

# NOTARIES PUBLIC IN ENGLAND IN THE FOURTEENTH AND FIFTEENTH CENTURIES<sup>1</sup>

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A series of headings was devised by Professor Giulio Battelli to serve as the basis of discussion during the meeting of the Commission Internationale de Diplomatique concerning notaries public held in 1994 at Seville. The observations in this paper concerning notarial activity in England mainly in the fourteenth and fifteenth centuries are arranged under these headings. They are prefaced by some remarks about the first traces of notarial activity in England.

The institution of the notary public was an alien one in England. It was an import from Italy, where, it seems, from the twelfth century notaries are found licensed by papal or imperial authority whose instruments were regarded as universally valid. Such notaries only appear in England in the second half of the thirteenth century. The papal legate Otto in the constitutions of a council which he held at London in 1237 stated that there were no notaries in England (*tabellionum usus in regno Anglie non habetur*)<sup>2</sup>. In London two years earlier Angelus, *magne Imperialis Curie notarius*, had written letters for Petrus de Vineia, proctor of the Emperor Frederick II, concerning the marriage of the latter to Isabella, sister of Henry III, king of England. Angelus corroborated the letters with his *signum*<sup>3</sup>. But there is no reason to think that Angelus was a notary public or to regard this document as a public instrument. However, the first known notarial instrument produced in England, dating from 1257, occurs in a broadly similar context<sup>4</sup>. It is a marriage contract to which one of the parties was the marquess of Montferrat. Most of the other early English notarial instruments likewise in some way concern foreign relations, above all relations with the papacy. The legation of Cardinal Ottobuono in 1265-8

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1. I am very grateful to Mrs Mary Cheney for showing me the notes of her late husband, Professor Christopher Cheney, concerning notaries public. Since these are working papers not intended for publication, I have not cited them below; in the cases when I have drawn on them I have gone back to the source referred to by Professor Cheney and cited that. I also wish to thank Dr Pierre Chaplais and Dr Nigel Ramsay for their comments on a draft of this paper, and Dr Richard Beadle and Dr Richard Mortimer for their help on specific points.

2. C.R. CHENEY, *Notaries Public in England in the Thirteenth and Fourteenth Centuries*, Oxford, 1972, p. 12.

3. P. CHAPLAIS (ed.), *Treaty Rolls*, i, London, 1955, pp. 4-5, no. 4: *hoc scriptum scripsi ego Angelus magne Imperialis Curie notarius de mandato sepe dicti magistri Petri de Vineia et meo signo signavi*. The document also bore the seal of Petrus de Vineia.

4. CHENEY, *Notaries Public*, pp. 14-15.

gave impetus to English notarial activity<sup>5</sup>. However, notarial instruments only became common after 1279, when John Pecham was provided to the see of Canterbury. He brought with him to England from Italy an Italian notary public and a papal faculty to create three more notaries public<sup>6</sup>. At about this time, the institution of the notary public was spreading to much of northern and central Europe.

## 1. APPOINTMENT

In thirteenth-century England, both notaries by apostolic authority and notaries by imperial authority are found. Little is known about the appointment of the imperial notaries; but among them are notaries appointed by members of the Alliate and Monte Florum families, counts palatine, to whom the Emperor had granted the privilege of creating notaries public<sup>7</sup>. The activities in England of notaries by imperial authority were short-lived, for in 1320 King Edward II forbade them to exercise their office. It was doubtless felt that permitting such notaries to practise implied some kind of subjection to the Empire, for Edward II's writ stressed that the kingdom of England was quite free from subjection to the Empire<sup>8</sup>. The king's action no doubt reflects ideas which were current in the Europe of his day, ideas epitomized by the maxim *rex est imperator in regno suo*. Philip IV, king of France, had already adopted a similar policy<sup>9</sup>, and in 1329 at the Cortes of Madrid the expulsion of imperial notaries from the kingdom of Castile was ordered<sup>10</sup>. In one significant respect, however, the English experience differed from the French: the notariate by imperial authority was not replaced by a notariate by royal authority<sup>11</sup>.

After Edward II's enactment of 1320, few notaries licensed only by imperial authority appear in English sources, although those licensed by both imperial and apostolic authority are common after about the middle of the fourteenth century<sup>12</sup>. The shortage of notaries public following Edward II's prohibition is

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5. *Ibid.*, pp. 19-23. A notary and chaplain of Ottobuono, Master Milo, appears in 1266 (Westminster Abbey Muniments 5839), but it is not known whether he acted as a notary public in England.

6. CHENEY, *Notaries Public*, pp. 26ff., 153-4.

7. *Ibid.*, pp. 82-3.

