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“Gladius antiquus et eruginatus”. A sword as a medium supporting the law in England in the late Middle Ages*

In medieval times, apart from its military use, the sword performed a variety of symbolical functions. Owing to historical research, the matter is widely discussed in the field of social life, art, as well as studies on weapon, all of these explored by experts. The article is to present the use of the weapon mentioned above in the area which is little or hardly any explored by scientific interest. Namely, it is in the aspect of legal significance of the sword. The starting point for the analysis of this intriguing subject matter is an extremely compelling fragment of *The Chronicle of Walter of Guisborough*, dated for the beginning of the 14th century. In this fragment, the author describes some events connected with Edward I's legal and administrative activities, supposedly dated back to 1279–1290, commonly known as the *quo warranto* procedure. The following presents:

The king disturbed some of great men of the land through his judges wanting to know by what warrant they held their lands, and if they did not have a good warrant, he immediately seized their lands. Among the rest, the Earl of Warenne was called before the king's judges. Asked by what warrant he held, he produced in their midst an ancient and rusty sword and said: “Look at this, my lords, this my warrant! For my ancestors came with William the Bastard and conquered their lands with the sword, and by the sword I will defend them from anyone intending to seize them. The king did not conquer and subject land by himself, but our forebears were sharers and partners with him”¹.

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¹ “Cito post inquietavit rex quosdam ex magnatibus terre per iusticiarios suos scire volens quo Warranto tenerent terras et si non haberent bonum varentum saysiuit statim terras illorum; vocatusque est inter ceteros Comes de Warenna coram iusticiarios regis et interrogatus quo Warranto teneret produxit in medium gladium antiquum et eruginatum et ait ‘Ecce domini mei ecce Warrantum meum. Antecessores enim mei cum Willelmo bastardo venientes conquesti sunt terras suas gladio et easdem gladio defendam a quocunque eas occupare volente. Non enim rex per se terram devicit et subiecit sed progenitores nostri fuerunt cum eo participes et coadiutores’” – *The Chronicle of Walter of Guisborough. Previously Edited as the Chronicle*

With reference to the historical record given above, before we come to its detailed examination, we shall underscore that there is nothing peculiar as of the content. Similar, however, not such illustrative examples of the use of a sword for legal purposes (what will be discussed further in the papers), appeared in the 13th and 14th century English texts. It is noteworthy that in many cases such use of the weapon turned out to be effective and resulted in landlords opportunity to maintain estates, thereby ‘defended’. Moreover, another intrinsically interesting method for legitimisation of legal status by means of a sword was known in England in that times – sticking swords, the tiny ones or daggers, all of which authenticated the legal status of the estates.

The analysis shall begin with the first of the aforementioned situations – the chronical description related to one of the finest part of Edward’s activity, who due to his extensive legislative work, for which he was known as English Justinian, desired to reorganise and regulate the model of the state².

As already mentioned, what Walter of *Guisborough* recounted was closely related to the so-called *quo warranto* procedure. The dimension of the issue raised here is broad and complex. Yet for the purpose of further research, it is sufficient to say that within the scope of this issue the royal judges were to establish what the legal and financial status was. Appropriately authorised representatives were obliged to summon any person and investigate legal grounds for the person to be entitled to possess property or take advantage of any other franchise. The relevant fact for our study is that no other thing could constitute the proof for the royal administratives, but the written document of land endowment³. Nevertheless, such written confirmation was not very common in that times. Accordingly, conscientiousness of the officials pursuing investigation met with great dissatisfaction of royal tenants. It has been barely mentioned in narrative sources⁴, albeit most of the information available for historians has come from the materials rich in legal-administrative facts, being the record of legal proceedings subsequent to investigation⁵.

of Walter of Hemingford or Hemingburgh, ed. H. Rothwell, London: Camden 1957, (further WG), p. 216.

² M.J. Prestwich, *Edward I*, London: University of California Press 1988.

³ T.F.T. Plucknett, *Legislation of Edward I*, Oxford: Oxford University Press 1949, p. 35–50; D. Sutherland, *Quo Warranto Proceedings in the Reign of Edward I 1278–1294*, Oxford: Clarendon Press 1963; H. Cam, *Quo Warranto proceedings under Edward I*, [In:] Eadem, *Liberties and Communities*, Cambridge: Cambridge University Press 1944, p. 173–182.

⁴ *Chronicon Petrobургense*, ed. T. Stapleton, London: Camden 1849, p. 30; *Bartholomei de Cotton, Historia Anglicana (A. D. 449–1298)*, ed. H.R. Luard, London: Roll Series 1859, p. 158; *Annales Prioratus de Dunstaplia, A. D. 1–1297, Annales Monastici III*, ed. H.R. Luard, London: Longmans 1866, p. 360–361.

⁵ *Placita de Quo Warranto*, ed. W. Illingworth, London: G. Eyre and A. Strahan 1818; *Yorkshire Hundred and Quo Warranto Rolls 1274–1294*, ed. B. English, Leeds: The Yorkshire Archeological Society 1996 (further YQW).

