund A.D. 793 × 795 (Bi 274, genuine 'original') has this 'preter' governing an Ablative ('preter expeditionalibus causis et pontium structionum et arcium muniment[or]um)—'except for charges of expeditions and of constructions of bridges and of defences of fortresses'.<sup>(158)</sup> Thus, the eighth-century formula seems to have used 'præter' with Ablatives in order to introduce the three exceptions in the ordinary immunity clause. Then, however, early in the ninth century, two genuine 'original' charters have different words for the same purpose: (1) a Grant by Coenulf, King of the Mercians, to Wulfred, Archbishop

(157) The text of Bi 203 has later interpolation, while that of Bi 202 is the one Hickeys copied truthfully 'from the 'original' then at Worcester which was in a pre-Alfredian hand.' Cf. W. H. Stevenson, *op. cit.* The 'præter' in Bi 203 is one of the lost words in the text of Bi 203 supplied by Birch from the text of Bi 202. Also cf. the text at *supra* note (156).

(158) W. H. Stevenson seems to have considered that in this wording only one Ablative is found and so the 'structionum' is a mistaken form, probably for Acc. 'structionem'?. The earlier wording in Bi 202, however, uses Ablatives in 'instructionibus (pontium)' and in 'defensionibus (arcium)', so Ablative *Plurals*. It can, then, be possible to consider 'structionum' to be a correct Genitive *Plural Form* and the textual 'munimentum' a miscopied Gen. Pl. 'munimentorum'. Not that such a view causes a great difference in the matter in question now. I just expressed the above view of mine for what it may be worth. *Clausuræ inconsuetæ semper inducunt suscipionem.*



of Canterbury, of land at Roegina ham etc., A.D. 811, Bi 335) has '(liberate ab omnibus.....aut etiam ab omni sæcularium causarum rerumque gravidine) *exceptis his debitis*. id est pontis instructionem. et contra paganos expeditionem. atque arcis munitionem distructionemve', although the wording is not too grammatical for an 'original' text—the Ablative Absolute construction '*exceptis his debitis*' itself is all right, but, then the 'id est' which follows and should introduce Substantives in Apposition to the '*debitis*' really introduces Accusatives,—one of which has a strange word-order '*contra paganos expeditionem*' in such a context, too. (2) A charter of the same king, i.e., a Grant by Coenuulf of the Mercians to Uulfred, Archbishop of Canterbury (Bi 348), has '(ita in omnibus inlæsa et inconcussa permanent) *nisi his tribus tantummodo causis*, id est expeditionem et arcis munitionem contra paganos et pontis instructionem.....sicut tota gens .....*consuete faciunt*'. So, these two types, the '*exceptis his debitis*' type and the '*nisi his tribus*' type appeared almost simultaneously, and the dues were 'customarily' paid.

Before we proceed, however, I think we had better refer to some further evidence by way of reinforcing W. H. Stevenson's argument expressed in the following words—'The liability to military service and to aid in the construction and the repair of fortresses are such primitive requirements of any organized state that it is unlikely that they were suddenly imposed in the eighth century' (Stevenson, *op. cit.* p. 698).

First, before the two charters quoted just now, and before the Grant by Offa to the thegn Æðelmund (Bi 274, A.D. 793×795), previously quoted, a Grant by Offa, King of the Mercians, to the see of Worcester, A.D. 730 (for 780), had the formula '*præter pontis et arcis restauratione et hostilem expeditionem*', but this charter, Bi 234, is a forgery, even if an early one. According to N. R. Ker, *Catalogue of MSS.* (Oxford 1957), pp. 70–71 and note, this charter *is* in Tiberius, A iii, early part (Hearne p. 12) and it has, along with Bi 455 (genuine) and Bi 701 (spurious), '*Ælfgyðecyrce*' (i.e., Alvechurch, Worcester), written against it in the 'Wulfstan' hand. Another Grant by Offa, King of the Mercians, to the Church of Worccingas or Working is a genuine eighth-century charter (Bi 275), and has '*ut absque impedimento secularium negotiorum ac regalium tributorum sive expeditionum aut*

jussionum incognitarum. (soli domino serviens sancta congregatio juris sui ac dominationis potestate propria non privetur.)', so the church should keep her right without the impediment of those secular troubles as well as of royal dues, whether of expeditions or of orders, unrecognized (by the church).<sup>(159)</sup> The wording seems to mean that the exceptions of the three necessary burdens *were* to a reasonable extent recognized by general custom, i.e., joining the *expeditions*, the building of fortresses and bridges, by *royal orders*, seem to have been usually recognized, unless the church specifically could refuse them.

A somewhat different but corroborative evidence indicating the existence of such a general custom is to be obtained by comparing two copies of a certain charter. Now, a Restoration of Coenuulf, King of the Mercians, to Christ Church, Canterbury, A.D. 799. (Bi 293, genuine 'original') contains something of importance in our connexion in its 'original' text. First, among the lands to be granted to Christ Church, is a land of four hides called 'Humbing lond on Biora. ham', which is described in the text as the land which Egbert (II), King of Kent, once gave to his thegn, Aldhun by name, and the latter, when going beyond the sea, gave the same land (or manor) 'to the family members residing in Christ Church, indeed for himself and themselves, by way of their own right and ownership, to have and enjoy favourably in the Lord for the common necessary expenses ('*communis necessitatibus*,'—'in paying common necessary burdens')". Now, according to the text, "Offa, king and glory of Britain, afterwards changed possessions of these lands and apportioned [them] to his own thegns, saying that it was wrong that his thegn should have presumed to give a land which had been apportioned to himself by his lord into the authority of another without his (i.e., the lord's) testimony."

Now, from the wording of the text, it is not clear how much grant of land Offa revoked. The land Aldhun was granted by Egbert is first referred to as "quatuor aratra ubi dicitur Humbling lond on biora ham. quam.....terram.....Egberhtus suo ministro.....tradidit. at ille..... suum dederat agrum", etc., so in the Singular. But when Offa revoked the grant, the text referred to 'harum.....possessiones terrarum (Offa

(159) Needless to say, 'incognitarum' agrees only with 'expeditio' and 'iussio', not with 'tributum' nor with 'negotium', so limits only the former two nouns.

rex et decus Britanniae inmutavit), so to Plural lands. Of course, if Offa's idea of his overlordship over Egbert should be applied thoroughly and consistently, the other grant by Egbert to Christ Church mentioned in Bi 293, 'Seleberhtes cert sive Bryning lond decem [aratorum] quas videlicet terras olim Egberhtus.....ad prænominatam perdonavit ecclesiam' could have been revoked, too, and that would make Plural lands. On the other hand, however, when, later, Archbishop Wulfred of Canterbury spoke critically of Offa's confiscation, he mentioned only the four ploughlands æt Burnan: 'terram utique ubi ab incolis regionis æt Burnan vocabulum dicitur. quattuor aratrum quam terram totam jam dudum Aldhun quidam comes venerabiles propinquus domni Iænberht archiepiscopi.....pro animæ suæ redemptione jure perpetua liberaque ad possidendum illis donaverat. illamque terram Egberht rex Aldhuno conscribendo dederat.'—so King Egbert had granted Aldhun the four ploughlands by means of a charter of liberty—'Sed post eo rex Offa predictam terram a nostra familia abtulit videlicet quasi non liceret Egberht agros hereditario scribere.'—so the archbishop discountenances Offa's disregard of the practice of making land legally hereditary by charter, and then 'Sed post ea beatæ memoriæ Aeðelheard archiepiscopus a rege Offa adquirere studuit illam terram cum integra libertate ad Christi ecclesiam.' (Bi 332, A.D. 811, 'original'): Archbishop Aeðelheard took pains to acquire from Offa that land 'cum integra libertate' in respect of Christ Church, and shortly before his demise, intrusted, under persuasion of his friends, our Brothers (at Canterbury) to restore 'illam terram cum illa libertate ] cunctis rebus rite ad eam pertinentibus' i.e., the land with its liberty as, apparently, was described in the original Egbert charter. And so did the Brothers and Archbishop Wulfred of Canterbury in the event.

In any way, therefore, Offa's revocation of the Egbert Charter[s?] was deemed, by the church, i.e., intellectual, circles as an infringement upon the customary law of the period and was corrected as such by his successor, King Coenwulf.

Second, the former charter, Bi 293, seems to restore partly the Clause of the privilege of the church of the original Egbert charter concerning the grant of the land æt Burnan, when it says 'sed modo tamen ego rex COENUULFUS.....eodem modo et eandem condicione sive ecclesiam

Christi seu etiam illa. IIII. aratra æt Burnan (Christ Church or even those lands they have?) congregatione et familiæ Dorovernensis ecclesiae in jus proprium ad habendum perpetuo perdonabo. sicut ante fuisset constitutum et condonatum sub Egberhto regi' which seems to represent something like a later form of the ancient 'jure æcclesiastico' or 'in jus monasteriale' formula we sometimes meet in early charters that still exists in this form in our clause, adding, for the same purpose, a variant form of such formulæ as 'sicut nunc usque possessa est', or 'ut quemadmodum primitus tradita fuerat, rursus recuperetur' (Bi 76 (probably) genuine), or 'dominium. quæ a me ipso. vel antecessoribus meis priscis temporibus tradita erant' (Bi 91, genuine) and the like, all indicating the existence of the general customary law guaranteed by means of such as the original church privilege Clause of the Egbert charter. These are also represented, in Bi 332, as '(dudum Aldhun·····) jure perpetua liberaque ad possidendum (illis donavit. illamque terram [æt Burnan] Egberht rex Aldhuno conscribendo dederat)'.