8. T. RYMER (ed.), *Foedera, Conventiones, Litterae, et cujuscunque generis Acta Publica*, new edn by Adam Clarke and others, 4 vols, Record Commission, 1816-69, II. i. 423: *licet regnum nostrum Angliae ab omni subjectione imperiali sit immune, & et ab origine mundi extiterit alienum: Tanta tamen multitudo notariorum, autoritate imperiali, officium publicum in regno nostro praedicto, tam de hiis quorum cognitio ad nos & non ad alium pertinet, quam de aliis excercentium crevit, quod nobis et juri coronae nostrae grave exhaeredationis periculum, & incolis & habitatoribus dicti regni nostri dampnum irrecuperabile praesumitur evenire, nisi remedium apponeretur in hac parte.*

9. CHENEY, *Notaries Public*, p. 54.

10. Cortes de los antiguos reinos de León y de Castilla, i, Madrid, 1861, pp. 425-6.

11. CHENEY, *Notaries Public*, p. 54.

12. For a notary by imperial authority as late as 1470, see Ramsay, 'Scriveners and notaries as legal intermediaries in later medieval England', in J.I. KERMODE (ed.), *Enterprise and Individuals in fifteenth-century England*, Stroud, 1991, pp. 118-131, at p. 130 n. 44.

given as the grounds for a papal faculty in 1323 for Walter Reynolds, archbishop of Canterbury, to confer the office by apostolic authority on four unmarried clerks<sup>13</sup>. It is the notaries by apostolic authority who are the key figures until the Reformation. They were appointed either directly by the pope or by someone possessing delegated authority from the pope. I do not propose to discuss direct papal appointments, which have been described elsewhere<sup>14</sup>. Those who had delegated authority from the pope to create notaries public included some of the papal legates and envoys sent to England (and to other countries). Cardinal Nicholas Capocci, for instance, in 1375 was authorised to create ten notaries in England<sup>15</sup>. The most frequent recipients of delegated authority were bishops. In petitioning for such faculties, English bishops sometimes gave as the grounds for their request the scarcity of notaries public in their dioceses<sup>16</sup>.

Both direct and indirect appointment of notaries by the pope came to an end in 1533, when the papal power to create notaries public was transferred by a statute of King Henry VIII to the archbishop of Canterbury<sup>17</sup>. The Court of Faculties under its master exercised the archbishop's powers in practice<sup>18</sup>. The notaries' licence was no longer held to be universally valid; it was now limited to the kingdom of England. They were normally described as having been appointed *auctoritate regia*, although the vaguer term *auctoritate sufficiente* also occurs<sup>19</sup>.

## 2. CULTURAL BACKGROUND

It is difficult to generalise about the educational, clerical and cultural background of English notaries public, for no prosopographical studies of them have been prepared.

Notaries by apostolic authority were typically unmarried clerks in minor orders. The form of the papal letter which appointed a notary refers to him as *clerico non coniugato nec in sacris constituto*<sup>20</sup>. However, there are frequent

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13. Vatican Archives, Reg. Aven. 18, f. 303<sup>r</sup>, cap. 60: *Cum itaque, sicut ex tenore tue nobis exhibite petitionis accepimus, ex eo quod pro parte carissimi in Cristo filii nostri .. regis Anglie illustris tabellionibus quibuscunque imperiali auctoritate creatis sui officii exercitium in regno Anglie generaliter extitit interdictum, tabellionum ad quos in casibus oportunis pro conficiendis publicis instrumentis recursus haberi valeat copia sufficiens non habetur ad presens ...*; G. MOLLAT, *Jean XXII: lettres communes*, 16 vols, Bibliothèque des Ecoles françaises d'Athènes et de Rome, 1904-33, iv, 272, no. 17335.

14. See P. M. BAUMGARTEN, *Von der apostolischen Kanzlei*, Cologne, 1908.

15. P.N.R. ZUTSHI, 'Some inedited papal documents relating to the University of Cambridge in the fourteenth century', *Archivum Historiae Pontificiae*, 26 (1988), pp. 393-409, at p. 397.

16. See CHENEY, *Notaries Public*, p. 42.

17. C.W. BROOKS, R.H. HELMHOLZ and P. STEIN, *Notaries Public in England since the Reformation*, London, 1991, pp. 18-19.

18. See D.S. CHAMBERS, *The Faculty Office Registers*, Oxford, 1966.

19. BROOKS, HELMHOLZ and STEIN, *Notaries Public*, p. 21.

20. M. TANGL (ed.), *Die päpstlichen Kanzleiordnungen von 1200-1500*, Innsbruck, 1894, p. 329.

divergences from this pattern. We occasionally find references to married notaries. John de Beccles, one of the notaries of John Pecham, archbishop of Canterbury, was married<sup>21</sup>. Pope Urban VI granted a faculty to a later archbishop of Canterbury to create twelve notaries, of whom six might be priests or married men<sup>22</sup>. References to married notaries are thought to become more frequent in the fifteenth century<sup>23</sup>. There are numerous examples of notaries who were priests at the time of their appointment or who subsequently were ordained priests. A priest, Ralph Hauyes, for instance, was admitted as a notary by Thomas Myllyng, bishop of Hereford, in 1481<sup>24</sup>. William de Overton, who drew up a notarial instrument in Ramsey Abbey in 1358, described himself as *in ordine sacerdotali constitutus*<sup>25</sup>.

