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Photograph © Nigel Ready

Our cover photograph this month symbolises Cheeswrights' long association with the maritime industry. As those familiar with the firm's development will know, Thomas Clark and Lewis Gilson, the founders of the practice in 1779, acted not only as notaries from their City of London offices, but also as ship and insurance brokers. From 1838 until 1940, the firm's offices were in Eastcheap opposite the Custom House by Billingsgate Market where shipmasters reported on their vessels' arrival at London. The Cheeswrights partnership was the nearest and most convenient firm of notaries public for masters intending to enter protests in respect of their voyages, and thus the firm's connection with the London marine market grew. For many years after World War II, the firm's practice was centred on the burgeoning Greek shipping industry, handling in particular documents relating to the sale, purchase, financing and registration of ships. In recent years, as the firm has expanded, its practice has become more general although shipping remains an important element. Through its membership of Maritime London (the industry body for the maintenance of the City of London as the pre-eminent centre for ship chartering, marine insurance, legal and financial services), backing for organisations such as the London Shipping Law Centre and academic publications, Cheeswrights seeks to foster the industry which has been so prominent in the firm's long history.

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The Mini-GmbH

Forming a company in Germany is now simpler and less expensive thanks to a reform of German company law enacted in 2008. An *Unternehmergesellschaft* or UG (literally "entrepreneur company", commonly known as a "mini-GmbH") can be established with a share capital of as little as one euro, or any other sum not exceeding the 25,000 euros required to form the more common *Gesellschaft mit beschränkter Haftung* (GmbH). One quarter of a mini-GmbH's annual profits must be contributed to its capital reserves until they reach 25,000 euros, at which point the UG can become a normal GmbH.

Legally, the UG is much the same as a GmbH – it is subject to company taxes and must publish accounts. It can own assets, sue and be sued.

In terms of the requirements for formation, the law provides for a standard form of constitution which must include the name of the company, its objects, share capital and a list of the shareholders together with their capital contributions. There can only be a single director and a maximum of three shareholders. The company is formed by means of a notarial deed; after it has been signed the notary files the deed electronically with the local commercial register. Formation costs are much lower than for a GmbH – typically a mini-GmbH can be set up for as little as 300 euros.

Andrew Claudet

Free Movement of Notaries – the European Court of Justice rules

The European Court of Justice has ruled that Member States may not reserve their notarial professions to their own nationals. The decision was given in a group of cases brought by the European Commission against six countries – Belgium, France, Luxembourg, Austria, Germany and Greece[1]. All these countries require notaries to be nationals. The main arguments for the retention of the nationality bar centred on the claim that notaries exercise official authority as defined in Article 45 of the EU Treaty. This Article states that, although generally all professional activities should comply with the free movement provisions of the EU Treaty, activities which involve the exercise of "official authority" are an exception to the rule. The principal argument used was that notaries, in their role as authenticating officers, verify that all the conditions laid down by law for the drawing up of an instrument are satisfied and that the parties have legal personality and capacity to enter into it. The second argument was that an authentic instrument has enhanced probative force and is enforceable like a judgment.

However, the Court noted that these instruments are freely entered into by the parties. They decide themselves, within the limits laid down by law, the extent of their rights and obligations and choose freely the conditions to which they wish to be subject when they produce a document or agreement to the notary for authentication. Therefore, the notary's intervention presupposes the prior existence of an agreement or consensus. The ECJ considered that the binding nature of legal contracts is derived from their basis in law and not from any power devolved to notaries, who are solely authenticators of legal documents. In respect of the probative force of an authentic act, the Court pointed out that such force derives from the rules of evidence of the Member States and so has no direct effect on the categorisation of the notarial activity of drawing up those acts. As regards the enforceability of notarial acts, the Court observed that this derives from the intention of the parties appearing before the notary. Further, the notary cannot unilaterally alter the agreement without first obtaining the consent of the parties. This does not have the appearance or substance of official authority. Finally, the Court also observed that, within the geographical limits of their office, notaries practise in conditions of competition, which is not characteristic of the exercise of official authority. They are also directly and personally liable to their clients for loss arising from any default in the exercise of their activities, unlike public authorities, liability for whose default is assumed by the State.

Directive 2005/36/EC on the Recognition of Professional Qualifications could have provided much needed clarity in respect of the application of the free movement ruling. However, there has been a situation of uncertainty in the European Union as to whether there is a sufficiently clear obligation on the Member States to transpose the Directive with respect to the notarial profession. In December 2011 the European Commission issued a proposal for modernising the Directive. The Commission did not propose a new Directive but rather, a well-targeted modernisation of the existing provisions driven by objectives which include offering a legal framework in the Directive for partially qualified professionals and for notaries. Considering the specificities of the notarial profession, the Commission considered that the rules on establishment and free provision of services have to be well-tailored: in the first case, Member States should be able to impose the necessary aptitude tests in order to avoid any discrimination in the national selection and nomination procedures. In the case of free provision of services, notaries should not be able to draw up authentic deeds and carry out other activities of authentication which require the seal of the host Member State.

It would appear from the free movement rulings of the ECJ and the proposed amendment to the Directive on the Recognition of Professional Qualifications that notaries are now to be treated like any other profession in the EU. However, although the recent proposal has gone some way to clarifying the scope of the Directive, it would seem that the free movement of notaries is far from being a practical reality.

Michelle Scott-Bryan

European Court of Justice

[1] Cases C-47/08, C-50/08, C-51/08, C-52/08, C-53/08, C-54/08 and C-61/08

The Execution of Deeds by Companies Incorporated in The Bahamas, British Virgin Islands and Cayman Islands

One area of law with which notaries have to be particularly familiar is the execution of deeds, especially by companies. The concept of a deed exists not only in England and Wales but also in other countries whose legal systems derive from English law, such as The Bahamas, British Virgin Islands and Cayman Islands. However, the formalities for the execution of a deed by a company under these legal systems show substantial variations and there are some notable differences with English law.