Now, the text of this charter, Bi 293, has a later copy in an abridged form (Bi 294), where the wording of the immunity Clause is changed: '(reddo) liberas ab omni sæculari servitio et tributo regali.' Actually, this seems not so much to be a change really as a modernized elucidation of the privilege Clause of the Egbert charter as we just explained in somewhat minute detail in the above, and, thus consolidated, the same privilege Clause is put in similar or parallel line with the immunity clause of the charter, Bi 275, which for a moment betrays the existence, in general customary law of the period, of the recognized idea of standard immunity from the burdens, secular as well as of the royal nature. So those charters discussed above definitely indicate the existence of the general customary law of the charter. Thus, those examples of the privilege-immunity clause with their variant wording as demonstrated above would supply the undercurrent of customary law upon which W. H. Stevenson could truthfully say, "That these obligations were then [in the eighth century] imposed is improbable, for there are charters after the date of the immunity clause [Bi 202, A.D. 767] without the exception and in some cases without the immunity clause." (op. cit., E.H.R. XXIX, pp 697 f.)

So, then, we are now ready to come back to the examination of the

words introducing the three exceptional burdens in the immunity clauses of the ninth century.

The next genuine charter after the charter, Bi 348, is Bi 350 (a Remission by Coenuulf, King of the Mercians, to Deneberht, Bishop of Worcester, 26th December, A.D. 814) which, however, has no immunity clause. The customary law must have continued, unmentioned. Then, the next genuine charter, a Grant by Kenulf, King of the Mercians to Deneberht, Bishop of Worcester, of land at Stour etc., A.D. 814 (Bi 351) does have an immunity clause with its exceptions: '(Liberam quoque terram istam concedo) ab omnium sæcularium rerum operibus. ac tributum oneribus. atque exactorum conflictione. *exceptis his*. expeditione et pontis constructione.' etc., so the Ablative Absolute construction beginning with Plural '*exceptis*' is regularly used here. That applies to the next genuine, contemporary text, a Sale of Coenuulf, King of the Mercians, to Archbishop Vulfred, 19th March, A.D. 815 (Bi 353)—"*liberata*.....terra ista ab omnibus saecularium rerum servitutibus permaneat. *exceptis his* arcis et pontis constructionibus et expeditione", etc.

The next genuine charter, a Grant by Coenuulf, King of the Mercians, to Deneberht, Bishop of Worcester, of land at Halhegan etc., A.D. 816 (Bi 356) has, however, no regular immunity clause except just the words '*libertatis privilegio*' which indeed indicate the rest as we saw just now existing in the customary law of the time. The next genuine charter, a Grant in exchange by Coenuulf, King of the Mercians to Denebert, Bishop of Worcester, A.D. 816 (Bi 357) does have an explicit immunity clause with its exceptions, "*liberam quoque terram istam conscripsi ab omnibus aliis sæcularibus rebus durisque servitutibus modicis et magnis. notis. ignotis preter tantum his tribus causis et pontis constructione et expeditione atque a pascua regis*", etc.—the appearance here of the conservative '*preter*' governing Ablatives is to be noticed. The next genuine charter, a Grant by Cenulf, King of the Mercians, to Deneberht, Bishop of Worcester, of land at Sluhford, etc., A.D. 817 (Bi 359) also has a similar immunity clause, not, however, with the explicit mention of the exceptions, '*Libera*.....sit terra ista ab omnibus rebus notis et ignotis. parvis et magnis sive principis [*defective here ?*]. Verumetiam qui eorum dominio sint subjugati.'—'*verumetiam*'

in the last clause seems to suggest that the exceptions are taken for granted—"but also those of them which should (usually) be attached to ownership'.

Then, the next genuine though fragmentary charter, a Grant by King Cenulf to Wulfed, of land at Aldantune etc., A.D. 796×809 (Bi 364), has 'ab omnibus sæculariarum rerum servitiis *exceptis his arcis et pontis constructione atque expeditione*', a regular clause of the 'trimoda necessitas'. The next genuine charter, a Grant by King Cenulf to Archbishop Wlfred, of lands at Coppanstan, etc., A.D. 821 (Bi 367), reverts to the shorter form 'liberas ab omni sæculari servitio et regio tributo', the exceptions being left to the customary law. Then the next genuine (and important) charter, a Grant by Coenuulf, King of the Mercians, to Deneberht, Bishop of Worcester, of land at Fledanburh, etc. (Bi 368) does have the immunity clause and the exceptions, "Liberabo quoque terram istam.....ab omnibus sæculariarum rerum honeribus duris ac lev[ib]us. *exceptis his arcis. et pontis constructione et expeditione,*" etc. The next genuine 'original' charter, a Grant by Ceolwulf, King of the Mercians, to Archbishop Uulfred, of land at Mylentun, etc., 17th September, A.D. 822 (Bi 370), has "hanc predictam terram liberabo. ab omni servitute secularium a pastu.....  
.....ab omnibus laboribus operibus. et oneribus. sive difficultatibus. quit plus minusve numerabo vel dico. ab. omni gravitatibus maioribus minoris. notis ignotis undique liberata permaneat in æfum *nisi is quattuor causis* que nunc nominabo. expeditione contra paganos [h-] ostes. et pontes constructione seu arcis munitione vel destructione in eodem gente et singulare pretium foras reddat." etc.—the most, almost too minute, enumeration found in the immunity clause may perhaps betray new and clumsy efforts to write down what had been taken for granted so far.

The elaboration continues to the next genuine charter, a Grant by Ceolwulf, King of the Mercians, to Wulfred, Archbishop of Canterbury, of land at Canterbury, 26th May, A.D. 823 (Bi 373), this time, however, without the exceptions, "ut sit libera ab omnium secularium rerum. vel cen<sup>s</sup>/súm nunc et deinceps. hinc et inde maiorum minorumve causarum notis ignotis per cujusquaque personis potestatis difficultatibus liber et segura perseverat in ævum", the immunity word-

ing is about half traditional but has elaborations, probably new, though within the limit of ordinary immunities, not referring to the three exceptions which are deemed to be taken for granted, notwithstanding the elaboration devices.

It may, therefore, be significant that the next genuine document, the record of the Council of Clofesho, the Settlement of the dispute between Heaberht, Bishop of Worcester, and the "familia" at Berkeley, etc., 30th October, A.D. 824 (Bi 379), declares that "Statuta est autem atque decreta ab archiepiscopo et ab omni sancta synodo illa consentientia. ut episcopus qui monasterium et agellum cum libris haberet. cum juramento Dei servorum presbiterorum diaconorum et plurimorum monachorum *sibi in propriam possessionem* terram illam cum adjuratione adjurasset. Et ita finita et proscripita illa contentione coram episcopo post. xxx. noctes illud juramentum to Westmynstre deducatum est." (followed by the Sanction). So the bishop who had the charters (of liberty) concerning his monastery and the land had to swear by oath (together with many ecclesiastic oath-helpers) that he had the same land 'for himself in his own possession' which seems to be equal to the 'in jus monasteriale' in the terms of a charter, and no more need be said as to his rights and obligations which are here in the Council officially and regularly to be understood without saying anything more, but nevertheless in the same way as in our previous charters, Bi 367, 368 and 373, to our thinking, and, the dispute having been thus concluded and written down in front of the bishop, the oath indeed was given thirty days later at Westminster.

And, indeed, in our next genuine charter, which is a private charter, a Grant by Uulfred, Archbishop, to the family or Convent of Canterbury, of land at Scelesford, etc., A.D. 805-832 (in spite of Birch dating 824 for 834(?)), the land to be granted is referred to as 'aliquam partem meæ propriæ hereditariæ terræ' to be granted 'in propriam possessionem'—which here seems to especially emphasize the phase that the land shall never be alienated in any way from the 'family'—and the idea 'in jus monasteriale' is repeated in the longish text: "Sed semper in posterum ad necessitatem istius congregationis cum omnibus usis ejus in propria possessione permaneat" (a formula similar to the one found in royal diplomas), also "Insuper illam terram quod....."

.....in propriam hereditatem a regibus Ecgberhto et Aeðel-uulfo donata fuerat, hoc est, LXXXV segetum cum libello ejusdem agelli”, so a royal diploma seems to exist concerning a part of the land (85 fields), still there is no mention of immunities and their exceptions. The presumption, then, is that that phase was not so material compared with the phase of the monasterial or ecclesiastical right or of perpetual heredity, to say in other words, that the immunities and their exceptions were so matter-of-fact and well-known that they need not be specifically mentioned, as W. H. Stevenson once explained. We might perhaps add that the former is the more revolutionary and essential institutions at the time in the sense that those rights were newly introduced after Christianity obtained in England and made charters especially useful, while the latter were their natural corollaries and incidents and, being customary as such, need not be emphasized especially in those earlier days.

