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Arbitration and Dispute Resolution in Wales During the Age of the Princes, c.1100 - c.1283

McGuinness, Shaun

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INTRODUCTION

In recent years, arbitration, as a type of Alternative Dispute Resolution ('ADR'), has been very much in vogue. Its perceived benefits of lower costs, the flexibility of procedure, combined with the ability of the parties to choose the arbitrators (who may be specialists in the particular field concerned), and the speedier resolution of disputes as well as the durability of settlements and awards have led many in the legal profession to consider it a better option than pursuing litigation through the courts.

This dissertation will consider arbitration and dispute resolution in Wales during the Age of the Princes *c*.1100 – *c*.1283 based on a detailed analysis of the extant primary sources. The aim is to identify different types of dispute resolution, the contexts in which they are used and the respective roles of princes, lords, arbitrators, semi-professional lawyers, the Church and Welsh medieval society in general. The dissertation will also consider how the mechanisms for resolving conflict varied within *Pura Wallia,* that is between Gwynedd, Powys and Deheubarth, and in turn, how the same were similar to, or differed from, those in the March, in England and western Europe for the same period.[1]

Contained in the marginalia at the end of Matthew's Gospel in the St. Chad Gospels now in Lichfield Cathedral is the record of a dispute settlement written in Old Welsh in the ninth century. This is the so-called *Surexit* Memorandum.[2] It records that after a long dispute, concerning the ownership of land, 'the goodmen said to each other let us make peace … in order that there might not be hatred … from the ruling afterwards till the Day of

[1] The boundaries between *Pura Wallia* and *Marchia Wallie* fluctuated between 1100 and 1282-3 according to the relative strengths of the Welsh princes on the one side and the Anglo-Norman Marcher lords and king of England on the other. Some idea of this fluctuation is given by the maps in Appendix Two to this dissertation.

[2] A copy of the *Surexit* Memorandum is in Appendix Three.

Judgement.'[3] It concludes with 'Whosoever observes it [i.e. the settlement] will be blessed, whosoever breaks it will be cursed.'[4] So as early as the ninth century we have in Wales all the basic elements of dispute resolution; the dispute itself, the desire to come to a settlement, a sanction for non-compliance and a realisation that a record of the settlement was preferable.

Dispute settlements are mentioned in the Welsh prose tales *The Mabinogi* (the date of which current scholarly consensus puts at between 1060 and 1200, although the stories hark back much farther in time). In *Geraint ac Enid,* one of *Y Tair Rhamant* associated with *The Mabinogi,* there is a dispute concerning boundaries which involved 'Gereint going off with his "gwyrda"[i.e. goodmen], having the boundaries pointed out to him, and then he himself, apparently because he had superior "braint", fixed the boundaries accordingly.'[5] Further, nouns such as *ammouyn* (*ymofyn*) meaning claim, *iawn* meaning right or justice and *carennydd* or *cerennydd* meaning a legal relationship reached on settlement of a dispute are used in *The Mabinogi.*[6]

A legal triad, in a late thirteenth-century Welsh law-book written in Latin, states that there are three ways in which a dispute might be determined; namely by agreement between the parties ('*per coadunationem litigantum*'), secondly by decision of arbitrators, that is *kymrodeddwyr* ('*vel terminus per arbitros, id est, kymrodeddwyr*') and thirdly by judgement

[3] D. Jenkins and M. E. Owen, 'The Welsh Marginalia in the Lichfield Gospels', *Cambridge Medieval Celtic Studies* 7 (1984), 51.
[4] *ibid.*
[5] T. P. Ellis, 'Legal References, Terms and Conceptions in the "Mabinogion"', *Y Cymmrodor* 39 (1928), 146-7.
[6] J. K. Bollard, 'Mefyl ar uy maryf i':Myth and Motivation in The Mabinogi', unpublished paper, North American Association for the Study of Welsh Culture and History Biennial Conference, Bangor University, July 2012.

('*vel terminus per iudicium*').[7] The same triad appears in a law-book written in Welsh.[8]

Elsewhere in Europe an arbitration, and the procedure employed in it, is brought to our attention by Giraldus Cambrensis. In his *Expugnatio Hibernica*, Giraldus refers to an arbitration by Henry II in 1177 concerning a territorial dispute between Castile and Navarre. Ambassadors came to England from Castile and Navarre and 'agreed to abide fully by the judgement of the English king in the matter of certain lands and castles which had been a source of great contention between them. So the king assembled in London all those skilled in law, and men of wisdom both lay and clerical from throughout his whole kingdom. Since the merits of any two sides to a lawsuit are set forth in statements from both parties, they listened to first-rate advocates and lawyers making claims on one side and the other.'[9] Gerald in describing Henry's efforts to provide a just decision says that 'The king, relying on wise counsel, decided to tread a middle path and worked towards ending the quarrel by means of an agreed settlement, so that each should give something and retain something, and neither side suffer any excessive loss of land.'[10] Both Castile and Navarre rejected the award made, and eventually made their own agreement. Whilst the case highlights the elements of a dispute resolution process outside Wales, as will be shown by this dissertation what took place inside Wales was not that dissimilar; the desire to reach an amicable settlement being particularly relevant even though such a settlement might not be achieved immediately or might be elusive.