The Bahamas

Bahamas companies legislation requires a seal to be affixed to a company deed in order for it to be deemed properly executed. In the case of powers of attorney, specific provision to this effect is made by the Powers of Attorney Act 1992, section 3. There have been minor steps to modernise the formalities for the execution of deeds by other entities. It is sufficient, for example, for a foundation established under the Foundations Act 2004 (as amended) to execute a deed by signature alone of its authorised signatories, provided that it is intended to be a deed. Indeed, it is not compulsory for a foundation to have a seal. However, this method of execution has not yet been extended to companies.

British Virgin Islands

The requirement for a deed executed by an individual to be made under seal was abolished by the Property (Miscellaneous Provisions) Act 2003. Execution of a deed by a company is governed by section 103 of the BVI Business Companies Act, 2004 which states that a deed is validly executed if: a) it is sealed with the common seal of the company and witnessed by a director or other such other person who is authorised by the memorandum and articles of association to witness the application of the company's seal; or b) it is expressed to be, or makes it clear on its face that it is intended to be, a deed and is signed by a director or by a person acting under the express or implied authority of the company. The requirements relating to the appointment of an attorney by a company are even less strict: section 106(3) BVI Companies Act 2004 provides that the instrument appointing the attorney may either be executed as a deed or signed by a person acting under the express or implied authority of the company.

Cayman Islands

The execution of deeds by a company is governed by the Companies Law (2007 Revision). Section 61 of this law states that any contract which is expressed to be executed by the company as a deed, or makes it clear on its face that it is intended to be a deed, is deemed to have been executed as if made by deed or under seal.

Recent changes in the area of company law have been brought about by the Companies (Amendment) Law 2011. These changes aim not only to increase the attractiveness of the Cayman Islands as a business forum (for example, by permitting the use of a foreign script in company names), but also to clarify the law relating to the execution of documents.

First, the practice of pre-signing a signature page in advance of a transaction closing has been expressly permitted. This allows signature pages to documents to be circulated and signed in advance and the final document assembled at the closing. This change was brought about in response to the decision in the English case of *R (on the Application of Mercury Tax Group Limited and another) v HMRC*[1] in which the judge ruled, amongst other things, that in order to be validly executed the document must exist as a discrete physical entity at the moment of signing. The amendment to the Cayman Islands law relaxes this requirement, provided that the authority of the relevant party to the contract or instrument has been obtained.

Secondly, powers of attorney are no longer required to be made by deed. Where a company appoints another person to execute a deed on its behalf, the document containing the authority does not need to be made by deed or instrument under seal.

From an English notarial perspective, these changes are problematic. Documents notarially certified in this country must be complete and in their final form at the point of signing. The practice of simply pre-signing signature pages and attaching them to the final document at a later stage is not considered proper

[1] [2008] EWHC 2721

practice. All documents certified at Cheeswrights are securely bound to ensure that the signature page cannot be removed and attached to another document after signing.

Furthermore, under English law, documents containing an appointment of an attorney must be made by deed. This applies whether the appointment is being made by a company or an individual. If we are asked to attest the execution of a deed by an attorney, our first concern is to check that the instrument appointing the attorney has been properly executed as a deed in the jurisdiction where it was created.

Emma Noon

Of vampires and werewolves – Ruth Campbell reports from Transylvania

At the mention of the word "Transylvania" an image is conjured up of Dracula, of vampires, haunted castles and werewolves. In reality, however, there is an intriguing and living history of that part of Romania which is evidenced by Saxon villages and fortified churches which date back to the Middle Ages.

The conquest of Transylvania by Hungarians began during the reign of King Stephen the Holy (crowned and christened during the year 1000).

Two waves of German colonists penetrated the Hungarian kingdom during the 12th and 13th centuries; they were referred to as "Flandrenses", later as Transylvanian Saxons.

In order to provide defence against Turkish/Tartar invasions the villagers fortified their village church, sometimes the only solid masonry building in their locality, capable of containing the entire population of a village at times of danger. Initially Catholic, then, after the Reformation Lutheran, a characteristic of such Saxon fortified churches is space for food storage and dwelling during a siege.

The mediaeval Transylvanian-Saxon dialect, which is similar to that of Luxembourg, is still spoken by the German inhabitants of Saxon villages in Transylvania today.

Unfortunately there was a large decline in the populations of these villages during the last century, especially between 1989-1993 after the Communist rule had come to an end in Romania. As a result many houses in villages stood empty and began to fall into decay, with houses and sometimes churches boarded up, until 1999 when UNESCO added seven fortified churches and their villages to the World Cultural Heritage List.

This summer I was fortunate to visit several of these villages and their churches: Viscri, Biertan, Malancrav, Medias and Richis, all near Sighisoara and Prejmer near Brasov. Small groups of local people of Saxon heritage help to maintain the churches despite the lack of local German speaking congregations. Nowadays the villagers are usually Romanian or Roma and they worship in the local Romanian Orthodox church.

The village houses are a standard type of farmstead with a gable-ended stone front and large gated courtyard leading straight onto the village street. The Mihai Eminescu Trust, founded during Ceausescu's dictatorship, has completed over 600 restoration projects large and small in 29 villages and continues to ensure that the villages and their houses do not disappear.

Bringing in craftsmen from the UK and Germany to help with restoration and rebuilding works, they help to preserve the old buildings and provide training in old crafts. Some village houses have been opened as guest houses in order to make the villages self-sufficient and HRH Prince Charles has even purchased one of the village houses in Viscri.

Ruth Campbell

Prejmer Church of the Holy Cross

Sinaia Peles Castle

The notary's role in preserving electronic evidence

The Russian Department at Cheeswrights endeavours to keep abreast of legal developments in Russia, particularly those relating to notarial practice. Our Russian colleagues appear to be equally interested in the work that we do in the City, and, as a result, the exchange of experience proves to be mutually enriching.