Such a point will probably be strengthened by the examination of the following curious document and rare genuine charter. We here omit to discuss the (1) Invocation, which is very authodox, and the likewise authentic (2) Proem, as well as the (3) Boundary clause, the (4) Sanction and the (5) Dating clause, all of which are quite all right, eventhough we do not discuss them here. The (6) Dispositive wording of a sort of this ‘original’ charter, Bi 381, only, is our present concern:—

381. *Deed whereby Archbishop Uulfred grants lands at Eythorne and Langdown to Christ Church, Canterbury, in exchange for lands at Barham and Suiðberhtinglond, co. Kent. 23rd July, A.D. 824.*

✠ In nomine domini nostri Jhesu Christi salvatoris mundi. Éá quæ secundum decreta canonum salubriter definiuntur<sup>2</sup>. Tamen in obcerta<sup>3</sup> futuris temporibus varietat<sup>e</sup>/ fidelissimis scripturis ad memoriam sunt confirmanda. Placuit itaque UULFREDO<sup>4</sup> archiepiscopo ejusque familia<sup>5</sup> quæ sita est in civitate DOROVERNIA<sup>6</sup> aliquam vicissitudinem terrarum inter se habere. quia commodum ex utraque parte esse perspexerunt



<sup>2</sup> Diff., K.    <sup>3</sup> For ob incerta, which is the reading of C., altered by a contemporary corrector to the above reading.    <sup>4</sup> Wolfr., .    <sup>5</sup> liæ, K.  
<sup>6</sup> Dorob., K.

cum<sup>1</sup> commune consilio<sup>2</sup> daturus episcopus sui propriæ<sup>3</sup> juris. \v. áratro<sup>4</sup> ubi nominatur ÆGYÐEDORN et Longean duum<sup>5</sup> cum omnibus úsis<sup>6</sup>. ad eam<sup>7</sup> rite pertinentibus. Et eidem<sup>8</sup> libertate quam ante habuerat ad ecclesiam Christi in propriam potestatem et in perpetuam possessionem. Pari modo prædicta familia dederat prænominato episcopo simili co\ n\ paratione. U. aratorum<sup>9</sup> ubi dicitur BEORHAM et Suiðberhtinglond<sup>10</sup> cum omnibus úsis<sup>6</sup> ad eam rite pertinentibus. et in se habentibus. cum eodem<sup>8</sup> libertate quam in antiqua kartula<sup>11</sup> cernentibus adscripta dinoscitur. ad habendam<sup>12</sup> possidendam<sup>12</sup> vel etiam post se cuicumque placuerit derelinquendam<sup>12</sup> in perpetuam possessionem. Tamen huic condicione<sup>13</sup> inter nos composita<sup>14</sup> si aliut<sup>15</sup> ab áliquo subtrahitur secundum normam equitatis alteri innocenti sine altercatione sui proprie<sup>16</sup> juris condonetur ad imperium tam liber<sup>17</sup> sicut prius ab eo<sup>18</sup> acceptum fuerat. si quis interrogat quare primitivis telligraffis<sup>19</sup> vicisse<sup>20</sup> noluerunt. scito ut<sup>21</sup> in eis multorum agrorum numera<sup>22</sup> congregentur. Pro qua etiam causa nil magis appetere desiderantes. sed cum propriis hereditaris<sup>23</sup> libellis servandi<sup>24</sup> fieri cautius consiliantes.

<sup>1</sup> Cum, omitted, K.    <sup>2</sup> Communi concilio, K.    <sup>3</sup> -prij, K.    <sup>4</sup> Terram quinque aratorum, K.    <sup>5</sup> Agcðorne et Langedune, K.    <sup>6</sup> Usibus, K.  
<sup>7</sup> Se, K.    <sup>8</sup> Ea, K.    <sup>9</sup> Comp. terram duorum, K.    <sup>10</sup> Bereham et Suiðberhtingeland, K.    <sup>11</sup> Car., K.    <sup>12</sup> -dum, K.    <sup>13</sup> Condicione, K.  
<sup>14</sup> Compositæ, K.    <sup>15</sup> -ud, K.    <sup>16</sup> -prij, K.    <sup>17</sup> Liberum, K.    <sup>18</sup> Ab eo, omitted, K.    <sup>19</sup> Cyrographis, K.    <sup>20</sup> Incisse, K.    <sup>21</sup> Quod, K.    <sup>22</sup> -eri, K.    <sup>23</sup> Haereditatum, K.    <sup>24</sup> -da, K.

The minute words of the agreement of exchange of the two lands, each of five ploughlands, after 'Placuit', are our present concern.

First, it is said that "it has been approved thus by Archbishop Wulfred and his family who resides in the city of Canterbury to have some exchange of lands between themselves, because they have looked

into everything with the conclusion that it be convenient for both sides." And so, the 'bishop', meaning Archbishop Wulfred, is going to give five ploughlands 'of his own right (*sui proprii juris*)' in a place which is called 'Ægythe thorn et Longean duum, cum omnibus usis ad eam rite pertinentibus' a phrase which, as we often saw before, is a regular wording in a charter of grant of land. The land also is described to have a liberty which the bishop had had previously and which he is going to give to Christ Church 'in propriam potestatem et in perpetuam possessionem', so we meet here too our familiar wording which corresponds to the 'ecclesiastical right' formula found in early charters. Then, in the equal way ('*pari modo*'), the said 'family' of Christ Church, is said to have given to the said bishop, by equal comparison ('*simili co'n/paratione*'), five ploughlands in a place which is called 'BEORHAM et Suithberhtinland', and also 'cum omnibus úsis ad eam rite pertinentibus et in se habentibus'—mother wording of a charter similar to the above wording (the last two words here probably *were* in the very charter granting this land)—"together with that liberty which is diserned in an annexed ancient charter witnessing it, in eternal possession in order to have and possess and even, after himself, to leave [it] to whomsoever he shall like"—a typical wording, as we saw, of the liberty of the church with hereditary right. And, adding to those words of definition of the lands to be exchanged, a peculiar wording concerning the exchange is next found in the text, "To this, however, a condition having been agreed upon: if anything is removed from the other [part of the land to be given in exchange], it should be delivered up, in accordance with the rule of equality and without argument, from his own right to the other innocent party into his [the latter's] governance in such a free form as when it had first been received<sup>(160)</sup>, and if anyone asks why he has not wished to have proceeded with the first deeds [= charters of grant], he [the interrogator] shall know that in these (charters) large numbers of many lands are assembled together. For which reason indeed, we are not desiring to strive for more at all, but are deciding more cautiously to be protected by means of the

---

(160) Kemble omitted the textual 'ab eo' with good reason. This part obviously refers to the original grant by some king which had been done earlier than the date of the exchange, so not by any of the parties concerned.

charters of our own heredities.”

Now, apart from our admiration for the very high rectitude as well as consideration on the part of the Archbishop who obviously dictated the wording of this present charter, Bi 381, we cannot help marveling at the most exact minuteness of the descriptions of the rights of both the parties. Both the lands of five ploughlands are their own, i.e., their booklands, to use our modern terms, and so accompanied with—as ‘adscripta’ explicitly mentioned in one case—charters. And the description of the contents of the rights of both the parties seems to be derived from such their charters. The wording, moreover, of such descriptions shows that both naturally have liberties, and although the words used to describe minutely the rights of both parties are not identical—probably because of faithfulness to the respective charters—, they are one in ensuring the churches’ own rights, the ‘jus ecclesiasticum’ with the eternal possession and heredity—‘ad ecclesiam……in propriam potestatem et in perpetuam possessionem’ in one case, and ‘cum eadem libertate……ad habendum possidendum vel etiam post se cuicumque placuerit derelinquendum in perpetuum possessionem’ (*here according to Kemble*).

So the entire description of the rights of both parties seems to be confined to the ancient rights of the churches, to their eternal possession of lands and their heredity, which, however, implied not only the immunities but also the exceptions, as W. H. Stevenson pointed out long ago—“The genuine early charters [‘antiquæ kartulæ’ in our charter] contain no immunities, and consequently no exceptions from them”, “The absence from the early charters of the three great burdens may be explained in three ways: (1) that originally ecclesiastical lands enjoyed no immunities whatever, so that there could be no exemptions; (2) that they were originally exempt from the three burdens; (3) that their immunities and their limitations were so well-known by common law or ecclesiastical law that it was not necessary to mention them. The second theory is hard to reconcile with later references to the inevitable nature of the three burdens, from which no one could be excused. No. 3 might be covered by the *ius ecclesiasticum* and the like definitions of tenure in the early charters. The first suggestion is in conflict with evidence of older date than that of the mergence of the immunity clause

that ecclesiastical lands enjoyed certain exemptions from taxation and other things." He also quoted the laws of Wihtrd, 1, as having a reference to churches' freedom from taxation. On this last point, however, I think I can say something perhaps more than Stevenson considered at that time. First, Stevenson says, "C. 1. *Cirice an freolsdome gefola*' (Liebermann, Gesetze, i. 12.). Case for Case this may be latinized '*ecclesia* (nom. sing.) *in libertate tributorum*', taking *an* to be the preposition *on*. Dr. Liebermann renders it accordingly: '*Die Kirche [sei] in Freiheit von Abgaben*'. It is more natural to read *ciricean*, the form of the oblique cases of *cirice*. Schmid, *Die Gesetze der Angelsachsen*, p. 15, renders it accordingly: '*Die Kirche [mehr man] mit der Freiheit von Zinsen*.' The expression in any case is very unusual. It looks more like a rubric: [Be] *ciricean freolsdome gafola*', but there are no such rubrics elsewhere in these laws."<sup>(161)</sup>

Now, I cannot agree with Stevenson in the '*ciricean*' reading of Wi 1. Of course it is *per se* possible to read '*ciricean*' instead of '*cirice an*', but in that case the ending *e* of *freolsdome* must necessarily be considered to be inorganic, since the word should either be taken for a Nominative or an Accusative, then. Toller did the former, '*Ciricean freólsdóm* [MS. *freólsdóme*] *gafola to the church freedom from imposts*, L. Wiht. 1' (Bosworth and Toller, AN ANGLO-SAXON DICTIONARY BASED ON THE MANUSCRIPT COLLECTIONS, Oxford, 1954, p. 334). Schmid, obviously following suit after Grimm, took it for an Accusative when he rendered as mentioned above, and the '*mehre man*' part also probably comes from the Prologue, 3 '*æcton*', but this way of supplementing is justly rejected by Liebermann.<sup>(162)</sup>

On the other hand, I think that Stevenson's suggestion that the whole wording 'looks more like a rubric' should be paid more respect to. Let us look at the OE text around this part: 'Ðær ða eadigan fundon mid ealra gemedum ðas domas ] Cantwara rihtum theawum æcton, swa hit hyr efter segeth ] cwyth: Cirice an freolsdome gafola; ] man for cyning gebidde, ] hine buton neadhæse heora willum weorthigen.'