Already acquainted with the historical context, roughly outlined out of necessity, that alludes to the aforementioned fragment, we shall consider over the sense why the Earl Warenne used the sword as evidential material. Firstly, we shall note the significance of the clash of the document and the sword – at the age of civilizational breakthrough initiating the primacy of a written word (at least in the royal chancelleries). For better understanding of that situation, it is initial to ponder on what, according to the author of the chronicle and people of that times, could determine the symbolical power of the weapon unsheathed by the defendant before the court.

It seemed to be rather odd in the old days and therefore the fragment of the chronicle quoted above provoked fierce controversy among the researchers. Its credibility was undermined, inter alia, by proving the lack of legal precision of Walter of *Guisborough*. It was indicated that the *quo warranto* procedure did not pertain to the investigation of legal titles to land (as described by the chronicler), but only to franchises⁶. Thanks to the analysis of the way in which the procedure in Henry III's times (1216–1272) was practiced, nowadays we already know it was widely applied, including both pursuing rights to land and various franchises⁷. In spite of his knowledge on the course of investigational work⁸, the author of the chronicle was more interested in spreading the aspects of social content, which were much more important to him, rather than in the nuances of the procedure itself.

The doubt in the authenticity of the situation described was also common, all the more so as it is outlined only in one of the eighteen manuscripts of the chronicles that we know⁹. This particular manuscript is stored at British Museum (MS. Lansdowne 239), and was written at the end of the 14th century or at the beginning of the 15th century; while the first preserved copy of the chronicle (Lansdowne, MS. R.7.9.) is found as almost one hundred years older¹⁰. For that reason, it made the editor of the last edition of the chronicler, Harry Rothwell, to deem this relation as interpolation¹¹. Not to mention the fact that people indicated theatrical character of that scene, what would not have made it to be regarded as an account of the event but only rhetorical manipulation of the author. With reference to this issue, it is worth noticing that at least in several fragments of the text constituting our subject matter, it was because of its theatrical character, seemingly of little reliability, that historians proved its con-

⁶ J.H. Round, *Peerage and Pedigree. Studies in Peerage Law and Family History*, Part 1, London: J. Nisbet & Co. Ltd. 1910, p. 321–322.

⁷ *Bracton's Note Book. A Collection of Cases Decided in the King's Courts During the Reign of Henry the Third*, ed. F.M. Maitland, London: Cambridge University Press 1887, Part 1, p. 185.

⁸ Including the estate of the monastery in Guisborough, q.v. YQW, p. 175.

⁹ However, similar fragment is given in the chronicle of Lanercost, dated for the 1st half of the 14th century, the hero of which is Gilbert de Clare, q.v. *Chronicon de Lanercost*, ed. J. Stevenson, Edinburgh: Edinburgh Printing Company 1839, p. 168.

¹⁰ WG, p. XII–XIII, 216.

¹¹ WG, p. 216.

clusive and realistic value¹². Slightly anticipating our statement we want to stress that irrespective of whether the history presented by the chronicler is true or not (which is supposedly impossible to be proven now), in our hands deserves our attention because of its ideological spectrum. In fact, we are able to elicit some elements from the chronicler's narrative, which viewed in cultural context will give us the key for better understanding of the intent hidden in the situation described. Thus, we shall refer to Walter's text again and examine the scene under discussion more carefully.

In order to prove his rights, the Earl Warenne pulled out "gladium antiquum et eruginatum". It is such a greatly significant term: the sword reflects features proving its antiquity, because, as written in further papers, it was supposed to be in the earl's ancestry possession, who had ensured the victory over the English forces together with William the Conqueror. It seems natural that the weapon was decrepit (rusty), the reason being that since the conquest it had already passed 200 years; however, it was not about the physical features of the weapon in fact. Not accidentally, Walter highlights antiquity of the sword by means of two epithets ("antiquum et eruginatum"). They stress the significance of the act the author wanted to illustrate. From one point of view, it was the sword which got the dispute back to the remote dates of the initiation of Norman community (what was of highest importance – more on this subject further in the article), contrary to the features and unmilitary dimension of the sword giving evidence of the earl's intent. It seems irrational that the earl could have wanted to fight against officials with the decrepit sword; even if that is what the bared sword can be associated with. Regarding what was mentioned above, the 'argument' which de Warenne arose should be interpreted in another, more ideological sense. And for this purpose, we need to treat the issue of the sword within the social context of that times more cautiously.