I now have a regular column in the magazine *Notarial Law* (http://www.notarlaw.ru/) which is published in Moscow and distributed to courts, government bodies and legal firms. The editor-in-chief of the magazine, Alexander Begichev, who was a recent guest at Cheeswrights' offices, published in 2011 a book entitled *The Preservation of Evidence by Notaries: Theory and Practice* (Logos, 2011). Our conversations and the reading of his work have inspired me to consider the topic in relation to its potential application in England and Wales, the jurisdiction where I practise.

In this digital age much information is created and available only in the electronic, rather than traditional written, form. Advantages of the electronic form are obvious – ease of creation and amendment, simplicity of exchange between parties and the usage of a variety of equipment to access it. Electronic data is also arguably safer than traditional paper records. Creators of electronic data use variations of passwords and secure log-ins to access and make changes to information to which they claim ownership. However, despite the strenuous efforts to protect access to electronic data, all too often it becomes subject to unauthorised use. Such use can take the form of hacking into a website with the aim of corrupting existing information or unauthorised usage of data, such as copyright infringement. In the latter case, the importance of preservation of evidence of alleged infringement lies in the fact that there is a high probability of its being removed or hidden if the author suspects legal repercussions. The same rationale applies to cases of defamation of character and libel published online since the information is often easily removable at its source. In both examples, the fact of removal of information does not mitigate the reputational damage suffered by the person defamed; it is therefore in the person's best interest to approach a notary with the aim of preserving the evidence of such copyright infringement or defamation of character.

By intervening to preserve evidence, a Russian notary takes on an important public role. Although the function of preserving evidence is undertaken by the notary before legal proceedings are launched, the notarial certificate that records the act of preservation does not have any time limit as to its validity and can be submitted as part of the body of evidence relied upon by a party, as well as form the basis of a settlement out of court.

In concise terms, the notary's role in preserving evidence consists of inspecting an internet site with a view to making an independent and current assessment of its contents. It is highly advantageous if the notary is familiar with the process of placing information on the internet since the basis of the act of inspection lies in taking careful and methodical steps in accessing the website in question. It is important to emphasise that at all times a notary's function is to record facts. The preservation of evidence is not an exception to this function and the notary is required to meticulously record each step he or she takes in accessing the contents of the website following a set protocol.

A Russian notary can provide the same preservation function with regard to information received by means of an SMS (a text message) on a mobile telephone. As with the internet, care needs to be taken to ensure that the notary records the details of the device receiving the information, the telephone number associated with the device, the step-by-step actions undertaken to examine the text message in question, the date and time when the message was received (as recorded on the device) and, of course, the notary must accurately and precisely transcribe the contents of the message.

In England and Wales these activities rarely form part of a notary's practice. Disputed facts are generally proved by the testimony of witnesses, often through affidavits, affirmations or declarations which may be made before a notary in his or her capacity as a commissioner for oaths. The practice of our colleagues on the Continent indicates that courts find it both convenient and efficient that members of the notarial profession undertake such an important role in obtaining, recording and preserving evidence.

With information increasingly exchanged or available exclusively in electronic form, I anticipate that the necessity for an accessible and convenient public service in recording and preserving such information, whether for use in legal proceedings or otherwise, will soon impose itself. This is an area, I would suggest, in which we, as English notaries, can play a valuable role, taking inspiration from our foreign colleagues. In this connection, readers may wish to bear in mind rule 32.20 of the Civil Procedure Rules 1998 which apply to proceedings in the Senior Courts of England and Wales whereby "a notarial act or instrument may be received in evidence without further proof as duly authenticated in accordance with the requirements of law unless the contrary is proved."

Alisa Grafton

Who regulates notaries?

With the regulation of financial and other professional services being so much in the spotlight in the City of London at the present time it may be of interest to our clients to have a brief note explaining how and who regulates notaries in England and Wales.

In England and Wales a notary obtains his faculty, i.e. his authority to practise, from the Court of Faculties of the Archbishop of Canterbury. The president of the court is known as the Master of the Faculties and no person is entitled to act as a notary unless he or she has been duly, admitted, sworn and enrolled in this court. The jurisdiction of the Court of Faculties to appoint notaries was created by the Ecclesiastical Licences Act 1533, prior to which the power to appoint notaries was in the hands of the Pope. The Master's extensive powers in relation to the regulation of notaries were confirmed by the Courts and Legal Services Act 1990. The Master of the Faculties continues to be the principal regulator of notaries in England and Wales and his regulatory role was recently enshrined in the Legal Services Act 2007 ("the Act") which designates the Master as an approved regulator in respect of notarial activities.

The regulatory functions of the Master referred to in the Act include, inter alia, the arrangements for authorising persons to carry out notarial activities, establishing practice, conduct, disciplinary and qualification rules together with arrangements relating to indemnification and compensation. In common with other "front line" regulators the Master is supervised by the Legal Services Board (LSB) established by the Act. The LSB board is empowered to direct the Master, in certain circumstances, to amend the regulatory arrangement which he has put in place, with any alterations in those arrangements having no effect unless approved by the LSB.

The various rules and regulations passed by the Master from time to time pursuant to his statutory powers can be found on the Faculty Office website www.facultyoffice.org.uk. The Master is kept up-to-date with current notarial affairs by Advisory and Qualification Boards which provide advice on matters pertaining to the notarial profession and its regulations. Cheeswrights notaries regularly contribute to the deliberations of these Boards.

Edward Gardiner

Four Tudor notaries

In 1540 the united Convocations of Canterbury and York issued a judgment declaring the nullity of Henry VIII's marriage to Anne of Cleves in 1540. This judgment is a remarkable document. It is handsomely written, with a towering and intricate "EXCELLENTISSIMO" in the opening address to Henry as *"Excellentissimo, Illustrissimo*, *et Potentissimo in Christo Principi, et Domino nostro, Dominco Henrico Octavo, Dei gracia, Anglie et Francie Regi, Fidei Defensori, et Domino Hybernie, ac in terra, immediate sub Christo, Supremo Capiti Ecclesie Anglicane",* and beautifully penned on four sides of parchment, proclaiming that the marriage is annulled and that both parties are free to marry again.