(161) W. H. Stevenson, *loc. cit.* (at p. 699, note 47). The note is especially important in connexion with Liebermann's view.

(162) Cf. Liebermann in *supra* note (97) (*Die Gesetze*), iii, p. 26. (Wi 1] 2)). He considers that '*gebe man*' should suffice, and be acceptable. But cf. the *infra* text.

(There, the leading men, with the consent of all, devised these judicial sentences and added<sup>(163)</sup> them to the legal customs of the Kentish people, as is hereafter said and declared: the Church in freedom from taxation; and [thus] the king is to be prayed for, and honoured of their own free will without compulsion.). Yes, indeed, the top clause does look like a rubric or heading. We remember here that in many a charter, we see a king granting lands so that he may be prayed for. So this can very well be the really important part of Article 1 of 'Wihtréd's Code', nay, indeed, even the *raison d'être* of this whole sentence. In other words, it presupposes the freedom from taxation of the church as already having been given by the charters of kings, so the sentence first and briefly refers to such a freedom as a matter to be taken for granted really. The texture seems then to be: "The church having been given the freedom from taxation, you priests and people of Kent should go and pray for the king and honour him of your own accord, conscientiously." I would not be surprised, even if the Latinization by W. H. Stevenson of the beginning part, 'ecclesia (nom. sing.) in libertate tributorum' were the original wording, supposing that the OE text had, behind it, an original in Latin, which fact itself is not utterly impossible, if we take into consideration the fact that the beginning part up to 1.1 of the 'Code of Wihtréd' are framed in something very much like a Latin-charter form.

### THE AUTHENTICITY OF 'WIHTRED'S CODE'

Supposing that the part be a translation, we could, and should envisage, even temporarily, the form which the part of 'Wihtréd's Code' could have taken as a Latin charter, although we could not consider that the rest of the 'Code' be part of such a charter for the moment. Possibly Stevenson had a subconscious inkling of some such thing as the above at least when he rendered the OE clause into Latin? Indeed, it seems to me that the clause in question *has* an innate similarity to some

---

(163) I take advantage of this opportunity to amend my former rendering found in my *Essays in Anglo-Saxon Law (and History)*, II., text at notes (898) f. The 'æcton' in 'rihtum theawum æcton' (Wi ProL. 3.) should be rendered 'added to', not 'increased', since the 'theawum' is Dative (not Accusative) Plural.

Latin idiomatic construction, such as Stevenson rendered it. So Let us try:—

\* Carta Wihtredi regis Cantuariorum de libertate ecclesiarum Dei vel monasteriorum intra Cantiam cujus cartæ tenor iste est.

[In nomine domini Dei et Salvatoris nostris Jhesu Christi!] Regnante Uuihtredo clementissimo rege Cantuariorum anno quinto regni ejus indictione nona. vi die in mense Rugerni congregatum est synodicum concilium in loco ubi nominatur BERGHAMSTYDE. Præsidente autem eodem concilio BERHT-UUALDO reverentissimo archiepiscopo Britannix et eodem rege semet deinde Hrofensis episcopo (qui nominatur Gybmund). et una cum eo sedentibus ceteris ecclesiasticarum gradibus ejusdem regionis exposuerunt una voce cum populis obsequentibus.

Ubi itaque omnium consensu iudicaverunt dignitates mores et illos adjecerunt ad legitimos usus Cantuariorum: ecclesia in libertate tributorum; itaque preces reddantur pro rege et honoratote eum libenter et non invite.

Well, something like the above might have been the general wording of the 'original' charter, i.e., if there were such at all behind the beginning part of 'Wihtréd's Code', for all we know.

Even in such a hypothetical form, however, the transliteration of the vernacular into Latin as tried above has rather more easily been done than I expected myself. At the same time the whole viewpoint as regards the beginning part of 'Wihtréd's Code' has had to change in my mind, i.e., the essential similarity between the OE and Latin sentences here caused a misgiving in my mind for the first time: an original Latin text there might well have been. Now, in the first place I have become aware that the Dating clause comes in at the beginning. In early Kentish charters the Dating clause usually appears in the middle of the text after the king's name or at the end of the text, except when a 'charter' happens to be the record of a council, which is the case in 'Wihtréd's Code'. Now we have such records of synodal councils of the

seventh and the eighth centuries: (1) Council of Hatfield (Bi 52, A.D. 680); (2) Council of Bapchild (Bi 91, A.D. 696×716); (3) Council of Clovesho (Bi 162 A.D. 742); (4) another Council of Clovesho (Bi 174, A.D. 747); (5) Council of Bapchild (Bi 290, A.D. 798 for 803). Of these, the first is a spurious document and the Dating clause immediately comes in (after the Invocation): “*imperantibus piissimus dominis nostris Ecgfrido rege humbronensium. anno decimo regni ejus. sub die. xv. kalendas Octobres indictione. VIII. et Ædilredo regi Mercinensium (!) anno sexto regni ejus: et Aldulfo rege Cantuariorum regni ejus anno VII. præsidente Theodoro gratia Dei archiepiscopo Brittanix insulæ et civitatis Dorovernis una cum eo sedentibus ceteris episcopis Brittanix viris venerabilis præpositis sacrosanctis evangeliiis. In loco qui Saxonico vocabulo Haethfeld nominatur; Pariter tractantes fidem rectam et orthodoxam exposuimus.*” just as in the part in question of ‘Wihtred’s Code’, and the rest of the sentence is similar, too. The second is, as we already saw, a genuine, though interpolated text, and begins (after the Invocation) with ‘*Congregatum est magnum concilium in loco ubi nominatur BACCANCELDE. Præsidente autem eodem concilio UIHTREDO clementissimo regi [better, rege] Cantuarioum necnon BERHTUUALDO reverentissimo archiepiscopo. Brittanix. simulque Tobix Hrovensis æcclesix, ceterisque Abbatibus. abbatissis. presbiteris. diaconibus. ducibus. Satrapis, in unum glomeratis pariter tractantes anxie examinantes de statu æcclesiarum Dei vel, etc.....*’ The third which is a doubtful document though written in an eighth-century hand (Stevenson says ‘c. 800’), begins, after the Invocation, immediately with a Dating clause: “*anno vero dominicæ incarnationis DCCXLII. Indictione x. et regni Æðelbaldi regis Merciorum XXVII. synodus congregatum fuerat in loco ce[le]bri ubi nominatur CLOVESHOS (?) de diversis eccle[sia]rum Dei; et hutilitatibus præsidente autem eodem synodo ÆðELBALDUS rex (!) cum suis optimatibus necnon Cutberhtus (!) venerabiles arciepiscopus ceterisque episcopis, etc.*” The fourth is an abstract only and cannot help us. The fifth is a genuine document which begins with ‘*Anno dominicæ incarnationis DCC. XVIII. Congregatum est magnum concilium in loco ubi nominatur. BACCANCELDE præsidente eodem concilio. Cenulfo rege necnon reverentissimo archiepiscopo Athelardo*

cum episcopis abbatibus et multis aliis Idoneis personis.” So, in the ninth century, or in spurious or dubious charters only, the Dating clause appears first: earlier genuine records of councils begin, not with a dating clause, but with ‘congregatum est’. Indeed, we have, at this date, a genuine OE record of a council and it begins with a Dating clause, too: “✠ In nomine trino divino, qui est Deus benedictus in sæcula amen. thy gere ðe wes from cristes gebyrde agæn eahta hund wint[ra] 7 . XXV sio æfterre indictio wæs in rime 7 wæs Biornwulfes rice Mercina cyninges. ða wæs sionoðlic gemot on ðære meran stowe ðe mon hateth CLOFESHOAS. and ðæ siolfa cyning BIORNWULF. 7 his bisc[opas] 7 his aldor men 7 alle ða wioton ðisse ðiode ðær gesomnade weron. Ða wæs tiolo micel sprec ymbs……………(In the name of the divine trinity who is the blessed God for ages and ages. Amen. In the year which had passed since the birth of Christ, eight hundred and 25 years, and the second indiction was reckoned, which was in the reign of Biornwulf, King of Mercia, an ecclesiastical meeting was held in the famous place which is called Clovesho, in which the same king Biornwulf and his bishops and his ealdormen and all the *witan* of this people were assembled together. Then there was a very noteworthy suit, etc.)” (Bi 386, OE ‘original’, A.D. 825.) Therefore, this way of beginning the council record by a Dating clause does not go back beyond the end of the eighth century in genuine charters,—it is also to be remarked here that the way does go back in *spurious* ones, though. You might perchance object and say that the part in question is not a charter. Still, there is no denying the fact that the particular part *is* framed in the form of a charter, although, very strangely, no one pointed it out so far.<sup>(164)</sup> Besides, what sort of a law can it be, when the law orders people to honour their king, or to pray for the king, except when the order is to the ecclesiastic people and laid down within a charter and prescribed