At the beginning we notice that none of the commonly known functions which the sword served in the Middle Ages provides us with an explanation for what is concerned within the subject matter. Most of the functions are seemingly obvious. It sounds familiar, even for a layperson that the sword was used, e.g. as a device in the act of knighting. Yet if we go further, it turns out that ceremonial application of this weapon bears more than one meaning, in the understanding of which will help us the fragment cited above. The tapping of the flat side of the sword on the candidate shoulders changed the social status of the person to be one of the knight communities – a group of citizens living in a traditional privileged society and having the right to possess as well as alienate a land. Some sort of an initiation ritual took place

¹² One of the example being Roger Brabazon who was to make a statement at Norham in 1291, cited by Walter in Latin, who noted that the original copy in French did not survive. However, this scene of similar theatrical character was described in parliamentary documents, q.v. WG, p. 234–235; A. Gransden, *Historical Writing In England c.550–c.1307*, London: Routledge 1998, p. 473–474.

simultaneously with the act of knighting. That led a young man to be a part of the knight reality. It did happen very often that the initiation act was followed by his first mature achievements, such as being one to whom the feoffment was granted or taking part in the campaign¹³. Even after the knight death, as the sword was presented at an effigy, the weapon would bear testimony of his and his posterity chivalry¹⁴.

The same situation was with the weapon given to the ruler or his successor. Attributing the sword to the ruler was associated with, if not giving him right to come into power at the territory of his state, then at least physical ability to carry out his royal duties¹⁵. The prominent role, mainly because of the status of its owner, the sword also played in the spectacles of power. As an example can be given: *deditio* or *adventus regis* rituals, during which the sword was an inherent element of splendour or humiliation¹⁶. Furthermore, the sword was commonly used as an instrument of making and executing law. By virtue of its great importance in the sphere of law (*gladius iustitiae*), people used them while promulgation of a new ordinance or passing and executing a judgment¹⁷. We can provide you with more examples of popular swords, many of which had their own names, acted as the transfer of different traditions and laws related to heroic owners of the swords¹⁸. Ergo, the sword in England and Europe in former times is regarded as the object with specific meaning, irrespective of the context it is put in. Though, initially we can indicate that this specific meaning was assigned to the branch of law.

Hitherto with this state of knowledge, we need to follow further analysis broadening our reflections. The fact that the sword was associated with the memory for the Norman Conquest, which was current in that times, seems crucial to overcome

¹³ Z. Dalewski, *Pasowanie na rycerza książąt polskich we wcześniejszym średniowieczu: znaczenie ideowe i polityczne*, „Kwartalnik Historyczny” 1997, vol. 4, p. 15–35; O. Ławrynowicz, *Treści ideowe broni rycerskiej w Polsce wieków średnich*, Acta Archaeologia Lodziensia, vol. 51, Łódź 2005; D. Piwowarczyk, *Obyczaj rycerski w Polsce późnośredniowiecznej (XIV–XV w.)*, Warszawa 2000.

¹⁴ T. Jurkowlanec, *Nagrobki przedromańskie i romańskie w Polsce*, „Rocznik Historii Sztuki” 1981, vol. 12, p. 15–41.

¹⁵ Z. Dalewski, *Pasowanie na rycerza...*, op. cit., p. 15–21.

¹⁶ Idem, *Rytuał i polityka. Opowieść Galla Anonima o konflikcie Bolesława Krzywoustego ze Zbigniewem*, Warszawa 2005, extensive literature concerning subject matter.

¹⁷ Still, up to the 20th century, constituting law in the presence of Tynwald on the Isle of Man has been accompanied by the 13th century ancient sword of state, q.v. F.J. Drake-Carnell, *Old English Customs and Ceremonies*, London: B.T. Batsford 1938, p. 42–43.

¹⁸ Apart from the best-known swords of Charlemagne or Roland, we shall indicate to Caliburn, the legendary sword of King Arthur, which Richard the Lionheart was supposed to pass over Tankred, King of Sicily during the Crusades, q.v. *Chronica Magistri Roberti de Hovedene*, ed. W. Stubbs, London: Roll Series 1870, vol. 3, p. 97; J. Martindale, *The Sword on the Stone: Some Resonances of a Medieval Symbol of Power (The tomb of King John in Worcester Cathedral)*, “Anglo-Norman Studies” 1993, vol. 15, p. 199–242.

the problem. Walter makes the Earl Warenne (or rather his sword) the translator of this tradition, after all. The significance of the conquest of England revealed in the way that the earl, as one of many, was to be given an authority to have the power over the lands seized at that war. In order to confirm his statement, the earl presented the decrepit sword which his ancestors had been to be armed with at William the Conqueror's side, the same which was maintained as the family treasure at the token of that events. Together with the sword, he also revived the family tradition, closely connected with the memory for the Norman Conquest¹⁹. Therefore, the sword evoked the memory for the common origin. It is noteworthy that this origin is particularly important for traditional communities as it prolongs the basis of the functioning of the community. Moreover, it is not a random situation that the origin is regarded as 'the golden age', which a particular community will be trying to restore (or maintain)²⁰. Yet such general assumptions do not solve the problem. Thus, in order to understand the matter discussed properly, we shall scrutinize the medium of the memory for middle times, by means of which people used to transfer various meanings for the future reference. Indisputably, the aspect of the sword should be given special attention.