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[7] *Latin Texts*, p. 357.
[8] *Ancient Laws*, i, p. 467 – in A. Owen's 'Dimetian Code'.
[9] A. Breeze, 'Gerald of Wales's *Expugnatio Hibernica* and Pedro of Cardona (d. 1183), Archbishop of Toledo', *National Library of Wales Journal*, 29, 3, (Summer 1996), 337.
[10] *ibid.*

Previous scholarly work has looked at arbitration and dispute resolution in medieval England and western Europe in some depth. In comparison relatively little has been written about medieval Wales. Whilst writing about the Anglo-Scottish border Cynthia J. Neville stated that the success of arbitration depended heavily on the good will of the parties and the trust and approval of the community.[11] Successful arbitration was highly valued as it resulted in peace and the repair of social relations dislocated by feud.[12] In fact recent scholarship has highlighted the importance of dispute resolution in maintaining social relations and avoiding recourse to violence.[13] It has been said that one of the first causes of a legal system is the desire to prevent or discourage feuding by offering a peaceful alternative.[14] The community could assist by encouraging the parties to settle their differences or submit them to arbitration.[15] Anger has been spoken of as a social signal which paradoxically helped keep the peace because, inter alia, one of its consequences was the settlement of disputes.[16] Paul Hyams, in the same vein, has said that feud was a live process with a positive side.[17]

As regards Wales, Llinos Beverley Smith has commented that the poetry of the period provides a splendid vein of comment upon the perceived effects of conflict and disharmony upon the fabric of society.[18] Indeed she points out that the Welsh language was itself rich in

[11] C. J. Neville, 'Arbitration and Anglo-Scottish Border Law in the Later Middle Ages', in M. Prestwich (ed.), *Liberties and Identities in the Medieval British Isles* (Woodbridge, 2008), p.53.
[12]*ibid*., pp. 53-4.
[13]Including *ibid*, 37-55 and B.H. Rosenwein (ed.), *Anger's Past: The Social Uses of an Emotion in the Middle Ages* (Ithaca, New York, 1998).
[14]J. H. Baker, *An Introduction to English Legal History.* 4th edn (Oxford, 2002), p. 4.
[15] *ibid.*
[16] Rosenwein (ed.), *Anger's Past*, p. 5.
[17] P. R. Hyams, *Rancor and Reconciliation in Medieval England* (London, 2003), p. xvi.
[18] L. B. Smith, 'Disputes and Settlements in Medieval Wales: The Role of Arbitration', *English Historical Review* 106 (1991), 839.

the vocabulary of arbitration and compromise.[19] Dafydd Jenkins, in the introduction to his translation of the Iorwerth Redaction of the Welsh laws, said that Irish parallels show that early on there was an effective encouragement to submit disputes for arbitration.[20] Native law in Wales before the Edwardian Conquest, R.R. Davies argued, was to a considerable degree arbitrative in its operation and collective in its judgements as well as informal in its methods.[21] The communal element was woven into the texture of native law and custom.[22] Similarly, Wendy Davies when writing about early medieval Wales has stated that disputes were settled with reference to customary rules and procedures, often administered by local worthies like elders.[23] However, save for David Stephenson's pamphlet considering a case involving arbitration from early thirteenth-century Arwystli,[24] and an article by J. Beverley Smith[25] (which concentrates on procedures in Welsh courts) and another by Llinos Beverley Smith[26] (whose article concentrates on late medieval Wales), little has been done to date to consider in detail the extant documentation concerning individual dispute resolutions in the period before the extinction of native rule in 1282-3.