With Katherine Howard waiting in the wings, Henry was keen to ensure that his freedom from the Cleves marriage would be accepted as legal fact throughout Christendom. In addition to the signatures of over 150 noblemen and officers of the church and the seals of the two archbishops, the judgment is attested by four notaries: Johannes Rheseus, Richard Watkyns, Anthony Huse, and Thomas Argall. These notaries were important persons in their own right and their names come up again and again in sixteenth-century records. All four rose to positions of prominence and three of them became members of Parliament towards the end of their careers. Their notarial functions brought them into contact with the great and the powerful at court and in the courts and this undoubtedly contributed to their later success and wealth.

The seals of the archbishops of Canterbury and York appended to the judgment declaring the nullity of Henry VIII's marriage to Anne of Cleves

Johannes Rheseus (1502-1555) is the latinised name of John Ap Rice, the name by which he is most commonly identified in contemporary sources (he later anglicised his name and on being knighted in 1546 was known as Sir John Price). Ap Rice was close to Thomas Cromwell and married Cromwell's niece in 1534. Cromwell appointed him a monastic visitor and he reported a vast number of confessions by various monks and nuns, mostly of sins of the flesh – expressed as "incontinence", but also of idolatry and, in one case in Pontefract, of murder. There is evidence that he was fair-minded in his visitations and did not invent wrongdoing for the benefit of his masters. In 1535 he wrote a report on Lacock Abbey in which he stated that he had "found no excesses" and even found the rule there "over strict".[1]

In 1539, just prior to attesting the judgment in the divorce from Anne of Cleves, he provided a description of his career to date when he petitioned the King to be granted the manor of West Dereham in Norfolk, stating that he had *"written for the King, without any allowance therefor: – Professions of all prelates, persons, and bodies politic throughout this realm; divers great instruments, as well of the process of divorce of Queen Anne, as of the contract and solemnisation of the same between the King and the most noble Queen Jane; all which instruments and others he is charged by his office to keep."*[2]

He was elected Member of Parliament for Breconshire in 1547, then for Ludlow in April 1553, Hereford in October 1553, and finally Ludgershall (Buckinghamshire) in November 1554.

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[1] Letters and Papers, Foreign and Domestic, Henry VIII, Volume 9, August-December 1535, entry 139.

[2] Letters and Papers, Foreign and Domestic, Henry VIII, Volume 13, Part 2: August-December 1538, entry 1225.

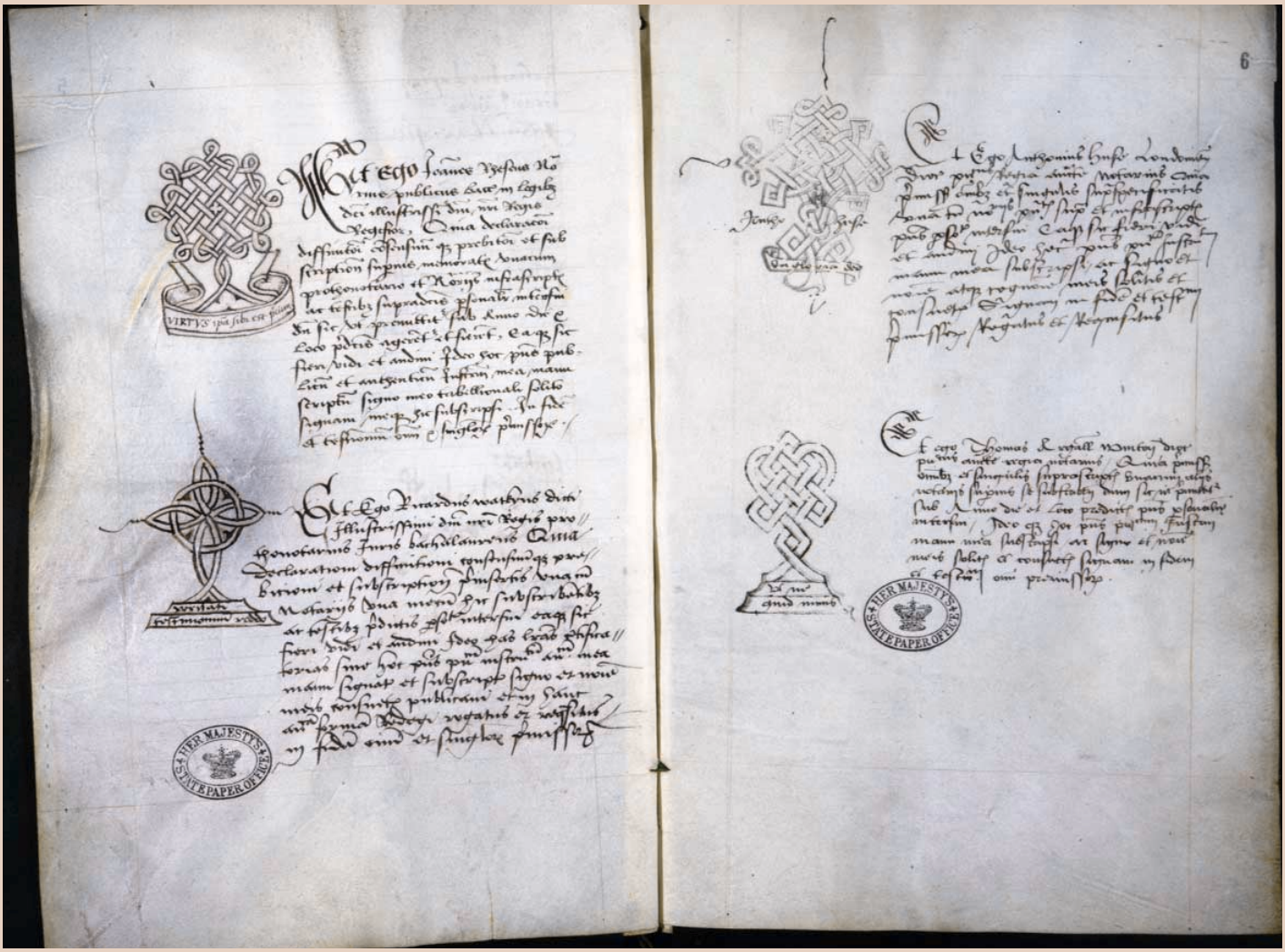
As Sir John Price, he was the author of various historical works, including *Historiae Britannicae Defensio*, and is said to be responsible for the first book to be printed in Welsh, *Yn y Lhyvyr hwnn*, of 1546/7.