It is perfectly known that notwithstanding the prevalence of literacy and development of the document, even in the period of the High Middle Ages, other means of preserving and transferring law were functioning²¹. In spite of the fact that chroniclers were aware of the necessity to write down the essence of their knowledge about the world, the oral traditions still existed. Undoubtedly, the oral transmission more easily adopted to changing circumstances, briefly, it was flexible. On the contrary, what was transferred soon obliterated as a result of imperfection of the capability of human memory. English chronicler, Eadmer has alluded to this problem in a simple way: "it will be a great service to posterity to commit to writing the deeds of the present for the use of the future"²². The monk from the monastery in Beverly, has comment upon

¹⁹ For further information on the figure of the Earl Warenne and his family origins refer to G. Lapsley, *John De Warenne and the Quo Warranto Proceedings in 1279*, [In:] Idem, *Crown, Community and Parliament in the Later Middle Ages. Studies in English Constitutional History*, Oxford: Oxford University Press 1951, p. 43–47.

²⁰ J. Banaszkiewicz, *Podania o "Początku"*, [In:] *Dynastie Europy*, ed. A. Mączak, Wrocław 1997, p. 17–45; A. Pleszczyński, "Fetyszym początków" w ideologii władzy czeskiego średniowiecza, [In:] *Origines mundi, gentium et civitatum*, ed. S. Rosik, P. Wiszewski, Wrocław 2001, p. 153–159.

²¹ M.T. Clanchy, *From Memory to Written Record. England 1066–1307*, London: Blackwell 1993; *Oral History of the Middle Ages. The Spoken Word in Context*, ed. G. Jaritz, M. Richter, Budapest: Central European University 2001; G. Myśliwski, *Pamiętnicy. Ludzie sędziwi jako źródła wiedzy o przeszłości na ziemiach polskich (do końca XVI w.)*, [In:] *Europa barbarica, Europa christiana. Studia mediaevalia Carolo Modzelewski dedicata*, ed. R. Michałowski, Warszawa 2008, p. 113–126.

²² *Eadmeri Historia Novorum in Anglia et Opuscula Duo De Vita Sancti Anselmi et Quibusdam Miraculis Ejus*, ed. M. Rule, London: Longman 1884, p. 1.

the subject in a closely related way. He gathered stories about wonderful deeds of John from Beverly who was the patron of his monastery, and explained why he had decided to write it down: “Although memory [for John’s deeds – B. K.] is held firm by many people telling story, nevertheless committing it to writing strengthens and sharpens the memory”²³. However, owing to the fact that people of the Middle Ages lived in the world with verbal communication, the oral evidences were supposed to be, and very often they indeed were, the principle of the written texts. Even Richard, the son of Nigel and the author of *Dialogus de Scaccario*, who was so deeply rooted in the culture of literacy, by describing the origins and functioning of Exchequer in 1170’s, he refers to the witness of the old, life-tired elders who kept excellent memory for the Norman Conquest²⁴.

A historical account in the written form was not the only way to retain facts. ‘Ascribing the memory’ to varied objects was many times similarly significant²⁵. The methods for ‘writing down’ the knowledge in the objects were diverse and targets helpful for that process differentiated. What was the most important for preserving memory thus was the correlation between the object and tradition ascribed to that object. The signs of memory were often of the highest importance in the course of transmission from oral to written communication. Especially as in medieval treatises, it was advised to make use of objects of different kinds for more effective memorizing. ‘Objects’ were easier to remember and it was less-time consuming than memorizing words²⁶. Similarly, the pre-eminent English jurist, Henry Bracton has underlined that for better understanding of the grantor’s intent we should have some sort of physical contact with the objects²⁷. As a result, by dint of the lack of documents, the historical records, which can be nowadays defined as archives, embraced mainly precious relic of ancestors.

The signs of memory could have evoked different events. They were used so as to preserve the memory for true as well as slightly less plausible (at least according to us) deeds, events or figures. Many examples of referring to those objects, repeatedly endowed with unusual power, have been noted. By way of example, still in the areas of English lands, we shall allude to Coronation Stone of Scone, which

²³ *Miracula Sancti Johannes, Eboracensis Episcopi, The Historians of the Church of York*, ed. J. Raine, London: Longman 1879, vol. 1, p. 294.

²⁴ Richard son of Nigel, *Dialogus de Scaccario*, ed. C. Johnson, London: Nelson 1950, p. 14.

²⁵ J. Banaszkiwicz, *Usque ad hodiernum diem. Średniowieczne znaki pamięci*, „Przegląd Historyczny” 1982, vol. 72, p. 229–238; M.T. Clanchy, *From Memory to Written Record...*, op. cit., p. 254–260.

²⁶ M. Carruthers, *The Book of Memory. A Study of Memory in medieval culture*, Cambridge: Cambridge University Press 1994, p. 147–151.

²⁷ *Bracton on the Laws and Customs of England*, ed. S.E. Thorne, Cambridge: Selden Society 1968, vol. 2, p. 124–125; F. Pollock, F.W. Maitland, *The History of English Law Before the Time of Edward I*, Cambridge: Cambridge University Press 1895, p. 80–90.

English rulers used in order to waive their rights to having power over Scotland since the 14th century²⁸. By the same token, of the similar wonderful character was the sword stored in Ramsay abbey, commemorating the victory in 937 by the army of Ethlestan over the Scottish forces in the battle of Brunanburh. This sword was supposed to be given as a gift to the ruler by Saint Odo of Cantenbury²⁹.