---

(164) Liebermann (*ibid.* III. p. 24) did refer to the synodal council at Hertford of 673, but only pointed out the connexion of the Articles 5 ff. of ‘Wihtrud’s Code’ with the canon, shown and declared in the Council of Hertford. Besides, he probably depended upon Bede (Eccles. Hist. Book IV. Chapter V.), and not upon any charter.



as considerations for an ecclesiastical donation?<sup>(165)</sup> In fact, a rather similar passage to the above 'law' is found near at hand: "(a nostra jurisdictione transferentes inperpetuo tradimus possidendam).....  
.....condicione interposita, ut nostri memoriam habeatis tam in missarum solempniis quam in orationibus vestris incessanter nobis misericordiam a domino postulantes" (Grant by King Wihtred, King of Kent, to St. Peter's, Canterbury, March, A.D. 696 (Bi 90, probably genuine). I would not be surprised if our particular forger knew this charter and extracted this part, and by translating and condensing it, made up a 'law' such as Wi 1., 1.1.

And once we learn to suspect the genuineness of the part, specific dubious items can be pointed out. Above all, the title of Archbishop Brihtwald, 'Bretone heahbiscop', although not wrong in itself, since a letter of Bishop Waldhere to Archbishop Berctuald (Bi 115, genuine) calls him 'Berctualdo totius Brettaniæ gubernacula regenti', still the OE word-form 'heahbiscop' therein used is a rare and unusual one although not unique, and although Liebermann did not put special emphasis on the word, I think it is just the sort of word a forger would pounce upon in order to show the (pseudo-)ancientness of his own work, especially so because we know that Lambarde used the word for the same purpose in the so-called Ld text of I Athelstan, Prologue. It should have been far easier to have done the same in Canterbury of the eleventh century, or before. Then, the phrase 'in thære stowe thy hatte Berghamstye' is more apt to be the rendering of Latin 'in loco qui dicitur Berkamstede' than the above regular wording of the quoted OE charter which uses the type 'stowe ðe mon hateth N'. Then, again, after the great emphasis being put upon the Dating clause, which itself differs greatly from the corresponding clause of the 'original' OE charter quoted above, and which indeed is more like the wording of Latin charters, such e.g., as 'indictione nona anno regni nostri v' than that of 'sio æfterre indictio wæs in rime ] wæs N's rice' or 'in tham tacencircole thy twelfte gear' (Bi 510, A.D. 864, genuine), or even 'thy

(165) I confess, to my own shame, that I did not recognize such a glaring point until now, so much so that all my discussions (found in my *Essays in Angle-Saxon Law and History*, II) presupposing the genuineness of the beginning part, up to Article 1, 1, of the 'Code of Wihtred' should be revised by *infra* text.

vii gebongere' (Robertson, A. J., *ANGLO-SAXON CHARTERS*, 2nd Ed., 1956, No. XVIII, Lease of land by Werfrith, Bishop of Worcester, A.D. 904); then, the wording 'ðær wæs' twice appears successively, which is rather awkward or clumsy in an OE charter and could rather be explained as translations of Latin Ablative Absolute constructions which should be very concise. Then the 'eadigra geheahtendlic [*better*, *getheahtendlic*] ymcyme' again is roundabout and clumsy, and could easily be a translation of the Latin 'magnum concilium', the unusual word 'eadig' possibly representing Latin 'optimas'. By the same token, 'cwæð ælc had ciricean ðære mægðe anmodlice mid thy hersuman folcy' may have come from some such Latin sentence as 'ceterisque Abbatibus. abbatissis. presbiteris. diaconibus. ducibus. satrapis. in unum glomeratis. pariter tractantes' (Bi 91).

It should be about time, then, that we examined what Felix Liebermann said about the genuineness of 'Wihtred's Code':—

"3. Die *Echtheit* stützt sich ausser auf die mit 695/96 vereinbaren Zeit- und Namenangaben des Prologs und auf die *Altertümlichkeit* des Inhalts. Englische, christliche, freigesewesene Verbrecher dürfen noch über See, also ev. ins Heidentum, verkauft werden. Götzendienst, der bei Untertanen Agsä. Könige nach dem 7 Jahrh. erst wieder im 10. unter Dänischen Einwanderern sich regte, muss noch bekämpft werden. Es gibt noch (was freilich nur für eine Zeit vor 900 spricht) Klostervorsteher, die Laien und nicht einmal Kommunikanten sind, und den vom Thegn (der aber schon vorkommt) getrennten Gefolgsadel *gesið*. Die Bevorzugung der Abendmahlsgänger im Eideswert kommt seit 8 Jh. nicht vor."<sup>(166)</sup>

(3. The *GENUINENESS* depends, besides upon the language, also upon the statement of time and name, consistent with 695/96, of the Prologue, and upon the ancientness of the content. English, christian, liberated offenders may still be

(166) Liebermann, *ibid.* iii. p. 23.

sold beyond the sea, so possibly into the heathenism.<sup>(167)</sup> Offering to the heathen deity, which was alive *after* the seventh century and again in the tenth under the immigration of the Danish people, still have to be fought against.<sup>(168)</sup> There still are heads of monasteries who are laymen and not even communicants (which certainly tells in favour of a period *before* 900)<sup>(169)</sup>, and the *gesið*, noble by companionship, who is separated from the thegn (who, however, appears already). The privilege of the communicants in the value of the oath does not occur since the 8th century).

Now, our main concern here is the beginning part of 'Wihtréd's Code' up to 1, 1; thus his assertion concerning the Prologue here. Liebermann speaks of the time and name of the Prologue being consistent with the year 695/96. But we already saw in the above that the Dating clause of it does not seem to have a genuine formula of any date around 695/96, but has a formula similar to that found in forgeries of the date and to that of the ninth century, and also that the OE wording of the clause in the Prologue shows no similarity to the OE wording of Dating clauses of OE charters of the ninth century, but reads more like a translation from some Latin Dating clauses of the far later period than 695/96.

As for the names, it should not have been difficult for a cleric of, say,

- 
- (167) This refers to Article 26, and so out of our present issue. Still it should here be pointed out that *Wi 26* truly says 'beyond the sea', and that according to the fifth code of King Æthelred, Articles 2 and 3 (*V Atr 2.3.* = *VI Atr 9*), only those Christian offenders who are *not* worth death penalty are forbidden to be sold beyond the sea. The offender of *Wi 26* is a thief worthy of death penalty. Thus *Wi 26* cannot indicate its ancientness in itself.
- (168) For the same reason that is mentioned in *supra* note (167), I must point out that this can not be a valid indication, in itself, of the ancientness of Wihtréd's Articles 12 and 13. Needless to say, the immigration continues to the eleventh century.
- (169) This probably refers to Article 17 prescribing that the form of exculpation of the head of a monastery is to be the same as that of the priest. Liebermann perhaps considered that since such a 'head' is not a priest he must be a layman and no communicant. Still the 'head' is mentioned *after* the Bishop and *before* the priest and the deacon (*Wi 18*), and has an advanced form of exculpation than that of the ordinary cleric (*Wi 19*). So the Article seems to be a poor ground on which to put forward Liebermann's assertion, considering such ecclesiastical ranking.

eleventh-century Canterbury to get acquainted with the names of the Archbishop Brihtwold and of the Bishop of Rochester, Gebmund, who was contemporaneous with the Archbishop as well as of the contemporaneous king, Wihtred, even from Bede's Ecclesiastical History, to cite one example. For other possible sources of his knowledge we are given a very interesting statement by none other than Liebermann himself:—

“12. Wi ist im 11. Jh. benutzt worden von Cnut und einem Kentischen Traktat: s *Gl* Wihtred. Ein Urkundenfälscher in St. Augustin's zu Canterbury, der vielleicht zu Ende 12. (laut Plur. maiest.) oder zu Anfang 13 Jhs lebte, scheint Wi benutzt zu haben in einer Urk. Wihtreds von 696 für dessen Verwandte Äbtissin Mildthryth von [South-]Minster on Thanet, das von St. Au[gu]stin's beerbt wurde. [Diese Urk. edierte Bi 88, früher schon in *Elmham* ed. Hardwick p. 280, um 1415, wovon ms. Harlei. nur moderne Abschrift. Dagegen eine frühere Form benutzte der Auszug vom Anf. 13 Jhs. Bi n. 845. Statt des ihm unverständlichen *Rugern* setzt Fälscher *Febr.* (was nach Bede Wihtreds 6 Jahr wäre!), vielleicht weil er aus *rug* einen 'rauhem' Monat vermutete. Desselben Rechnung, dass Wihtred erst Juli 691 bis März 692 den Thron bestieg, folgen vier fernere Fälschungen gleicher Herkunft Bi 86, 90, 96, 141.] Die Urk. lautet nämlich: *Wyhtredus rex Cantuariorum anno 5 regni . . . cum concilio Brihtwaldi archiepiscopi . . . et omnium ecclesiasticorum graduum una cum Gebmundo Rovesciestre episcopo dabo, . . . ut defensio* [des privilegierten Stifts] . . . *sit sicut regum . . . In loco qui dicitur Berkamystede indictione 9.*— Noch eine zweite Fälschung desselben Stifts lässt wohl aus Wi 1 Wihtred *ecclesiis in Cantia* das Privileg geben, *ut ab omni exactione publici tributi liberæ sint mihique honorem exhibeant*; Bi 99, bestätigt durch Offa a. 792 Bi 848, eine Fälschung, die auch nur in St. Au[gu]stin's existiert. Diesen Fälschungen lag der Textus Roffensis, unsere Vorlage, geographisch ferner als dessen, uns verlorene, Quelle die Canterburysche Kompilation; s.o. S. 1 n. 1<sup>(170)</sup>

(170) Liebermann, *ibid.* (Gesetze). iii. pp. 24 f.