Richard Watkyns (or *Watkins*) (1507?-1550) was appointed in 1529 to act as notary for the proceedings in the King's divorce from Katherine of Aragon. On the first day of these proceedings, the Queen was present in person and desired the appointment of three notaries – Florian Montini (a notary of Ferrara in Italy), William Clayburgh, and Richard Watkyns. On the second day of the proceedings the judges were directed explicitly to *"require the notaries and witnesses to draw up an instrument of the premises"*.[3]

The same three notaries worked together in July 1529 on the examination of witnesses present at the wedding in 1501 between Arthur, Henry VIII's older brother, and Katherine of Aragon. For example, Sir William Thomas, of Carmarthen, deposed that he *"was present at the marriage of the prince Arthur and lady Catharine, and they were married lawfully, as far as he knows or ever heard. Knows that they lived together near London and at Ludlow for five months, till the Prince's death. As one of the Prince's privy chamber, often conducted him in his nightgown to the Princess's bedchamber door, received him in the morning, and conducted him to his own room. They called each other prince and princess, man and wife, and were always so reputed."*[4]

[3] Letters and Papers, Foreign and Domestic, Henry VIII, Volume 4: 1524-1530, entries 5694 and 5695.

[4] Letters and Papers, Foreign and Domestic, Henry VIII, Volume 4: 1524-1530, entry 5774.



The four notarial attestations to the judgment

Four Tudor notaries - *continued*

In 1531 Watkins is to be found[5] preparing notarial instruments dealing with various ecclesiastical matters. In February of that year he records the surrender of the Austin priory of the Holy Trinity (Christchurch), London, which was deeply in debt to Henry.[6] In April of the same year he is at his house in St. Faith's parish, London (near St Paul's cathedral) preparing an attestation of the resignation by Thomas Leghe of the canonry of St. Sepulchre's chapel, York.

Highly experienced in royal matrimonial proceedings, he was a natural choice to act as notary in the proceedings annulling Henry's marriage to Anne of Cleves. Together with Anthony Hussey (Huse) he was interviewed at an early stage of the proceedings in an attempt to establish the whereabouts of an instrument of renunciation made by Anne with regard to her earlier espousal to Francis of Lorraine.[7]

Watkyns may have been elected as Member of Parliament for Bramber in 1542, and is firmly recorded as member for Bridport in 1545. He was a scrivener, the only one of the four notaries considered here to appear in the records of the Scriveners Company, and his subscription to the Scriveners' oath appears in the Company's Common Paper for the year.

Anthony Huse (also "Husey", "Hussy", "Hussye" and "Hussey") (1496/7-1560) first appears in the records in 1525 in relation to the dissolution of some small monasteries.[8] He seems to have courted controversy throughout a long and varied career, being indicted in 1530 for abetting the legateship of Thomas Wolsey. In the 1540s as president of the principal court of the Admiralty he found himself in trouble on a number of occasions. In 1541 was ordered by the Privy Council to *"answer to a contempt"*,[9] and in 1548 the Lord Protector Somerset intervened on behalf of one Matthew Hulle, *"who had been troubled in the Admiralty Court, wherein Hussey, the Judge of the Admiralty, had not behaved uprightly*".[10]

In 1531 he is recorded as one of the notaries in the trial of Richard Bayfield, who had adopted Protestant opinions in the early 16th century and then travelled between England and the continent, illicitly importing and selling the books of William Tyndale, John Frith, and other prohibited works. Bayfield was burnt at the stake.

On 11th July 1540 Hussey drew up a notarial instrument recording that *"in a lofty chamber called the Queen's Inner Chamber in Richmond Palace",* in the presence of Charles Brandon and other noblemen, Anne of Cleves freely signed certain letters of consent to the divorce from Henry VIII. In addition to attesting the judgment declaring the nullity of the divorce, his name also appears alongside those of Watkins and Argall in a notarial record of the trial of the marriage reciting the judgment of the Convocation and recording a large number of depositions.

Hussey's life was full of incident. *"To his posts in civil law and ecclesiastical administration there were added the governorships of trading companies and, for a time, the royal agency at Antwerp. Such versatility was calculated to make Hussey a valuable recruit to the Commons and it is surprising that he sat in only the first and last of Mary's Parliaments."*[11]

Anthony Hussey died on the first day of June, 1560, in London. His funeral was notable for its pomp and was recorded in a number of contemporary records. In John Strype's *"A survey of the Cities of London and Westminster"* it is stated that a *"Hundred Mourners, Men and Women, attended his Corps. He had Five Penons*

[5] Letters and Papers, Foreign and Domestic, Henry VIII, Volume 5: 1531-1532, entries 215 and 813.

[6] Also mentioned in John Strype's *"A survey of the Cities of London and Westminster"*

[7] Letters and Papers, Foreign and Domestic, Henry VIII, Volume 15: 1540, entry 821; see also Retha M. Warnicke, "The Marrying of Anne of Cleves – Royal Protocol in Tudor England", CUP, 2000, p. 229.