The objects (as well as messages transferred by them) which gave evidence of rights, duties or events that appeared in the past, are in the center of our interest. Frequently, these objects were simply connected with the sale of estates as, what shall be reminded, in the culture where writing was rather exception than principle other forms of commemorating the act of transaction was required.

By writing at the beginning of the 12th century about foundations of Norman rulership, the author of the Croyland chronicle underscores that many of land endowments were passed only through words (*nude verbo*) without noting these acts in the written form. Instead of any document, the sword, helmet, horn or the owner's cup was enclosed. Together with bow or arrows many estates were likewise submitted. Such method was supposed to be followed just at the beginning of William the Conqueror's reign as then, according to the chronicler, the custom was no longer respected with the time passing³⁰.

As the ownership had never been transferred *nude verbo*, the message of the monk from Croyland is quite general and indeed incoherent. Many situations clearly epitomize the effort to support the verbal or written transaction with additional provision in the form of artifact. What is more, we do not observe the development of the custom indicated by Ingulph as instantly as the chronicler does. Practically, social relations, also those identified with right of property, did not improve so quickly. Especially as we are aware of the fact that the other customs, the example being the practice of drinking so-called *aqua abrenuntiationis* in the areas of Poland, supposedly necessary for effective sale of land³¹, or attending an alcohol party for celebration of commercial transaction known as 'litkup', existed within the scope of our interest³².

The basic problem we encounter with the past artifacts is caused by little number of such signs of memory, preserved until now. What is worse, we are extremely rarely able to estimate what functions the objects may have served in a specific situation.

²⁸ *Vita Edwardi Secundi*, ed. N. Denholm-Young, London: Nelson 1957, p. 132.

²⁹ *Chronicon Abbatiae Rameseiensis*, ed. W.D. Macray, London: Longman 1886, p. 16.

³⁰ *Ingulph's Chronicle of the Abbey of Croyland with the Continuations by Peter of Blois and Anonymous Writers*, ed. H.T. Riley, London: Henry G. Bohn 1854, p. 142.

³¹ J. Matuszewski, *Aqua abrenuntiationis*, "Czasopismo Prawno-Historyczne" 1952, vol. 4, p. 164–237; J. Adamus, *Wzdanie a symbol Aquae abrenuntiationis*, "Czasopismo Prawno-Historyczne" 1955, vol. 7, p. 410–419.

³² P. Dąbkowski, *Litkup. Studium z prawa polskiego*, Lwów 1906; McCall, *Litkup in the Rural Court Books of Old-Time Poland*, "Czasopismo Prawno-Historyczne" 1998, vol. 49, 1–2, p. 11–25.

If the symbolic meaning of a sword or a cup had not been inscribed on or written up in any document, it would have been forgotten with the time passing. Nowadays, however, such objects are only seen as a museum piece. Nevertheless, fortunately we can indicate a little more examples of spreading memory through the objects.

By way of example, Copsi, the earl of Northumberland presented the Church of Durham with the cup about 1066. As it was associated with the previous land endowment which the cup was to remind of, then it was stored in royal treasury³³. According to what is written in Ramsay chronicle, certain Wulfeg donated a staff (*baculus*) to monastery in 1221–1222. The chronicler did not fail to add: “quem adhuc habemus”³⁴. The catalogue of the objects constituting such ‘appendixes’ attached to the agreement has always been accessible. Apart from the aforementioned cup and staff, there were also knives or daggers, sometimes hung to the documents. We shall indicate, e.g. the dagger (*cultellus*) given by Thomas from Moulton to the monastery in Spalding. In accordance with the document relating to that property acquisition, the dagger was attached to the document in which Thomas transferred the church in Weston-Lincolnshire to the abbey in Spalding³⁵. Owing to the caution and conscientiousness of priests belonging to Durham Cathedral³⁶, we can point some other examples of the objects which survived until now.

Among them, the most important example is a diploma to which the dagger was attached, dated back to the 2nd half of the 12th century. It should be mentioned that it was the document that was essentially hung to the dagger as, in spite of the fact that almost a half of the blade was broken off, it was indeed larger than the parchment. On both sides of the weapon’s haft the following inscription was engraved: *SIGNUM DE CAPELLA DE LOWIC*, with *ET DE DECIMIS DE LOWIC TOTIUS CURIE ET TOTIUS VILLE* added at its back side³⁷. In the slot of the haft, the parchment where the sense of the transaction to which it referred to was put into. It is written on the parchment that Stefan Bulmer concluded an agreement with monks of the monastery in Lindisfarne, by virtue of which he transferred to the monks the tithes he received from Lowick and villages that belonged to him. On the reverse side of the document

³³ *Symeonis Monachi Opera Omnia*, ed. T. Arnold, Roll Series, LXXVI, 1882, vol. 1, p. 97.

³⁴ *Chronicon Abbatiae Rameseiensis*, op. cit., p. 245–246.