(12. Wi ['Wihtred's Code'] WAS UTILIZED in the eleventh century by Cnut and by a Kentish treatise [Grið]; see [my] 'Commentary' at 'Wihtred'. A charter-forged of St. Augustine's at Canterbury, who lived perhaps towards the end of the twelfth century (according to *Plur. maiest.*) or at the beginning of the thirteenth century, seems to have utilized 'Wihtred's Code' in [forging] a charter of Wihtred for his relation, Abbess Mildthryth of Minster in Thanet which was inherited from St. Au[gu]stine's. [Bi 88 published this charter; earlier already in *Elmham*, edited by Hardwick, at p 289, around 1415, of which Harley MS. is only a modernized copy. Whereas, the extract of the beginning of the thirteenth century, Bi No. 845, used an earlier form. Instead of the *Rugern* which was not understandable to him, the forger put Febr. (which, according to Bede, would be Wihtred's sixth year!), perhaps because he conjectured, from *rug*, a '*rauh*' [raw or severe] month. Four further forgeries of the same provenance follow the same reckoning that Wihtred came to the throne only July of 691 to March of 692, Bi 86, 90, 99, 141]. Thus, the charter runs: *Wyhtredus rex Cantuariorum anno 5. regni [nostri, omitted here by Liebermann] cum concilio Brithwaldi archiepiscopi.....et omnium ecclesiarum graduum una cum Gebmundo Rovesciestre episcopo dabo, . . . ut defensio [of the privileged monastery] . . . sit sicut regum, .....in loco qui dicitur Berkamystede in-dictione 9.*— Yet a second forgery of the same foundation allows, probably from Wi 1, Wihtred to give the privilege (to) *ecclesiis in Cantia, ut ab omni exactione publici tributi liberae sint mihique honorem exhibeant*; Bi 99, which is confirmed by Offa a. 792 Bi 848, a forgery which again indeed exists in St Au[gus]tine's. To these forgeries the *Textus Roffensis*, our model text, was lying geographically farther away than its, to us lost, authoritative source, the *Canterbury Compilation*; see above p. 1 n.l.)

We examine the above point by point from the beginning. First, the

Cnut regulations which here are said to have utilized the 'code of Wihtred' are Articles 45,1 and 55 of the second code of King Cnut (II Cn 45,1; 55). Now 45, 1 reads "*Gyf freoman freolsdæge wyrce, thonne gebete thæt mid his halsfange [or healsfange B], ⁊ huru wið God bete hit georne, swa man him tæce*" (If a freeman should work on a festival-day, then he is to atone for this with his *healsfang*, and to God, nevertheless, to atone for this deeply, as he is directed): the corresponding article in 'Wihtred's Code' reads: "11. Gif frigman thonne an ðane forbodenen timan, sio he healsfange scyldig; ⁊ se man se thæt arasie, he age healf thæt wite ⁊ ðæt weorc." (If a freeman [works] then in the forbidden time, he is to be liable to his *healsfang*, and the man who discovers it is to have half the fine and half the [profit of] the work.)—so the first half of the legal sentence only has a similar content to Cn. 45, 1. Quite the same, indeed, applies to an article of the eleventh-century forgery, the Treaty between King Edward and King Guthrum, usually called 'Edward and Guthrum', Article 7,1 [E Gu. 7, 1] which runs: "Gif frigman freolsdæge wyrce, tholie his freotes oððe gylde wite, lahslette. (Deowman etc.))" (If a freeman should work on a festival-day, he shall lose his freedom or pay the fine, i.e., the atonement for his insubordination. (A slave etc.)). Then, again, an article in King Ine's Code which is attached to King Alfred's Code, Ine 3,2 [In. 3, 2.] reads: "Gif thonne se frigea ðy dæge wyrce butan his hlafordes hæse, ðolie his freotes (oððe LX scll'; ⁊ preost twyschildig)" (If, then, a freeman should work on the day [Sunday] without his lord's order, he shall lose his freedom (or sixty shillings; and a priest twofold liable)). So, rules like Wi 11 are indeed found in codes, genuine or spurious, ranging from the ninth to the eleventh centuries, apart from 'Wihtred's Code'.

Then Wi 4 has a parallel article in II Cn 55, which runs: "*Æltheodige men, gif hig heora hæmed rihtan nellan, of lande mid heora æhtum ⁊ synnan gewitan.* (Foreign men, if they will not regularize their marriages, are to depart from the land together with their goods and sins.)". Now, Wi 4 reads: "*Æltheodige mæn, gif hio hiora hæmed rihtan nyllað, of lande mid hiora æhtum ⁊ mid synnum gewiten.* (Foreign men, if they do not wish to regularize their marriages, are to depart from the land with their goods and with the sins)". So the two are practically the same.

Second, the eleventh-century treatise, called 'Grið', indeed has a section beginning with 'on Cantwara lage (in the law of the Kentish people)' (Section 6), but its first statement 'cyning 7 archebiscop agan gelicne and efen dyrne mundbryce' (The king and the archbishop have the similar and equally-priced *mundbryce* (sum for the breach of the protection)) is not found among the Kentish laws we have. Then, Section 8 runs: " 7 Christes cyrican mundbyrd is efne swa cyninges" (and the [breach of] protection of the Church of Christ is as equal as that of the king). Now Liebermann considers this 'church of Christ' to be the Cathedral of Canterbury—"Nicht etwa 'christliches Kirche'" (perhaps not the 'Christian church'), he says—then compares it to Article 2 of 'Wihtred's Code' which reads "Ciricean mundbyrd sie L scil' swa cinges (The [breach of the] protection of the church is to be 50 shillings just as the king's), and concludes that the 'cirice' in the latter should be supplemented by the Grið 8, thus should read 'the Cathedral of Canterbury' by adding 'Cristes' to 'cirice'. This rather arbitrary emendation he defends by saying that this was the original reading of Wi 2 and that the copyist had dropped the 'Christes' from a better text than the one we have of 'Wihtred's Code' (Liebermann, *ibid.* ii. p. 537 **Kirchenfriede 46**), adding to it the explanation that the authors of Grið (Sections 6 and 8) and of *Instituta Cunti* (a Latin rendering, c. 1100, of I Cn 3.2.) probably used this better text. Indeed, the text of *Instituta Cnuti* 3,2 reads: "Principales autem ecclesiæ sicut episcopatus talem emendationem violatæ pacis secundum legem Anglorum habere debent: mundam regis, hoc est quinque libras." The chief set-back of his theory, however, is that there is no definite proof that there was such a 'better' text and that the authors used it. Besides, I Cn 3,2. itself runs: "Heafodmynstres griðbryce is æt botwyrthum thingum be cyngces munde, thæt is mid V pundum on Engla lage ( 7 on Centlande æt tham myndbryce V pund tham cingce 7 threo tham archebiscope)" (The violation of the peace of a chief minster is, in cases of crimes that admit of compensation, at the rate of the [breach of the] king's protection, that is, by 5 pounds in English law (and in Kent, at such a breach of protection, 5 pounds to the king and three to the archbishop). So this parallel exists really as regards the post-Conquest treatises, and not between the laws, if 'Wihtred's Code' is the ancient

Kentish code of laws at all, as has been generally supposed so far.