[8] The House of Commons 1509-1558, ed. Stanley T. Bindoff, "Members D-M", p. 420.

[9] Letters and Papers, Foreign and Domestic, Henry VIII, Volume 20 Part 2: August-December 1545, entry 4

[10] Calendar of State Papers Domestic: Edward, Mary and Elizabeth, 1547-80, entry 45.

[11] www.historyofparliamentonline.org/volume/1509-1558/member/hussey-anthony-149697-1560

of Arms, and a Coat of Armour; and two Heralds accompanying, viz. Mr. Clarencieux, and Mr. Somerset. There attended also the St. Paul's Choir, and Parish Clerks of London, singing."

Thomas Argall (?1500-1563) is first mentioned in court records on 23rd May 1529 in correspondence between the Bishop of Norwich and Cardinal Wolsey. He was later Secretary (Scryvenor/Clerk) to Thomas Cromwell who was Secretary to Cardinal Wolsey.[12]

Argall also had previous experience of royal divorce proceedings. On 4th June 1533 he authenticated an *"inspeximus and exemplification of a writ of certiorari"* addressed to Thomas Cranmer, archbishop of Canterbury, regarding the invalidity of the King's marriage with Katharine of Aragon, and of the validity of his marriage with Anne Boleyn. Shortly afterwards, on 14th June 1533 he drew up a notarial act recording the attestation of Edward Lee, archbishop of York, to the proceedings of the convocation of York regarding the King's divorce from Katherine.

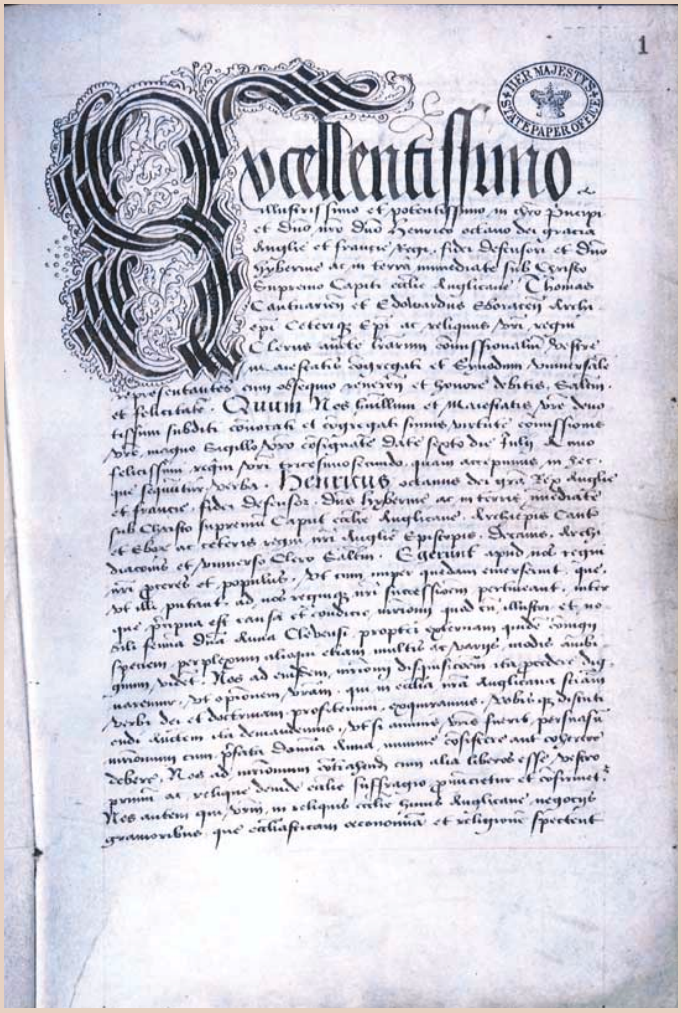
In 1534 the tax on clergy taking up a benefice or ecclesiastical position, known as "first fruits and tenths", which had previously gone to the Pope in Rome, was annexed to the income of the Crown. In 1540 the Court of First Fruits and Tenths was established to deal with Henry's valuation of ecclesiastical establishments, known as the *Valor Ecclesiasticus*. Argall was appointed as keeper of the records of this court in 1542.[13]

In the reign of Edward VI he acted as one of the notaries (William Saye was the other) in the trial of Stephen Gardiner, Bishop of Winchester. When Gardiner was condemned in 1550 *"to be deprived and removed from the bishopric of Winchester, and from all the rights, authority, emoluments, commodities, and other appurtenaunces to the said bishopric in any wise belonging, what soever they be"*, he and Saye were directed *"to make a publike instrument"* recording this sentence.[14]

He was granted the right to use the Argall coat of arms[15] around the time that he was appointed Registrar of the Prerogative Court of Canterbury by Queen Mary,[16] a position that he held until the end of his life. From 1559 to 1561 his name appears in that capacity in various papers relating to the estate of Sir Thomas Cawarden, Master of Revels to Henry VIII of England, Edward VI, and Mary.

Thomas Argall was the only one of the four notaries considered here not to have been a member of parliament, but his son, Richard, was elected member for Maldon in 1563.

Iain Rogers



[12] www.generationsgoneby.com/tng/getperson.php?personID=I26557&tree=1

[13] Letters and Papers, Foreign and Domestic, Henry VIII, Volume 17: 1542, entry 220 (grant number 72)

[14] Foxe – Acts and Monuments – 1563 Edition, Book 4, p.923

[14] www.argallfamilyworldwide.com/coatofarms.php

[16] "Argall Family" at www.geocities.com/heartland/plains/6025/argall.htm

Continental notaries face challenges

The difficulties faced by Western economies since 2008 have led to a re-appraisal of the rôle of the continental notary, who is perceived in some quarters as being a drag on economic activity. In this connection, many readers of this newsletter will have seen a somewhat ill-informed article which appeared in *The Economist* magazine on 11 August 2012.
http://www.economist.com/node/21560242

The continental notary differs from his English counterpart in that he is largely concerned with the authorisation of transactions within his immediate geographical area, rather than with the authentication of documents for use overseas, which is the primary function of the English notary.