The notary public needed to be trained in the *ars notarie*. How English notaries acquired a knowledge of the *ars notarie* is unclear. Studies at the university of Oxford, from at least the mid-fourteenth century, included basic instruction in drawing up charters and other documents<sup>26</sup>; but it is very doubtful if either of the two English universities, Oxford and Cambridge, ever provided a specifically notarial training. Some Englishmen may have gone to Bologna and attended the notarial courses which were taught there<sup>27</sup>. Probably only a minority of English notaries public were university graduates. However, a notary needed at least a rudimentary knowledge of law, and we come across some notaries who actually studied law at university. William de Doune, for instance, appointed a notary public in 1340, was described in 1343 as a scholar of civil and canon law at Merton College, Oxford. He was registrar of the bishop of Exeter and subsequently official of Lincoln. In 1354 he became archdeacon of Leicester<sup>28</sup>.

Someone who wished to be appointed a notary public was obliged to undergo an examination; but it would be difficult to say what expertise and other qualities were expected. The letters of appointment and the oaths which they swore are too general and vague to throw much light on this question. Two

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21. R. C. FINUCANE, 'Two notaries and their records in England, 1282-1307', *Journal of Medieval History*, 13 (1987), pp. 1-14, at pp. 7-8.

22. CHENEY, *Notaries Public*, p. 80 n. 3.

23. RAMSAY, 'Scriveners and notaries', p. 125.

24. A.T. BANNISTER (ed.), *Registrum Thome Myllyng, episcopi Herefordensis*, Canterbury and York Society, 1920, p. 60.

25. British Library, MS. Cotton Otho B XIV, f. 273v.

26. H.E. SALTER, W.A. PANTIN and H. G. RICHARDSON (eds), *Formularies which bear on the History of Oxford*, 2 vols, Oxford Historical Society, 1942, ii. 331-45; CHENEY, *Notaries Public*, pp. 77-8; RAMSAY, 'Scriveners and notaries', pp. 119, 124.

27. CHENEY, *Notaries Public*, pp. 76-7.

28. A.B. EMDEN, *A Biographical Register of the University of Oxford to 1500*, 3 vols, Oxford, 1957-9, i. 587-8; CHENEY, *Notaries Public*, pp. 46-7; M.J. HAREN, 'Social ideas in the pastoral literature of fourteenth-century England', in *Religious Belief and Ecclesiastical Careers in Late Medieval England*, Woodbridge, 1991, pp. 43-57, at p. 50. Cf. in general I. HAJNAL, *L'enseignement de l'écriture aux universités médiévales*, 2nd edn, Budapest, 1959.

letters of 1337-8 concerning the desire of the university of Oxford that Robert de Appleby, who held the university office of bedel, should be appointed a notary public are somewhat fuller. In one letter he is described as *virum competentis literature, bene scribentem, discretum, providum et maturum*, in the other as *virum probum, pudicum et sobrium, et honestis undique moribus adornatum, literatum, intelligentem, egregieque scribentem, et omnino nostre communitati perutilem et fidelem*<sup>29</sup>.

### 3. FORMALITIES OF INVESTITURE

The English evidence adds little to what is known from other sources about the investiture of notaries public by apostolic or imperial authority. I shall therefore comment only briefly on this question.

The notary by imperial authority, after being examined and approved, swore an oath to the Roman Church and the Roman Empire and undertook to exercise his office faithfully. He was then invested with the insignia of his office, *per pennam, calamarium atque cartam*. It is recorded that when in about 1317 the prior of Christ Church, Canterbury, conferred the office on John de Kynaston under powers received from Albertus de Alliate de Mediolano, count palatine, the new notary also received the kiss of peace<sup>30</sup>.

Papal letters appointing notaries public do not mention investiture<sup>31</sup>, but it seems likely that here too formal investiture was normal<sup>32</sup>. In 1313 the bishop of Durham, under the terms of a papal faculty, invested a notary *per pennam, calamarium atque cartam*, the same terms as were used for imperial notaries. The bishop of Hereford in 1344 used different terminology: *per calami, atramenti et carte tractacionem*<sup>33</sup>. But it seems likely that a broadly similar ceremony of investiture was used for both imperial and papal notaries in England.

### 4. EXTENT AND LIMITS OF COMPETENCE

By the second half of the thirteenth century, when notaries public appear on the scene, the institutions of secular law and government in England were sufficiently developed, and indeed sufficiently elaborate and sophisticated, to allow only limited scope to the newcomers. 'The English Common Law', C.R. Cheney

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29. SALTER, PANTIN and RICHARDSON, *Formularies*, i. 99-100.