³⁵ W. Dugdale, *Monasticon Anglicanum*, ed. J. Caley, H. Ellis, B. Bandinel, London: Longman 1821, vol. 3, p. 217.

³⁶ A.J. Piper, *The monks of Durham and the study of Scripture*, [In:] *The Culture of Medieval English Monasticism*, ed. J.C. Clark, Woodbridge: Boydell 2007, p. 86–103; M. Bonney, *Lordship and the Urban Community: Durham and its Overlords, 1250–1540*, Cambridge: Cambridge University Press 2005; R. Southern, *Aspects of the European Tradition of Historical Writing: The Sense of the Past*, “Transactions of the Royal Historical Society” 1973, vol. 23, p. 251–252.

³⁷ M.T. Clanchy, *Reading the Signs At Durham Cathedral*, [In:] *Literacy and Society*, ed. M.T. Larsen, K. Schousboe, Kopenhaga: Akademisk Forlag 1989, p. 175, pictures of the document on page 181; the picture of the dagger with a legible inscription is also published in J. Raine, *History and Antiquities of North Durham*, London: Longman 1852, p. 135.

its author also wrote that it was delivered to Lindisfarne by Cecilia, wife of Stephen, as he did not manage to get to the monastic island personally. Given that he decided to commemorate his donation in such a way, we can only reflect on his intents. If we knew he had no opportunity to make the document, the matter would be easier to explain. But, as that man mixed two different ways of the transfer of information he might have some special reason. In fact, the dagger was an extremely personal object, the mark that proved the grantor's will. The hypothesis that the grantor was not in the possession of his own seal and deemed attachment of the dagger to be the best possible way as to prove he was the author of the document, is also acceptable. It is noteworthy that Stephen certainly appreciated the value of writing, what is proven by his making of the document. As it were times when the seal was not commonly used among knights, the lack of authorization seal cannot indicate Stephen's imperfection. While writing about Henry II's times, the chronicler of the Battle abbey briefly touches on this subject: "it was not the custom in the past for every petty knight to have a seal, they are appropriate for kings and great man only"³⁸. The use of dagger, knife (or any other artifact) in order to reinforce the message was probably the most common form of validating transaction.

Owing to Durham Cathedral we have an access to other noteworthy sources of this type. With the dagger attached, the document from Blyborough, dated back to 1148 is stored in the Cathedral up to present days. Because it was used as evidential material in the process before the royal court in 1213, by the prior of Durham, the dagger is extremely extraordinary and important for us. The opponent in that process undermined the document's relevance due to the lack of seal, denoting that as the dagger can be easily attached to and detached from the parchment, it can bear no testimony³⁹. Notwithstanding the acceptance of the objection, the dagger's relevance as evidential material was not denied! Despite unfavourable decision in that matter, the monks preserved the document in its original version⁴⁰.

Stored in the cathedral treasury in Durham up to these days, the Conyers family sword may turn out to be peculiar *curiosum*. It is connected with some practice which is deeply interesting in the context of our interest. It is that every new householder had to prove his identity with a sword before local bishop. It was necessary so as to preserve lands endowed in favour of the family in the Middle Ages. The practice was followed until the middle of the 19th century⁴¹.

³⁸ *The Chronicle of Battle Abbey*, ed. E. Searle, Oxford: Oxford University Press 2002, p. 215.

³⁹ *Curia Regis Rolls*, vol. 7, London: HMSO 1935, p. 39, M.T. Clanchy, *Medieval mentalities and the primitive legal practice*, [In:] *Law, Laity and Solidarities*, ed. J. Martindale, J. Nelson, P. Stafford, Manchester: Manchester University Press 2001, p. 90–92.

⁴⁰ C.J. Stranks, *Durham Cathedral*, London: Pitkin, 1976, p. 21; M.T. Clanchy, *From Memory to Written Record...*, p. 39.

⁴¹ M.T. Clanchy, *From Memory to Written Record...*, p. 40.

While outlining its context, we shall return to the heart of the matter. Although the earl Warenne pulled out his sword at the time when the nation regarded the written proof as more reliable, he simultaneously illustrated the vitality of traditional approach in the matter of memory. Even if the royal administratives had not accepted such proof, they would have had to take into account the functionality of the relicts of the past. Notwithstanding the small number of comparative materials, it seems that two issues are signaled by their content. For one thing, focusing on commemorating events with the signs of memory by people of medieval times, and for another, what is now more of our attention, the fact that the sword and its miniature forms were of great importance in that process. The application of these objects mainly associated with fighting was most visible in the sphere of law.

In England this particular weapon was undoubtedly linked with the Norman Conquest. Thus, the earl Warenne can be regarded as the proponent of some issue, which we will try to present as follows: “For my ancestors came with William the Bastard and conquered their lands with the sword, and by the sword I will defend them from anyone intending to seize them”⁴². By this statement the earl legitimized his rights to the land. He owed his position to his ancestors who had accompanied William the Bastard in 1066. By facing the hardship of the campaign, they had also divided spoils of war. These ancestors had become the lords of particular part of kingdom by virtue of the right of conquest. In the earl’s opinion, his contribution to the victory made his right to land obvious enough. It was not the document that gave evidence of the predecessors participation in Wilhelm’s campaign (and of the right to the land then conquered!), but the old rusty sword which had been used over 200 years before in the victorious war.