A small market town in, for example, France, will have one or two *notaires* charged with formalising wills, company incorporation documents, and land transfer deeds. The *notaire* charges a fixed percentage fee based on the value of the property which is the subject of the transaction, such as a house.

The continental notary's formal records, together with those of the relevant land or company register, provide certainty and definitive evidence of transactions, but it is argued by some that the fees he levies are unjustified and serve to impede labour mobility, and that his rôle in general is an anachronism in a dynamic modern economy.

It is also argued that the absence of a continental-style notariat has not prevented the United States from developing into the world's foremost economic power.

The continental notary's view, however, is that the U.S. sub-prime lending crisis could never have occurred in Europe, given that the notary, as an impartial overseer of real property transactions and mortgage arrangements, would have been in a position to counsel both lender and borrower against the sort of reckless property deals which were common in the United States prior to the crash of 2008.

There is some justification for this view, not least because a U.S. notary plays a very restricted part in real estate transactions, which amounts to little more than asking the parties to a transaction to acknowledge that their signatures appear on the conveyancing and mortgage instruments.

Had U.S. notaries asked "Ninja" borrowers how they proposed to repay their loans, it is possible that some of the difficulties now faced by the global economy might have been avoided.

It can be seen that this argument forms part of the wider general clash between the *dirigiste* economic view prevalent in Europe, and the more *laissez-faire* attitudes prevalent within the Anglo-Saxon economic tradition.

It is perhaps surprising, therefore, that the government led by the technocratic prime minister of Italy, Mario Monti, a former European Commissioner, appears to have sided with the Anglo-Saxon view in its recent reforms to the notarial profession in Italy.

As part of a general plan to reduce the rights and privileges of Italy's 28 professional guilds, 1550 new notaries are to be appointed in Italy within the next three years. In addition, in order to give the Italian public greater access to notarial services, notaries will now be required to maintain an office in their designated town and must be personally present at their office at least three days a week.

It is hoped that by expanding the number of notaries the profession will be opened up to applicants who are not related to existing office-holders. It is, however, pointed out by the Italian notaries that only 17% of Italian notaries are related to their colleagues.

These reforms were in part prompted by a critical report by the International Monetary Fund on the performance of the Italian economy in general. This report cited restrictions on the number of notaries and shortcomings in their examination procedures as factors in the relatively poor performance of the Italian economy in comparison with its peers.

It remains to be seen whether this reform will prove to be of major benefit to the Italian economy, and it is the strongly-held view of many Italian notaries that the expansion in the size of the notariat may in fact lead to a lowering of the high standards of the profession, and hence ultimately be detrimental to the economy.

The effect of similar reforms in Portugal has yet to become clear. Since 2008 notarial intervention in Portuguese real property transactions has not been

required, as the government of prime minister José Sócrates believed that such intervention was delaying their completion.

Accordingly, Portuguese *advogados* (solicitors) may now draft and record *documentos autenticados* for the purpose of transferring interests in land without the involvement of a notary.

Again, the possibility exists that this new system may create less certainty in real property transactions and give rise to an increase in legal disputes in the future.

The notariats of other European countries obviously view these developments with some concern, and are perhaps justified in thinking that, whilst a certain liberalisation of the notarial profession across Europe may be desirable, ill-conceived and over-hasty changes based on common prejudices may ultimately prove to be highly damaging.

Jeremy Burgess

Spanish NIE numbers

In the course of our work we are frequently asked by clients to notarially certify powers of attorney for the purposes of obtaining Spanish "NIE" numbers. This acronym stands for *"Número de Identificación de Extranjero"* which in English means Foreigners' Identification Number.

Many forms of fiscal and legal transactions in Spain require non-Spanish nationals undertaking them to hold a valid NIE number. For individuals, such transactions include the buying and selling of property or vehicles, applying for a mortgage or other form of loan, opening a bank account, accepting an inheritance, engaging in employment, paying tax and claiming social security benefits. A person looking to obtain a business permit, form a company or be registered as a director in Spain will also need an NIE number.

The characteristics of this identification number are that it always starts with the letter "X" followed by seven numbers and a letter, is personal to the holder, cannot be transferred and does not expire.

There are currently three ways of obtaining an NIE number. From within Spain, one can apply for it in person at any police station with a foreigners' department (*"Oficina de Extranjeros"*) by submitting the relevant EX-15 application form (in duplicate), a receipt of payment of the applicable fee, an original passport (and photocopy of the same) and two passport photographs. Once the application has been made, processing usually takes between 2 and 4 weeks and the applicant would then need to collect the NIE number in person from the same police station. In some locations (e.g. Madrid and Oviedo) the NIE may be issued immediately.

From outside Spain an application may be made via a Spanish consulate. It should be noted that the consulate does not issue the actual NIE number but, instead, forwards applications to the Police in Spain for processing and the turnaround time is approximately 1 month.

Luis Hyde-Vaamonde

The third option is to authorise a representative by way of a power of attorney so that he or she may obtain the NIE number in Spain on behalf of the applicant.

There has been confusion in Spain lately as to whether the use of powers of attorney to obtain NIE numbers is in fact permitted. This began with a Royal Decree in April 2011 which only cited the first two options discussed above for obtaining NIE numbers (without mentioning applications by power of attorney), followed in January this year by a ruling of the Spanish Ministry of Work and Immigration prohibiting the use of powers of attorney for such purpose.

However, following complaints that this restriction was affecting trade, Spain's Ministry of the Interior now specifically provides on its website for NIE applications to be made through a representative holding a valid power of attorney.