30. CHENEY, *Notaries Public*, pp. 82-3, 155-9.

31. TANGL, *Die päpstlichen Kanzleiordnungen*, pp. 50, 329.

32. Cf. the form for the investiture of a *scrinarius* by the pope (1192) given in J. FICKER, *Forschungen zur Reichs- und Rechtsgeschichte Italiens*, iv, Innsbruck, 1874, p. 224, no. 179.

33. CHENEY, *Notaries Public*, p. 89.

concisely observed of the notary public, 'did not recognize him or his works'<sup>34</sup>. Moreover, notaries were rarely employed in drawing up records of debt or contracts. Accordingly, the *arenga* of papal letters appointing notaries public, beginning *Ne contractuum memoria deperiret*, was rather inappropriate as far as English circumstances were concerned. The majority of English notarial instruments were in fact transcripts of judicial acts, charters and other documents.

There were occasions when notarial instruments were accepted as evidence by the secular courts, normally in cases involving the church; for instance, when in ecclesiastical proceedings against excommunicates the assistance of the secular arm was sought in the royal chancery<sup>35</sup>. Moreover, the royal government made use of notaries for its own business, above all when that business concerned the church or foreign affairs. In diplomacy, there were obvious advantages in using a notary public, whose transcripts and other instruments would be widely recognised and accepted. The disputed succession to the Scottish throne in 1291-6 (the so-called Great Cause) was subsequently recorded from the standpoint of Edward I, king of England, in elaborate detail in notarialised rolls<sup>36</sup>. The department of the English royal government in which notaries public are first found is the wardrobe; later they are found in the chancery and the privy seal. John Thoresby by 1336 was acting as notary in the chancery; he dealt with much of the diplomatic correspondence. John de Branketre appears as notary in chancery in 1355, and he remained in this position for twenty years. He not only prepared notarial instruments for the royal government but also took a leading part in writing correspondence concerning foreign affairs. Various innovations in chancery documents have been attributed to him<sup>37</sup>. John de Branketre is a good instance of a general feature of English notarial activity: the skills of the notary public were employed in writings other than notarial instruments and the influence of the notary is to be found in a range of documents emanating from royal and ecclesiastical institutions.

The principal area of work for English notaries public was ecclesiastical law and administration. In the fourteenth century, each bishop normally had at least one notary public in his service, and bishops' registers were often the responsibility of notaries<sup>38</sup>. Records of resignations of and admissions to benefices, citations and appeals, and *procuratoria* in public form are common<sup>39</sup>. Notaries

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34. *Ibid.*, p. 52.

35. *Ibid.*, pp. 55-6.

36. E.L.G. STONES and G.G. SIMPSON (eds), *Edward I and the Throne of Scotland, 1290-1296: an Edition of the Record Sources for the Great Cause*, 2 vols, Oxford, 1978.

37. P. CHAPLAIS, 'Master John de Branketre and the office of notary in Chancery', *Journal of the Society of Archivists* 4 (1971), pp. 169-199.

38. C. HARPER-BILL, *The Register of John Morton, Archbishop of Canterbury*, i, Canterbury and York Society, 1987, pp. 80-1, contains testimonies of notaries public who worked in the registry of the archbishop of Canterbury. See also C. Jenkins, 'Cardinal Morton's Register', in R.W. SETON-WATSON (ed.), *Tudor Studies presented ... to A.F. Pollard*, London, 1924, pp. 26-74, at pp. 26-32.

39. CHENEY, *Notaries Public*, p. 104.

were particularly involved in recording the proceedings of ecclesiastical courts. The registrar of the metropolitan court of the archbishop of Canterbury, the Court of Arches, for instance, was a notary, and other notaries were employed in this court<sup>40</sup>. Many of the proctors who were active in the ecclesiastical courts were notaries, for notarial skills were useful to them. In the Roman curia, too, one finds that some of the proctors acting for English petitioners were notaries<sup>41</sup>.

It was perfectly possible for a notary employed in royal or episcopal government to work also for private clients, and there may even have been freelance notaries who specialised in this kind of work<sup>42</sup>. The amount of notarial work for private clients does not seem to have been great. However, caution is necessary in drawing conclusions from the number of surviving documents, because documents were less likely to survive in private than in institutional possession<sup>43</sup>. Instruments prepared for private clients sometimes occur in an international context (for instance, recording the exchange of currency), where the advantages of the notarial instrument are obvious.

In England we find limitations on the role played by the notarial document comparable to those which existed in other parts of northern Europe. Notarial instruments were frequently authenticated by sealing in addition to the notary's *signum* and attestation. Their use was mainly confined to ecclesiastical and royal institutions. Even in these areas, there were few types of document which were the monopoly of notaries public<sup>44</sup>.

## 5. PROFESSIONAL COLLEGES

There were no professional colleges, corporations or guilds of notaries public in England. It seems worth asking why this situation prevailed. The majority of notaries in England were in the service of ecclesiastical or secular government. They differed from the more independent municipal notaries of much of southern Europe, who undertook a great deal of work for private clients within their community. The English notaries had little need and no opportunity to form themselves into corporate organizations.