The main research question of the dissertation is 'How were disputes resolved in medieval Wales during the Age of the Princes *c*.1100 – *c*.1283 and what part did arbitration play?' In order to answer this question, it will be necessary to pose certain subsidiary questions namely: (a) What methods were recognised by the medieval law-texts for resolving

[19] *ibid.*
[20] *Law of Hywel Dda*, p. xviii.
[21] R.R. Davies, 'The Administration of Law in Medieval Wales: The Role of the Ynad Cwmwd (Judex Patrie)', in T.M. Charles-Edwards, Morfydd E. Owen and D.B. Walters (eds), *Lawyers and Laymen* : *studies in the history of law presented to Professor Dafydd Jenkins on his seventy-fifth birthday Gŵyl Ddewi 1986*, (Cardiff,1986), 258-273. p.261.
[22] *ibid.*
[23] W. Davies, *Wales in the Early Middle Ages* (Leicester, 1982), p.134.
[24] D. Stephenson, *Thirteenth Century Welsh Law Courts* (Aberystwyth, 1980).
[25] J. B. Smith, 'Judgement under the Law of Wales', *Studica Celtica* 39 (2005), 63 – 103.
[26] L. B. Smith, 'Disputes and Settlements', 835-60.

disputes?, (b) Were the methods followed in practice?, (c) How were settlements recorded and is the written evidence broadly representative of the type and number of disputes settled ? (d) How did dispute resolution and arbitration differ within *Pura Wallia*?, (e) How similar was native Welsh dispute resolution to English and western European dispute resolution and to that in the March?, (f) What was the role of the Church, princes, lords, the community and others?, (g) What legal weight did an arbitration award carry and was the award routinely followed by the parties?, and (h) Were there sanctions for non-compliance?

The extant primary sources, relevant to this dissertation, consist of; (a) charters, often in favour of religious houses, where the beneficiaries included the Cistercian abbeys of Margam,[27] Strata Marcella,[28]and Valle Crucis[29]; (b) cartularies of religious houses, such as Brecon Priory,[30] and the abbeys of Haughmond[31] and Shrewsbury[32]; (c) episcopal *acta* of the bishops of Llandaff[33] and St. David's[34]; (d) collections of ecclesiastical sources such as *Llyfr Coch Asaph,*[35] *Councils And Ecclesiastical Documents Relating To Great Britain And*

[27] Margam Abbey Charters - all have been published in *Cartae*.
[28] Strata Marcella Charters – thirty five original charters all of which have been published in G.C.G. Thomas (ed.), *Ystrad Marchell Charters: The Charters of the Abbey of Ystrad Marchell* (Aberystwyth, 1997). There are also on-line facsimiles of the original documents on the National Library of Wales website - *Ystrad Marchell*.
[29] Valle Crucis Charters - transcripts of some of these are to be found in *Montgomeryshire Collections.* Further H. Pryce has re-edited those issued by Welsh rulers in *AWR*.
[30] R. W. Banks (ed.), *Cartularium Prioratus S. Johannis Evangelistae De Brecon* (London, 1884).
[31] Important as a record of, inter alia, grants by various Welsh princes to the abbey - *Cart. Haughmond.*
[32] *Cart. Shrewsbury.*
[33] *Llandaff Episcopal*.
[34] *St David's Episcopal*.
[35] *Llyfr Coch Asaph* - there are four manuscripts which are regarded as transcripts of, the now lost, *Llyfr Coch Asaph,* a medieval record relating to the diocese of St. Asaph, which in large part covers the period 1220 to 1346. A large number of the matters referred to within the manuscripts relate to disputes and law-suits. The four manuscripts are deposited at the National Library of Wales, Aberystwyth. They are as follows; A. *Llyfr Coch Asaph* MS. Dd. (N.L.W. SA/B/1), B. Peniarth MS. 231B, C. Nefydd MS. No.1. (N.L.W. MS. 7011 D), D. St. Asaph

Ireland[36] and *Monasticon Anglicanum*[37]; (e) narrative sources like *Brut y Tywysogyon*[38] and *Annales Cambriae* [39]; (f) administrative documents issued by the English royal chancery, including the 'Calendar of Welsh Rolls'[40] and *Littere Wallie preserved in Liber A in the Public Record Office,*[41] and (g) the Latin and Welsh redactions of the medieval Welsh Laws; approximately forty manuscripts of Welsh law survives from the period covered by this dissertation and later (six of which are written in Latin, the rest in Welsh).[42]

MS. No.2. (N.L.W. SA/B/2). Manuscripts B, C and D contain a list of contents, *Summa Libri Rubei Assaphensis*, compiled in 1602. A fifth manuscript, namely *Liber Pergameneus* (N.L.W. SA/MB/22), is closely associated with the four transcripts. The texts of all the manuscripts are set out in *Llyfr Coch Asaph Thesis*.

[36] Contains various ecclesiastical documents – *Councils.*

[37] Contains records for Wales as well as England - W. Dugdale, *Monasticon Anglicanum*, ed. J. Caley, H. Ellis and B. Bandinel, 6 vols in 8 (London, 1817-30).

[38] This medieval Welsh 'Chronicle of the Princes' is relevant to general conflict resolution. There are two versions, firstly, *Brut Peniarth* and secondly T. Jones, (ed. and trans.), *Brut Y Tywysogyon or The Chronicle of the Princes, Red Book of Hergest Version* (Cardiff, 1955)).