In order for such powers of attorney to be recognised in Spain they must be properly drafted as public form notarial instruments, signed in the presence of a notary and subsequently legalised at the United Kingdom Foreign & Commonwealth Office with a Hague Apostille. At Cheeswrights we are familiar with these procedures and are happy to provide assistance upon request.

Competition – signs of the times

The multitude of plaques and signs which adorn many of its buildings attest to the City of London's rich and varied history. Five plaques are pictured below. As usual, six bottles of Chateau Le Clos du Notaire for the first client to correctly identify the locations and three bottles each to the two runners-up. An additional three bottles for explaining the connection between Doctors' Commons and notaries.

Photographs © Nigel Ready

Issue Six's Winner

Issue Six's competition (all creatures great and small) was won by Gaynor Bassey of E D & F Man Holdings Limited, a previous winner of our competitions. Our congratulations to her once again.

We value your opinion, so tell us what you think about our newsletter. Please send your comments to Kelly Harper at our City office. E-mail to: kelly.harper@cheeswrights.co.uk

NEWS IN BRIEF 2012

Nigel Ready retired as senior partner on 30 April 2012, but remains active as a consultant to the firm and its honorary chairman. **Alisa Grafton** and **Luis Hyde-Vaamonde** became partners of the firm on 1st May 2012.

Nigel Ready attended meetings of the European Affairs Commission of the International Union of Notaries in Amsterdam and Skopje. He also attended the annual congress of Italian notaries which took place in Naples in November.

Jeremy Burgess, as Chairman of the Society of Scrivener Notaries, attended the Special Commission on the practical application of the Apostille Convention held at The Hague in November 2012 under the auspices of the Hague Conference on Private International Law.

Nigel Ready has contributed the chapter on Nationality, Registration and Ownership of Ships to the *Manual on International Maritime Law* under production by the IMO International Maritime Law Institute; the Manual will be published by Oxford University Press.

Trainee notary, **Sara Dodd,** has returned to the office after a year spent working with notaries in Spain and Portugal. Cheeswrights' other trainee, **Sarah Mackie,** is currently in Bavaria where she will spend a year developing her knowledge of the German language and legal system.

There are four 2012 weddings to report: Cheeswrights partner **Andrew Claudet** married on 15 June; our notaries, **Michelle Scott-Bryan** (née Scott) and **Emma Noon** (née Wilkinson) celebrated their marriages on 7 July and 26 May respectively; among our secretarial staff, **Nicola Adams** (née Barron) was married on 6 October. We wish all of them every future happiness.

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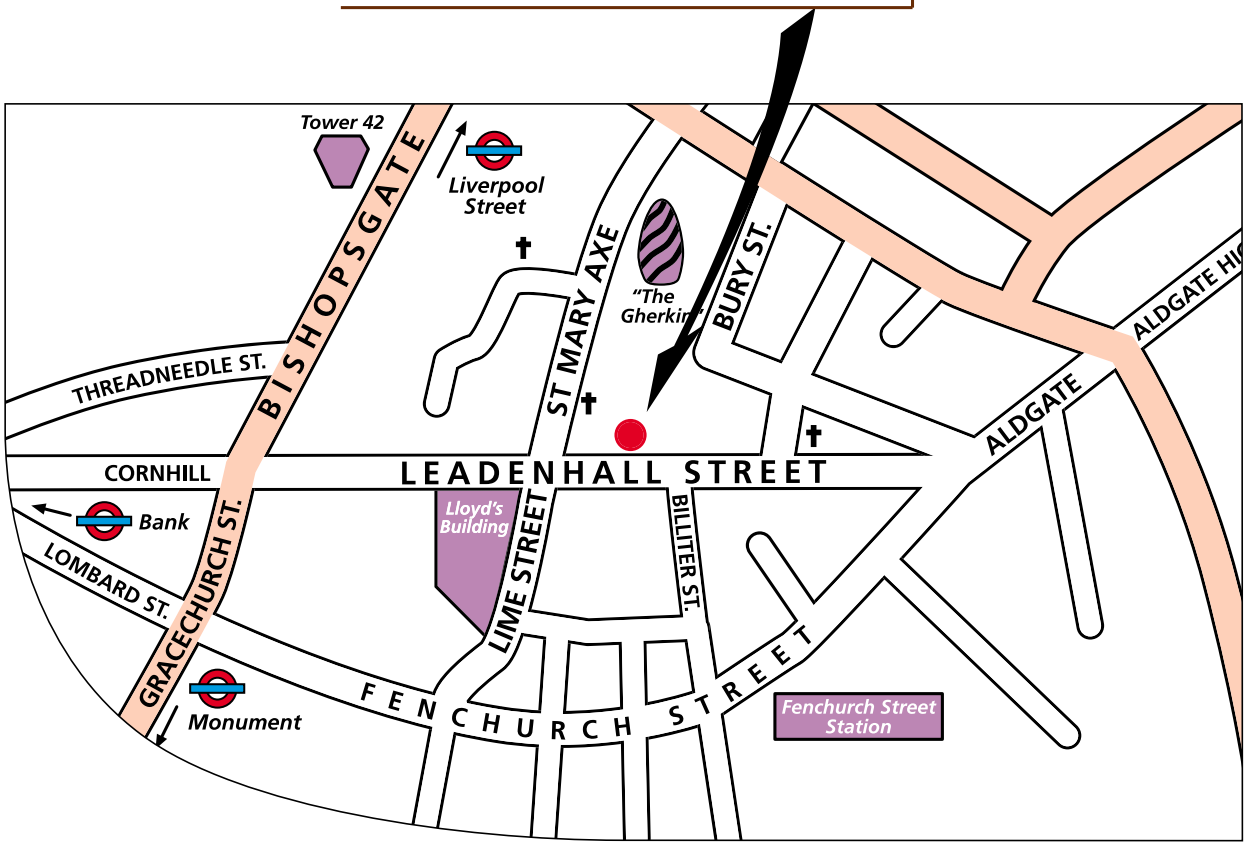

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