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40. *Ibid.*, pp. 43-4. For notaries in the diocesan courts of Canterbury see B.L. Woodcock, *Medieval Ecclesiastical Courts in the Diocese of Canterbury*, Oxford, 1952, pp. 42-3, 212-3.

41. See P.N.R. ZUTSHI, 'Proctors acting for English petitioners in the chancery of the Avignon popes', *Journal of Ecclesiastical History*, 35 (1984), pp. 15-29, at p. 20-1.

42. See CHENEY, *Notaries Public*, pp. 64-8.

43. Cf. W. TRUSEN, 'Zur Geschichte des mittelalterlichen Notariats', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung*, 98 (1981), pp. 369-81, at p. 377.

44. CHENEY, *Notaries Public*, p. 136. Cf. P.-J. Schuler, 'Fortleben des Notariats in Verwaltung und Urkundenwesen in spätmittelalterlichen Deutschland', in *Notariado público y documento privado de los orígenes al siglo XIV*, 2 vols, Valencia, 1989, ii. 1225-58, at p. 1239.

The nearest English equivalent of the notaries' guilds which existed on the Continent is found with the scribes. Scribes were professional scribes who composed and engrossed documents on behalf of their clients. Their function was in some respects similar to that of municipal notaries in southern Europe and *notarii iurati* in Switzerland<sup>45</sup>. The most important group of scribes consisted of those who worked in London. They formed a company or guild, which is first mentioned in 1357. In 1373, to combat abuses in their craft, which included forgery, they drew up regulations and received formal recognition from the civic authorities. Henceforth only those examined and admitted to the Scribes' Company were permitted to practice as scribes in London. Revised regulations were made in 1392, and from about this date a register was kept, known as the 'Common Paper', which among other things recorded those admitted as members of the Company. Each new scribe stated that he had sworn the oath of admission and undertook to observe the ordinances of the Company<sup>46</sup>. The scribes wrote these entries in their own hand over a period of two centuries and more. The Common Paper is therefore of considerable palaeographical interest. From our point of view, it is more important to note that in framing their regulations the scribes were probably to some extent influenced by notarial practice. Indeed, some scribes, including two of the earliest wardens of the Company, John Cossier and Martin Seaman, were notaries public<sup>47</sup>; and some (but not all) of these notaries recorded their notarial signs in the Common Paper<sup>48</sup>.

Little can be said about scribes outside London, for virtually no research has been done on them. The scribes of York, however, were sufficiently well organized and effective to mount performances of a mystery play, 'The Incredulity of St Thomas', the text of which is extant<sup>49</sup>. Another unusual survival is the note-book of a scribe practising at Bury St Edmunds, recording numerous transactions of c. 1460-4<sup>50</sup>.

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45. M. POSTAN, 'Private financial instruments in medieval England', *Vierteljahrsschrift für Sozial- und Wirtschaftsgeschichte*, 23 (1930), pp. 26-75, at pp. 34-5; TRUSEN, 'Zur Geschichte des mittelalterlichen Notariats', p. 378.

46. CHENEY, *Notaries Public*, p. 139; N.L. RAMSAY, 'Forgery and the rise of the London Scribes' Company', in R. MYERS and M. HARRIS (eds), *Fakes and Frauds: Varieties of Deception in Print and Manuscript*, Winchester and Detroit, 1989, pp. 99-108, at pp. 103-4; BROOKS, HELMHOLZ and STEIN, *Notaries Public*, pp. 52ff.; F.W. STEER (ed.), *The Scribes' Company Common Paper, 1357-1628*, London Record Society, 1968.

47. BROOKS, HELMHOLZ and STEIN, *Notaries Public*, p. 55.

48. E. FRESHFIELD, 'Some notarial marks in the "Common Paper" of the Scribes' Company', *Archaeologia*, 54 (1895), pp. 239-54, at p. 240; H. JENKINSON, *The Later Court Hands in England*, Cambridge, 1927.

49. A.C. CAWLEY, 'The Sykes manuscript of the York scribes' play', *Leeds Studies in English*, 7-8 (1952), pp. 45-80; R. BEADLE (ed.), *The York Plays*, London, 1982, pp. 366-72.

50. Cambridge University Library, Add. MS. 7318. See A.E.B. OWEN, 'A scribe's note-book from Bury St Edmunds', *Archives*, 14 (1979), pp. 16-22.



## 6. ECONOMIC AND SOCIAL CONDITIONS

It is extremely difficult to generalise about the social and economic status of notaries public in England. There are no *matricula* which record systematically the admission of notaries to their office. The nearest equivalent to these is the Common Paper of the Scriveners' Company mentioned above. In 1402 Thomas Arundel, archbishop of Canterbury, ordered the bishop of London to enquire into the notaries practising in the diocese of London; and a list of them resulting from this investigation survives. It shows that sixty-one notaries were known to be practising in the diocese, of whom forty-eight were able to show that they were suitably authorised. Of these forty-eight, thirty-five were active in the city of London<sup>51</sup>.