The chronicler’s record gives some opportunities to understand the Earl’s attitude. We shall allege to two evidences. According to Matthew Parris, the chronicler residing at St Albans abbey, it is commonly known that the kingdom was not created on the basis of written law or by clergy conceit, but because of war difficulties⁴³. The author of *Vita Edwardi Secundi* has given similar opinion, noting that Robert Bruce regarded the Kingdom of Scotland to be in his possession due to both the hereditary right and the right of conquest⁴⁴. Each of two authors being in fact intellectualists, for each of whom the reality of their times constituted the precious source of knowledge. In their case, it was surely not the life motto, but consciousness in the vision of the world they had to lived in.

What chroniclers expressed in general and occasional manner, at the time of Quo Warranto investigations people of the king articulated far more strongly. We

⁴² WG, p. 216.

⁴³ *Mathei Parisiensis Chronica Majora*, ed. H.R. Luard, Roll Series, London: Longman 1872–1884, vol. 4, p. 593.

⁴⁴ *Vita Edwardi Secundi*, op. cit., p. 94.

have already mentioned about great efforts of Edward I's administration to inquire material and legal status of his tenants on a large scale. A significant number of English nobles had to deal with difficulties of proving their rights on the grounds of the document. Not many were able to submit such document. Those who did not manage to do so, made an attempt to advocate their rights referring to historical argument that they indeed possessed a property or franchise since they remember (*tempus non extat memoria*), or since the times of Norman Conquest.

In 1279, certain Thomas de Furnivall was asked by the royal judges by what right he was taking advantage of numerous privileges (e.g., the right to execute death sentence or the privilege of waving stray animals) at the territory of Sheffield, and why he did not want to let one of the royal bailiffs into his property. He defended himself by claiming that he made the most of franchises on the grounds that "he and all his ancestors had there from the conquest of England". As with the royal administrators he said that "he and all his ancestors from the conquest of England had used such liberty"⁴⁵. In order to avoid repetition, we will only add that in the matter of other disputable issues the argument mentioned above was used by Thomas at least two times more. By virtue of the document from Henry III's times, he managed only to prove an agreement for fortifying his castle⁴⁶.

The arguments of the Earl Warenne or Thomas de Furnivall was widely used⁴⁷. Notwithstanding the subject of the dispute, people referred to the right of conquest. For instance, Hugo de Euere came to be judged and said that his ancestors had hold the property in Stokesley since the conquest, together with many privileges, such as the right to punish a thief caught in the act (*infangthief*)⁴⁸. Certain Baldwin Wake supported his rights by the fact that "his ancestor had come with William the Bastard conqueror of England, and obtained the said manors and used the liberties all his times as joined to the manors"⁴⁹. Extremely compelling and interesting reference is given to Yorkshire. The royal administrators asked some Wilhelm, son of Thomas, by what right he did not attend in his senior's court, what was in

⁴⁵ YQW, p. 124.

⁴⁶ Ibidem, p. 124–125.

⁴⁷ Ibidem, p. 128, 132, 144, 146, 152–155, 160, 168, 170–171, 173, 181, 198; D. Sutherland, op. cit., p. 82–110. The tradition of conquest remained present up to the later period. For example, we know that in 1466 John Paston stood before the king Edward IV. John was a prominent figure representing his family. Owing to rich correspondence material we are acquainted with the history of his family. The aim of Paston's meeting with the monarch was, *inter alia*, the response for the accusation of their rustic origins. John defended his nobility, claiming that the Paston direct relatives had noble roots since the time of conquest, when their first ancestor had come to France, q.v. *Paston's Letters and Papers of the Fifteenth Century*, ed. N. Davies, Oxford: Oxford University Press 1971, No. 897.

⁴⁸ YQW, p. 148–149.

⁴⁹ Ibidem, p. 162.

fact one of the most important feudal obligations of a tenant. Wilhelm responded that he held the lands within the scope of discussion: “from John de Warenne earl of Surrey, which earl and all his tenants in that country were and had been free from all kinds of suits of country, hundred and riding from the time of the conquest of England”⁵⁰. These words are of highest importance to us as they can be easily bound with the message of the chronicler from Guisborough.

Coming up to the conclusion, we shall epitomize the justification of the rhetoric of conquest once more. To some extent, the following description illustrates our thesis a *contrario*. At Easter of 1293, bishop Hereford stood before The Court of King’s Bench in order to prove by what right he held jurisdiction over pleas of the Crown (*placita corone*). The bishop testified that his predecessors had had the jurisdiction over such matters since time immemorial (*a tempore quo non extat memoria*). Associating the bishop’s words with the argument for the conquest, the royal judge, Hugo Lowther replied: “the said Bishop cannot show that anyone of his predecessors had arrived with the Conqueror and had had those liberties by conquest, because the aforesaid bishop and all his predecessors were men of religion and enfeoffed of their tenements and liberties by others”⁵¹. The high-ranking royal administrator unintentionally stated that the right of conquest had been practiced. By claiming that bishop Hereford cannot exercise the right to conquest as, similarly to his predecessors, he is a clergyman and their rights are acquired in a different manner, the administrator ipso facto agrees with secular people. The fact that the clergy was denied similar argumentation should be associated with canonical prohibition against bloodshed.