Besides, what Liebermann says in connexion with his efforts to put Wi 2 in parallel with Grið 6 and 8 is worth our special attention here. He says "Wi 2] . . . Mir sheint vor 2 *Cristes* aus Grið 6, 8 ergänzbar, m. a. W. nur Canterburys Kathedrale so hoch privilegiert. Denn selbst das 10. Jh stellte doch nur die Hauptkirche oder den Raum innerhalb der Kirchenwände, nicht die ganze Kirche in höchsten Frieden; freilich gehen allgemeine Phrasen seit Æthelred und Cnut predigend weiter.—Die Stelle scheint benutzt in den Worten *defensio sit sicut regum* der Fälschung o. S 25 Z. 1 (Wi 2] . . . (It seems to me that before [Wi] 2 [cirice], *Christes* can be supplemented from Grið 6 and 8, in other words, only Canterbury Cathedral [can be] so highly privileged. Because even the tenth century put yet only the chief minster or the place within the church-walls, and not the whole church, in the highest peace (= protection); indeed overall phrases since Æthelred and Cnut go in a preaching way further [than this].—This Article seems to be utilized in the words *defensio sit sicut regum*,<sup>(171)</sup> of the forgery, see *supra* p. 251. 1. (Bi 88))". What, then, I should like to call the attention of the reader is the fact that Liebermann is here comparing Wi 2 with other, mainly West Saxon sources until before the very last part (which is about to be examined henceforth), and tries to interpret Wi 2 from the point of view of later West Saxon laws—we even saw in the above an

---

(171) I cannot quite follow Liebermann's reasoning in this context because (1) this wording occurs in a genuine charter given to the Monastery of Minster in Thanet, thus the liberty and protection about to be given certainly concerns really and truly the Monastery, not Canterbury Cathedral; (2) the wording around '*regum*' is "ut defensio ejus . . . sit sicut regum antecessorum nostrorum fuerit", so means that the defence of the Monastery should be just the same as of those kings, Wihtried's predecessors: now this particular liberty and protection are obviously about to be newly given to the Monastery by Bi 88.; so the reference to Wihtried's predecessors could only mean those liberties and protections which had been usually and generally given to grantees of charters of liberties by earlier kings than Wihtried. The wording, therefore, should imply that all those monasteries or churches that were given charters were given the same liberties or protections as those about to be given to the Monastery. So the wording does not seem to me to have any connexion with Canterbury Cathedral and/or the latter's exclusively high protection. Did Liebermann think of usurpation of the privilege of the Cathedral by the so-called 'forger' for the sake of the Monastery?



instance of the comparison of it with apparently Kentish, but in reality West Saxon, laws in connexion with *Instituta Cnuti* 3,2. How such a comparison was considered to be feasible to any advantage at all by a great scholar such as Liebermann, who believed in the authenticity of the ancient *Kentish* 'code of Wihtréd', is beyond me, and could, on the rebound, point to a very much different conclusion: the spuriousness of 'Wihtréd's Code'.

In the meanwhile, we are now to examine what he says in the last part of the above-quoted passage of his. He is referring to Bi 88 which he calls a forgery. He was not a diplomatist and so did not know that this charter, although a far later copy, is a (probably) genuine charter of 696. Thus we at long last come to what he had said, third, in the passage of his, previously quoted *supra* text at note (170).

Now Liebermann says that those charters, Bi 88 and Bi 86, 90, 99, 141 are all forgeries! A thousand times indeed could we deplore that he was no diplomatist. They are all later copies indeed, but of genuine charters, as we already saw (except for Bi 99 which, although Wilhelm Levison accepted it, is dubious). Especially important of them in connexion with 'Wihtréd's Code' is Bi 88, of course, which Liebermann first took up and considered to be a forgery concocted on the base of the 'Code': for instance, he depended upon Bede for the date and the indiction number of Bi 88; this proved fatal to him, because Bede, as we saw, is untrustworthy in this particular connexion. *Ignorantia eorum quae quis scire tenetur non excusat*.

Thus, the whole relationship between the 'Code' and Bi 88 has now to be considered the other way around: it should be the Prologue and Wihtréd 1,1 of the 'Code' in its charter-like shape—a rather peculiar one at that from various points of view as we saw before—that *are* now to be considered to be spurious. It should then be possible to consider that the 'Code' was provided with such a beginning part, because the forger considered it convenient to put a genuine-looking material at its head, so that the whole 'Code' might look authentic enough.

The Heading is considered by Liebermann to be later put by the compiler of the model codex, but I am not so sure of it now. Most of Wihtréd's charters have such a heading, so this one, too, might have been given by the knowing forger himself. The name-form, King

Wihtræd looks ancient. As we saw, however, we have fortunately one extant 'original' charter of Offa that shows his name-form 'Uuihtred (i)', not using the archaic 'æ', but in Canterbury of the eleventh century, when Liebermann considered the model texts of Kentish laws were compiled, or even before that, the old materials available to the forger might have induced him to make his Offa use this unproved name-form for the sake of pseudoancientness. The Dating clause has a construction, similar to the Latin Ablative Absolute, using a Dative and a Participle in agreement, a known practice in OE sentences. The king's name, his regnal year and the indiction number are fetched from Bi 88. The name of the month, 'Rugernes', instead of 'Februarii', was perhaps used by some sort of misunderstanding—if Liebermann's suggestion 'rug' is to be adopted, 'rug-ernð' (uncultivated corn), e.g., may have corrupted into rugernes and then 'Rugernes', like the name of a severe month, for all we know. The place-name is fetched from Bi 88, 'Berkhamystede', so are the personal names of Brihtwold, Gebmund, besides Wihtræd (Hadrian was dropped because he was not a bishop?). The description 'ælc had ciricean' is the translation of 'omnium ecclesiasticorum graduum' (Bi 88), 'ðære mægðe anmodlice' may perhaps be the rendering of some such phrase as 'ceterisque Abbatibus. abbatissis. presbiters.....Satrapis in unum glomeratis. pariter tractantes' (Bi 91, Grant by Wihtræd at the Council of Bapchild, A.D. 696×716 (? 697), genuine), or 'non solum consentiente sed etiam persuadente, una cum omnibus provincialibus principis' (Bi 91, Grant by Wihtræd, King of Kent, to Abbes Eabba, of land at Hæg. 2nd April, A.D. 697, probably genuine). The last phrase 'mid thy hersuman folcy' (with the obedient people) is an addition which could point to a period soon after the Conquest.

Then the last part, 'Ðær ða eadigan fundon mid ealra gemedum (There the notables found with the consent of all)' can be made on the base, besides of those Latin sentences quoted above, of some such wording: 'cum suis optimatibus necnon . . . venerabiles archiepiscopus. ceterisque episcopis. . . (*Torn out in the MS.*) . . . diligenter examinantes de statu totius christianitatis.....  
 ..vel qualiter in primordia nascentis ecclesiæ. jubebatur habere.....  
 .....secundum normam equitatis servaretur . . .

hæc et is similia anctie [*for anxie*] inquirentes undique antiquas privilegias.....Post eo hoc privilegium lecta et inter se examinata ante regis. et episcoporum presentia[m?] fuisset. placuit itaque omnibus pariterque condixerunt. nec ullam aliam. tam nobilem tamque prudenter constitutum invenire potuissent.....Et hoc adnuentes stare seu ab monibus firmare rectum esse sancserunt:’ (Bi 162, SYNODAL COUNCIL OF CLOVESHO. A Grant by Æthelbald, King of the Mercians, of Privileges to the Church. A.D. 742, doubtful, though in the eighth-century hand).<sup>(172)</sup>

The rest of the wording ‘ðas domas ǀ Cantwara rihtum theawum æcton, swa hit hyr efter segeth ǀ cwyth: (these decrees and added them to the legal customs of the people of Kent, as it says and declares hereafter)’ was probably made after the last part of the Prologue to the code of Hlothhere and Eadric: ‘ecton tha æ, tha ðe heora aldras ær geworhton, ðyssum domum the hyr efter sægeth. (added to the law which their forefathers had made these decrees which hereafter are stated).”.

Then Wi 1: ‘Cirice an freolsdome gafola’ is, as W. H. Stevenson tentatively? rendered, equal to ‘ecclesia in libertate tributorum’ and stipulates a complete freedom of the church in general from taxation. That such could not have been the case is shown by the existence of several genuine Wihtréd charters granting such a freedom to individual churches separately and respectively. On the other hand, we do find a charter which is supposed to grant such a sweeping freedom in Bi 99, Grant by Wihtréd, King of Kent, of privileges to the churches and monasteries in Kent. 8 April A.D. 699, having the following wording: “Ego Wihtrédus rex Cantia̅e consulens animæ meæ in posterum hanc providentiam pro diversis calamitatibus imminentibus æcclesiis Dei atque monasteriis quæ in hac CANTIA consistunt una cum consensu principum meorum quorum nomina subterscribenda sunt facere curavi ut ab omni exactione publici tributi atque dispendio vel læsione a

---

(172) In cases of copies of genuine charters, even if twelfth- or thirteenth-century copies, we can safely assume that an eleventh-century forger could use them, i.e., their model texts. In cases of spurious or doubtful charters we have to be sure that the copies were extant at the time when the forger is considered to have been active.

præsenti die et tempore liberæ sint mihique et posteris meis talem honorem vel obœdientiam exhibeant qualem exhibuerunt antecessoribus meis regibus sub quibus eis justitia et libertas servabatur et ut tam ego quam posteri mei in hac pia definitione permaneant”, etc., but this charter, as we saw before, is a somewhat ‘dubious’ one from diplomatic point of view.<sup>(173)</sup> We, of course, cannot prove that one and the same forger made Wi 1 and Bi 99, but it cannot be denied that words meaning very similar matters *are* found in both Bi 99 and Wi 1; 1, 1, i.e., [æcclesiæ atque monasteria] ab omni exactione publici tributi .....liberæ sint’ (Bi 99) corresponds to ‘circe an freolsdome gafola *ecclesia [sie] in libertate tributorum* (Wi 1); and ‘mihique et posteris meis talem honorem vel obœdientiam exhibeant qualem exhibuerunt antecessoribus meis regibus’ (Bi 99) corresponds to ‘man .....hine [=cyning] buton neadhase heora willum weorthigen’ (Wi 1, 1) (they are to honour him, without compulsion, of their own free will), the former expression putting more emphasis on honouring the king in the same customary way heretofore and hereafter, the latter expression more on the willingness of the lawful people. By and large, then, the way of prescribing the similar rules is more condensed in ‘Wihtréd’s Code’ than in Bi 99. Besides, ‘Wihtréd’s Code’, at least in Wi 1, 1, as we saw, also seems to have adopted its first half from some such charter as Bi 90 (probably genuine) in the same way.