As far as I am aware, this is the only comprehensive record dating from before the Reformation of notaries public functioning in a particular area of England. Otherwise the sources are scattered and have never been systematically sifted and collected. In the absence of a biographical register along the lines of the invaluable biographical registers of the universities of Oxford and Cambridge compiled by A.B. Emden, we cannot reach secure conclusions about what sort of careers they had. Moreover, the position is complicated by the fact that probably few men practised exclusively or even mainly as notaries public. Notarial instruments form only a very small part of the total documentary output of the fourteenth and fifteenth centuries in England, and the majority of notaries must have been involved also in preparing and copying other types of document, as well as in other administrative and legal activities. English notaries cannot therefore be seen as a homogeneous group.

Many (perhaps most) of them were unmarried clerks in minor orders. This status would have made it difficult for a notary on the one hand to establish a hereditary notarial dynasty and on the other to receive certain types of ecclesiastical preferment. Yet there are cases of notaries public who had successful careers in the church. Gilbert de Bruera, for instance, a notary public in priest's orders, can probably be identified with someone of the same name who was provided to various canonries, became archdeacon of Ely, and died as dean of St Paul's, London, in 1354<sup>52</sup>. John de Thoresby, mentioned earlier as holding the office of notary in the royal chancery, rose to the highest secular and ecclesiastical offices, becoming royal chancellor and archbishop of York<sup>53</sup>.

In many cases the principal reward that notaries received for their work in ecclesiastical and lay government must have been in the form of ecclesiastical benefices. There is also some evidence about monetary payments made to notaries for their work. The notary Ildebrandus, probably to be identified with Ildebrandus Bonadote de Senis (Hildebrand of Siena), was paid 13s. 8d. by the executors of Walter of Merton, founder of Merton College, Oxford, between 1277 and 1282 *pro*

51. CHENEY, *Notaries Public*, pp. 92-4, 181-4.

52. *Fasti Ecclesiae Anglicanae, 1300-1451*, 12 vols, London, 1962-7, iv. 17, v. 5, 59, vi. 46, vii. 28, viii. 39, 48, x. 52, 68.

53. CHAPLAIS, 'John de Branketre', pp. 172-3.

*scriptura et innovacione appellacionum*<sup>54</sup>. Accounts concerning the appropriation of the parish church of Longdon in the diocese of Worcester to Westminster Abbey record various payments, ranging from 3s 4d to 13s 4d, to notaries for their work in preparing documents<sup>55</sup>. John Salmon, bishop of Ely, in 1299 employed a notary by apostolic authority at an annual salary of 20s. plus clothing. In 1306 William de Maldon and certain other notaries who are not named were paid 20 marks by the king's Exchequer for transcribing no less than ninety-seven papal documents *in forma publica*. The same William de Maldon received 15s. from the abbot of Westminster for his services during the Worcester visitation of the archbishop of Canterbury in 1303, but what he did for this sum is not stated<sup>56</sup>.

These rather random remarks may at least suggest that the investigation of the careers of English notaries public and the comparative study of their careers is likely to be a fertile field of future research.

## 7. FUNCTIONING

In England, as elsewhere, the notary first prepared preliminary notes of the transaction he was recording and then drew up a formal account of it in a register (or protocol). In much of southern Europe the protocol was regarded as the principal record of the transaction, and protocols were carefully preserved in official archives<sup>57</sup>. In England they do not seem to have enjoyed this status, and virtually none of them survive. Some light is thrown on the protocols of two early notaries in England by the records of a commission concerned with the canonisation of Thomas Cantilupe, bishop of Hereford. In 1307 the commission examined and made copies from the protocols of John de Beccles and Hildebrand of Siena, both active in the late thirteenth century, one in the service of the archbishop of Canterbury, the other in that of the bishop of Hereford. By 1307 they were dead and their protocols were in the possession of their sons. Hildebrand's protocols were in the form of a roll, while John's were in loose quires<sup>58</sup>.

In drafting their instruments, notaries were assisted by formularies, letter books, treatises and similar compilations. We are more fortunate in the survival of these than in the survival of their protocols. John of Bologna, brought to England by John Pecham, archbishop of Canterbury, in 1289 completed a *Summa notarie* for

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54. J.R.L. HIGHFIELD (ed.), *The Early Rolls of Merton College, Oxford*, Oxford Historical Society, 1963, p. 143. For Ildebrandus Bonadote de Senis, see R. BRENTANO, *York Metropolitan Jurisdiction and Papal Judges Delegate (1279-96)*, Berkeley and Los Angeles, 1959, pp. 189-90, 192-4, and C.R. CHENEY, 'Notaries public in Italy and England in the later Middle Ages', *Studi Senesi*, 92 (1980), pp. 173-88, at pp. 176-7.