In view of the material presented, the particular manner of the legitimization of power by English nobles does not surprise us at all. Thus, by their participation in the conquest, they all have the power over kingdom. What is interesting, royal administration shared our views in this matter. Political theory that the rights to the Crown cannot be divided and that the Crown has inalienable domain was proposed and then followed in that times. Moreover, the properties which had belonged to Wilhelm according to Domesday Book and were officially judged to be his ownership after the conquest, were regarded as so-called ancient demesne. Not accidentally, this great record of English administrative abilities in the Middle Ages was used when the revindication of the demesne, reduced with the passing

⁵⁰ Ibidem, p. 140.

⁵¹ Dictus episcopus ostendere non potest quod aliquis predecessorum suorum venisset cum conquestore et libertates illas habuisset per conquestum, quia dicit quod predictus episcopus et omnes predecessores sui fuerunt religiosi et feoffati de tenementis et libertatibus suis per alios – *Select Case before the Court of King’s Bench under Edward I*, ed. G.O. Sayles, London: Selden Society 1936, p. 142.

of time, started⁵². By referring to the times of William the Conqueror, then the royal administration claimed the argument of power, associated with sword, to be the foundations of their existence. When following legists during Quo Warranto investigation, people of kingdom started to evoke the memories for Norman Conquest, irrespective of the fact that it was frequently done without any reason. Then it turned out how dangerous the argument of power was. That was the context for the old and rusty sword evoking the grandeur of its ancestry.

All in all, we shall stress that in the process of investigations, the royal administration was forced to come to compromise. In Quo Warranto statute of 1290, it was determined so as to make the right of property based on the document equal with the rights based on the actual, continuous holding of a land or franchise. The year 1189 was established to be the point in the past since the rights to the property had to be proven⁵³. This statute, at least partially, fulfilled expectations of English landowners, who by virtue of its content could preserve their estates. That was the way how the rusty sword served to be the effective evidential material.

Translated by Sylwia Gierada

⁵² R.S. Hoyt, *Royal Demesne in English Constitutional History 1066–1272*, Oxford: Oxford University Press 1950; M. Powicke, *The Thirteenth Century England 1216–1307*, Oxford: Oxford University Press 1953, p. 521–522; D. Sutherland, op. cit., p. 13–14; G.L. Harris, *King, Parliament and public finance in Medieval England to 1369*, Oxford: Oxford University Press 1975, p. 134–145; M. Prestwich, op. cit., p. 524; *The Earliest English Law Reports*, ed. P. Brand, London: Selden Society 1996, vol. 2, p. 198; E. Kantorowicz, *Dwa ciała króla. Studium ze średniowiecznej teologii politycznej*, Warszawa 2007, p. 268–304.

⁵³ D. Sutherland, op. cit., p. 154 and next.

Streszczenie

„Gladius antiquus et eruginatus”. Miecz jako środek wspierający prawo w średniowiecznej Anglii

Przedmiotem niniejszej analizy są przekazy pochodzące z Anglii z XIII i XIV wieku, dzięki którym możliwe było uchwycenie szczególnej roli miecza na gruncie prawa. Jak się wydaje, w świetle przeprowadzonej analizy, możliwe jest przypisanie mieczowi roli nośnika prawa, czy może nawet środka dowodowego w procesie sądowym. Siła miecza bierze się ze stosunkowo niskiego poziomu rozwoju kultury prawnej, która pomimo starań władzy państwowej nie osiągnęła pożądanego przez władców standardu (jak choćby powszechne posługiwanie się dokumentem). Chociaż problem jest w gruncie rzeczy uniwersalny dla całego średniowiecza, to jednak szczególnie bogaty materiał prawniczy powstał w wyniku tzw. śledztw *quo warranto* (1278–1294) i daje on podstawy do formułowania pewnych wniosków na gruncie angielskim.

Summary

“Gladius antiquus et eruginatus”. A sword as a medium supporting the law in England in the late Middle Ages

The article is devoted to the legal significance of a sword in the Middle Ages. The author analysed the texts from the 13th and the 14th century, thanks to which it was possible to show a special role of this kind of weapon in the field of law. The conducted analysis proves that a sword might be perceived as a means of conveying the law. The power of a sword comes from the considerably low level of the legislative culture which, despite of the efforts of the royal administration, had not reached a satisfying standard. Although this problem was common in medieval times, the interesting documents which were written down during the so called *quo warranto* investigation (1278–1294) allow to draw certain conclusions about the functioning of the system of law in medieval England.