Thus, all things being taken into account, I think that we cannot help but conclude that the beginning part (the Prologue to Wi 1, 1) is a concoction made on the base of various charters (mostly genuine, but some dubious) in order to supply a ‘law-code of King Wihtréd’ with a sort of window-dressing. Now, it is a difficult matter to determine *when* such was done. For one thing, we have no independent evidence showing that there *were* the ‘laws of King Wihtréd’ *before* our text that is now found in the *Textus Roffensis*. Liebermann considered that this text had a mother- and model-codex, now lost, which was in Canterbury Cathedral at the beginning of the eleventh century. For this assumption to stand, however, our beginning part in ‘Wihtréd’s Code’ had to be included in the codex, in the same way as is in the *Textus*

(173) Cf. *supra* text at 4 pages after note (147).

Roffensis. This might well have been so indeed, except that the same part already was not genuine at that time, although he obviously considered it to have been genuine. The materials which I consider were used to concoct the 'part' include an eighth-century forgery as we saw, so any time after this date until the early eleventh century is a possible date of forgery.

Might I be allowed to say, last, that I believe that the problem whether the rest of the 'code of King Wihtred' represents real, ancient laws of the king or not is outside our present task. We have been examining the charters of the Anglo-Saxon period, and strictly in that connexion I have considered that I cannot leave alone the particular part of 'Wihtred's Code', notwithstanding my own former acceptance of it.<sup>(174)\*(188b)</sup>

Now we can come back to our charter, Bi 134, and continue with the diplomatic examination of it. We saw that the 'immunity with the three exceptions' formula in Bi 134, although its core is derived from the original formulae of the ninth century, yet in its whole part, *is* found more intimately, so to say, similar to genuine charters of the tenth century. We must here point out again that we showed that the wording 'sit libera ab omni mundiali obstaculo (tribus exceptis.....)' is the formula which was liked and used by King Eadmund very much. So we here are about to quote from his earlier charters in order to trace its formation in his charters.<sup>(175)</sup>

The first tentative use of it seems to have been done in Bi 748, a 'contemporary' document of A. D. 940:—

"Cum omnibus quæ ad ipsum locum pertinere dinoscuntur

- (174) As the reader may be aware, the occasional references in *supra* text to individual Chapters in 'Wihtred's Code' might indicate a possibility that the whole 'Code' be a collection of laws or customs of other and mostly later kings than Wihtred.
- (175) Obviously we are expanding as well as revising what we stated previously in *supra* text around note (157). Already in King Æthelstan charters a number of examples are found of '(sit libera.....)' in omnibus mundialibus causis' (Bi 709, genuine)—'ab omnibus mundialibus causis' (Bi 712, genuine), 'ab omni mundiali obstaculo' (Bi 734, A. D. 939, 'contemporary'; Bi 741, 'contemporary'). As a precursor, 'sit.....liber ab omni mundiali obstaculo', is found in Bi 550 (Ælfred, King of the Saxons, A. D. 882), but this is a dubious charter.

tam in notis causis et ignotis. in modicis. et in magnis. Campis. pascuis. pratis. silvis silvarumque densitatibus. Sit autem prædictum rus perpetuali libertate liber ab omni mundiali censu et regali coactione. excepto communi labore. expeditione. pontis arcisve coædificatione.”

Then in the next ‘Grant of his to the thegn Elswith, A.D. 940’, (Bi 749, genuine), we once remarked that the formula was attained. King Edmund indeed says:—

“Si[t] hoc predictum rus liber ab omni mundiali obstaculo cum omnibus que ad ipsum locum pertinere dinoscuntur tam in magnis quam in modicis rebus campis paschuis pratis silvis excepto istis tribus expedicione pontis arcisve cohedificatione.”

Still another ‘contemporary’ document, ‘Grant by King Edmund to Æðelswith’, (Bi 753, A. D. 940), contains the following:—

“Sit autem predictum rus liber ab omni mundiali obstaculo cum omnibus ad se rite pertinentibus, campis, pascuis, pratis, silvis silvarumque nemoribus, excepto istis tribus expedicione pontis arcisve coædificatione.”

It seems that a more compact formula thus has been established. We find, in the next Edmund charter (Bi 754), a shorter form:—

“Sit autem predicta terra cum omnibus ad se rite pertinentibus libera campis. pascuis. pratis. excepto istis tribus expedicione pontis. arcisve construccione.” (Grant in tail by King Admund to his ‘homo’ Adulf, A. D. 940, genuine)

However, it is the above compact type of the formula that appears in the next charter of his—‘Grant by King Eadmund to the thegn Garuf, A. D. 940’ (Bi 756, genuine),—Bi 755 being a doubtful document.

“Sit autem predictum [rus] liber ab omni mundiali obstaculo

cum omnibus ad se rite pertinentibus. Campis. pascuis. pratis. silvis. Excepto istis tribus expeditione pontis arcisve constructione.”

Then the next of Edmund charters, ‘Grant by King Eadmund to the thegn Ordwold’, (Bi 757, genuine) has a longer wording, but includes the same words: “Sit autem predictum rus liber ab omni *mundiali obstaculo*. cum isdem universis. appendiciis prout pater suus comes. Ordlaf. prius possederat tam rebus in magnis quam in modicis campis. pascuis……derivatisque cursibus aquarum. *exceptis tribus* expeditione pontis arcisve constructione.” Quite the same type appears in Bi 758 (Grant by King Eadmund to the thegn Æthelgeard, A. D. 940, genuine), and also in Bi 759 (Grant by King Eadmund to the royal matron, Ælfhild, A. D. 940, probably genuine); only, in the latter, the three exceptional burdens are not referred to in the text under pressure of the other necessity of mentioning the fact that this was a newly written charter made (‘scripsimus novam cartulam’), because the old one was lost (‘quia antiquam non habeamus’) and that any other charter [than the present one] is to be refused and void (‘abdicandam nichilum valeat’). So the mention of the exceptional burdens seems to have been easily dispensed with, obviously taken for granted.

Edmund’s next charter does refer to these three exceptional burdens, (Bi 761, a genuine Grant of King Edmund to the thegn Wulfric), but this time has not his new formula, but utilizes an otherwise known—cf. Bi 787 (genuine)—conservative wording: “menti libero dono largiatur et ipsi perpetue namque hujus tramitibus mundi hoc quod concessi terre prenotatum á cunctis laboribus vite mortalium permaneat abdicatum. preter id quod nobis omnibus indigeri videtur. id est. tria. exercitus aditum. pontis edifitium……omnibus ] per omnia que ad eundem subjecta sunt locum. pascuis. pratis. silvis ] campis. magnis vel minimis. ut……suprascripta est in linea traditio quod in eternum manebit.” His next charter, Bi 762, (Grant by King Eadmund to the thegn Ælfsige, A. D. 940, genuine), however, does have, “Sit autem predictum rus liberum ab omnibus *mundiali obstaculo* cum omnibus……dinoscuntur quam in magnis tam in modicis rebus Campis……excepto istis tribus……”.

Yet his next charter, a genuine Grant to the religious woman Ætheldryð, A. D. 940, Bi 763, did not follow those new devices and its wording is more like that found in Bi 759, so “Maneat igitur meum hoc immobile donum æterna libertate jocundum cum omnibus quæ ad ipsum locum pertinere dinoscuntur. tam in magnis quam in modicis rebus. Campis. Pascuis. Pratis. Silvis. derivatisque cursibus aquarum. excepto commune labore. expeditione. Pontis. arcisvæ coedificatione.” Nevertheless, his next two charters Bi 764, ‘Grant by King Edmund to the thegn Edric’, A. D. 940, genuine, and Bi 767, ‘Grant by King Eadmund to the thegn Æthelnoð’, A. D. 941, genuine, both have the compact Edmund formula: Sit autem predictum rus liber`um’ ab omni mundiali obstaculo cum omnibus quæ ad ipsum locum pertinere dinoscuntur tam in magnis quam in modicis rebus. campis. pascuis. pratis. silvis. exceptis istis tribus. expeditione pontis arcisve coedificatione.” (Bi 764), “Sit autem predictum rus liber ab omni mundiali obstaculo. cum omnibus ad se rite pertinentibus. campis. pascuis. pratis. silvis. derivatisque cursibus aquarum. exceptis tribus. expeditione. pontis. arcisve constructione.” (Bi 767). It is true that his later charters, Bi 768 A. D. 941, Bi 770, A. D. 941—we refer only to genuine charters—Bi 771, A. D. 942, Bi 772, A. D. 942, Bi 773, A. D. 942, Bi 775, A. D. 942, Bi 776, A. D. 942, Bi 777, A. D. 942, Bi 778, A. D. 942, Bi 779, A. D. 942 × 946, etc. —are apt to use either conservative or the more brief wording, yet the long text in Bi 774 (Grant by King Edmund to Theodred, Bishop of London [pontifex Lundoniensis], A. D. 942, genuine), contains “(Hanc vero prænotatam munificentiam……roboravi atque confirmavi. ut) *omnibus mundialibus* coangustiis sit libera, *nisi* quod nostro communi labori pertinet.”