55. R. M. HAINES, *Ecclesia Anglicana: Studies in the English Church of the Later Middle Ages*, Toronto, 1989, pp. 8-9, 11.

56. CHENEY, *Notaries Public*, pp. 34, 57 n. 2, 185.

57. *Ibid.*, pp. 95-102.

58. FINUCANE, 'Two notaries'. See also his 'The registers of Archbishop John Pecham and his notary, John of Beccles', *Journal of Ecclesiastical History*, 38 (1987), pp. 406-36.

notaries in ecclesiastical courts. Its declared aim was to instruct them in the *ars notarie*, which the author said was little practised and understood in England, and to provide the material by which the practices of the Roman curia in judicial processes could be imitated in the court of Canterbury<sup>59</sup>.

Formularies and letter books associated with particular notaries have been identified. If one bears in mind the rather limited role which the notarial instrument had in England and the fact that most notaries probably devoted only a part of their time to preparing notarial instruments, one will not be surprised that their collections are far from being taken up exclusively with such instruments. This applies, for instance, to a letter book of Gilbert Stone, who held high offices in the dioceses of Salisbury, Bath and Wells, and Worcester from 1375 to 1407<sup>60</sup>, and to the formulary which belonged to Peter Effard. The latter contains fifteenth-century notarial instruments and other documents concerning ecclesiastical administration and especially benefices. Names and dates in the entries are generally abbreviated or omitted<sup>61</sup>. Another collection, which dates from the early sixteenth-century, is associated with Nicholas Collys. In addition to being a notary public, Collys was proctor-at-law of New College and Merton College, Oxford. In 1481 he is described as proctor of the court of Canterbury, a position he still held in 1521. In that year he also appears as *actorum scriba* of Richard Lichfield, commissary of the bishop of London<sup>62</sup>. Collys's collection contains copies of notarial instruments and judicial proceedings, but also copies of papal letters, petitions to the pope, letters concerning business in the papal court and other matter which would be of use to someone acting as a proctor there<sup>63</sup>. Business at the papal curia features prominently in the memorandum book of another notary, John Lydford, official of Winchester from 1377 to 1394 and archdeacon of Totnes<sup>64</sup>. This volume contains examples of notarial instruments as well as related material, for instance, a formula to be used in court to cast doubt on the authenticity of a notarial instrument.

The notary prepared the original instrument on the basis of his protocol. The notarial instruments drawn up in England do not differ fundamentally in their external features or their formulae from those drawn up on the Continent. The style of handwriting, as one would expect, tended to be English. Some notaries, however, were strongly influenced by Italian hands and, in the fourteenth century, by the handwriting of the papal curia in Avignon. A good

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59. L. ROCKINGER (ed.), *Briefsteller und Formelbücher des elften (sic) bis vierzehnten Jahrhunderts*, 2 vols, Munich, 1863-4, especially ii. 603-4, 711-2.

60. CHENEY, *Notaries Public*, p. 48.

61. Cambridge University Library, Add. MS. 3115. There are two illustrations from the manuscript in D.M OWEN, *The Medieval Canon Law: Teaching, Literature and Transmission*, Cambridge, 1990, pp. 51-2. This formulary and other collections are discussed *ibid.*, pp. 30-42.

62. EMDEN, *Biographical Register of the University of Oxford*, i. 465; Corpus Christi College, Cambridge, MS. 108, p. 22; Cambridge University Archives, Collect. admin. 39, f. 41'.

63. Corpus Christi College, Cambridge, MS. 170; M.R. JAMES, *A Descriptive Catalogue of the Manuscripts in the Library of Corpus Christi College, Cambridge*, 2 vols, Cambridge, 1912, i. 381-90.

64. D. M. OWEN (ed.), *John Lydford's Book*, London, 1974.

example of this is the handwriting of John de Branketre. He visited Avignon as an envoy of King Edward III in 1355. He remained there long enough to learn the curia's cursive script, which he employed until 1359<sup>65</sup>.

It is not possible to consider in detail the diplomatic of English notarial instruments here, but I wish to draw attention to one or two special features. The *signum* is visually the most striking element in the original instrument<sup>66</sup>. We learn of one notary, Thomas Everarde, employed by New College, Oxford, from 1475, who imprinted his sign with a wooden stamp. This suggests that he frequently had occasion to use his sign. We are here in the age of printing, and it has been suggested that the stamp may have been made for Everarde by Theoderic Rood, the first known Oxford printer, although there does not appear to be any direct evidence for this<sup>67</sup>. Many instruments, especially those concerning judicial proceedings, were authenticated only by the notary's *signum* and subscription; but sealed notarial instruments were common, for England was a land of seals. Only sealed documents were given credence in the common law courts, which must have provided an incentive to seal any notarial instruments which might need to be produced there. Finally, I should like to mention a case when the *signum* was used in place of the seal. In a document of 1338 addressed to the official of the court of York, the notary public Hugh Palmer de Corbridge recites a summons and states that, because there is no suitable seal available, he has added his sign<sup>68</sup>.

## 8. PENAL MEASURES<sup>69</sup>

There is no reason to suppose that official lists (or *matricula*) of notaries public practising in England existed, and doubts must have arisen from time to time about notaries' credentials. Most of the cases which I have come across of disciplinary proceedings against notaries public concern suspect credentials. In 1314 the bishop of Durham forbade notaries by imperial authority to practise in his diocese until they showed their credentials<sup>70</sup>. The bishop of London's investigation of 1402, which was discussed earlier, found forty-eight notaries in his diocese who were able to establish their credentials and no fewer than thirteen

65. CHAPLAIS, 'John de Branketre', pp. 179-81.

66. Examples of *signa* are illustrated in J.S. PURVIS, *Notarial Signs from the York Archiepiscopal Records*, Borthwick Institute, 1957. For the design of the *signum* of Richard of Ledbury, notary of the bishop of Worcester, see HAINES, *Ecclesia Anglicana*, p. 242 n. 74.

67. EMDEN, *Biographical Register of the University of Oxford*, i. 654.

68. Borthwick Institute of Historical Research, York: Diocesan Records, CP.E.35: *quia sigillum autenticum ad presens habere non potui signum meum consue[tum] apposui*. See also PURVIS, *Notarial Signs*, plate 19.

69. Cf. in general T. SCHMIDT, 'Der ungetreue Notar', in *Fälschungen im Mittelalter*, ii, Hahnover, 1988, pp. 691-711.

70. N. DENHOLM-YOUNG, 'The *cursus* in England', in his *Collected Papers*, Cardiff, 1969, pp. 42-73, at p. 57.

who were not able to do so. The thirteen, described as *male fame et denigrate opinionis*, were all named<sup>71</sup>. In addition one finds occasional references to individual notaries who appear to have been acting illicitly. A letter of Pope John XXII of 1317 refers to some associates of David de Truru (that is, Truro in Cornwall), who falsely claimed to be notaries by apostolic authority<sup>72</sup>. Similarly John de Pedehulle was denounced by the bishop of Exeter in 1331 for having posed as a notary public and produced *plura Instrumenta, nedum suspecta set falsitate conspersa*<sup>73</sup>. In 1382 Master John Thorne was found guilty in the court of King's Bench in a plea of falsity and deceit by bill. He was said to have forged an instrument concerning a marriage contract<sup>74</sup>.

Of a quite different type are cases when notaries public fell foul of the royal authorities, not because they were practising illicitly, but because they were employed by clients held to be acting against royal rights. Pope Clement V in 1308 accused royal officials of preventing notaries from publishing citations in certain ecclesiastical cases<sup>75</sup>. It is not surprising that notaries should occasionally have been caught up in the frequent conflicts between the Church and the English Crown concerning ecclesiastical benefices, jurisdiction and other matters. Luke de Thakested, for instance, a notary by apostolic authority, was imprisoned during the king's pleasure in 1329 for coming to the court of the Exchequer to notarialise a record of a plea there. He was only released through the intervention of the bishop of Lincoln<sup>76</sup>. The notary's work could indeed be hazardous. Thomas Pris was thrown into a pit in a dispute concerning a benefice in the diocese of Lincoln in 1400<sup>77</sup>.

If we wish to arrive at a balanced judgement concerning English notaries we should bear in mind that they seem normally to have been properly authorised and to have practiced peaceably and honestly. The instruments which they drew up are not free from blemishes, but in general it seems that they display a reasonable standard of penmanship, drafting and accuracy.

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71. CHENEY, *Notaries Public*, pp. 93-4, 183-4.

72. Vatican Archives, Reg. Aven. 6, f. 145<sup>v</sup>: ... *assumptis secum aliquibus, qui se tabelliones existere mentiuntur ...*; MOLLAT, *Jean XXII: lettres communes*, i. 324, no. 3556.

73. F.C. HINGESTON-RANDOLPH (ed.), *The Register of John de Grandisson, Bishop of Exeter*, i, London, 1894, p. 255.

74. G.O. SAYLES (ed.), *Select Cases in the Court of King's Bench*, vii, Selden Society, 1971, pp. 22-3. For further examples see CHENEY, *Notaries Public*, pp. 130-1.

75. RYMER, *Foedera*, II. i. 41-2.

76. *Calendar of Patent Rolls, 1327-1330*, London, 1891, p. 418.

77. *Calendar of Entries in the Papal Registers relating to Great Britain and Ireland: Papal Letters*, v, London, 1904, p. 303. A T. Prys acted as proctor for John Bysschopton, monk of Durham, in the papal chancery in 1396: P.N.R. ZUTSHI, *Original Papal Letters in England, 1305-1415* (Index Actorum Romanorum Pontificum ab Innocentio III ad Martinum V electum, 5, 1990), p. 322.