[39] Relevant to general conflict resolution in Wales - J. Williams ab Ithel (ed.), *Annales Cambriae* Roll Series (London, 1860) and P. M. Remfry, *Annales Cambriae* (2007).

[40] *Calendar of Welsh Rolls*. Includes records of testimonies given at the commission of inquiry appointed by Edward I in 1281 to investigate *Cyfraith Hywel.*

[41] Welsh documents for the period 1217-92 were copied by the English exchequer in to the register known as Liber A *c*.1292. J.G. Edwards (ed.), *Littere Wallie preserved in Liber A in the Public Record Office* (Cardiff, 1940).

[42] The Latin redactions of the Welsh laws are; Latin A: N.L.W., Peniarth MS 28, Latin B: British Library, Cotton MS Vespasian E.xi, Latin C: British Library, Harleian MS 1796, Latin D: Oxford, Bodley MS Rawlinson C 281, Latin E: (a) Cambridge, Corpus Christi College MS 454 and (b) Oxford, Merton MS 323. The vernacular redactions are: Cyfnerth (the 'Gwentian Code' according to *Ancient Laws*), Blegywryd (Aneurin Owen's 'Demetian Code') and Iorwerth (Aneurin Owen's 'Venedotian Code'). The Latin texts of the Welsh laws have been published starting with *Latin Texts* and continuing with various more recent works namely H. Davies (ed. and trans.), 'Latin Redaction E', in *Lawyers and Laymen: Studies in History of Law Presented to Professor Dafydd Jenkins on his seventy-fifth birthday, Gwyl Ddewi 1986*, ed. T. M. Charles-Edwards, M. E. Owen and D. B. Walters (Cardiff, 1986); Ian Fletcher (trans.) *Latin Redaction A of the Law of Hywel* (Pamffledi Cyfraith Hywel, Aberystwyth, 1986); H. Pryce, 'The Prologues to the Welsh Lawbooks', *Bulletin of the Board of Celtic Studies* 33 (1986), 151-82 ; S. E. Roberts (ed. & trans.), *The Legal Triads of Medieval Wales* (Cardiff, 2007); P. Russell (ed. and trans.), *The Prologues to the Mediaeval Welsh Law-books* (Cambridge, 2004); P. Russell (ed. and trans.), 'The Three Columns of Law from Latin D (Oxford, Bodley, Rawlinson C 821)', in *Tair Colofn Cyfraith: The Three Columns of Law in Medieval Wales*, The Welsh Legal History Society, V (2005) , ed. T. M. Charles-Edwards and Paul Russell (Bangor:

The methodology of this dissertation has been to analyse, record and present, in chronological order, the relevant agreements, arbitration awards, settlements and other documentation, found in the primary sources, in the systematic form set out in the charts in Appendix Four. The charts have been designed to portray the contents of each document in a format which facilitates comparison. The majority of the primary sources are in Latin and where instructive relevant Latin text has been included. Further, where it appears in the primary source, Welsh text is also included.[43] The results of the analysis of the individual documents as presented in the charts have gone a long way to answering the main research question and subsidiary questions posed above.

Of course not all dispute settlements will have been committed to writing. Some will no doubt have been recorded by being entrusted to the memory of witnesses rather than written down. Another problem, which is not easily overcome, is the fact that only a minority of the extant charters, *acta* and other documents derive from archives which have survived in Wales. For example, whilst two monastic archives, namely those of Margam and Strata Marcella, are of great importance, original documents surviving from other religious houses in Wales are scarce. Further, of the extant texts issued by the rulers of Gwynedd, the dominant native dynasty in the thirteenth century, seventy per cent are preserved only in

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The Welsh Legal History Society, 2007); P. Russell (ed. and trans.) *Welsh Law in Medieval Anglesey. British Library, Harleian MS 1796* (Latin C), Texts and Studies in Medieval Welsh law II (Cambridge: ASNC, 2011). As regards the Welsh texts of the laws, Dafydd Jenkins has published a translation of the Iorwerth Redaction; *Law of Hywel Dda*. Other works are helpfully listed in T.M. Charles-Edwards, *The Welsh Laws* (Cardiff, 1989), pp. 95-6. One of the most important is *Ancient Laws*, a monumental work, providing a wider range of variant versions and readings than the more modern editions of single manuscripts or groups of manuscripts

[43] Welsh text, if it does appear in the extant documentation which is the subject of the charts, tends to clarify something not readily translated into Latin or refers to a Welsh legal or quasi-legal concept.

the English royal archives, now held in The National Archives.[44] They were preserved only to the extent they were of interest to Edward I's officials after the conquest of 1282-3.[45] These facts necessarily highlight a weakness in the extant evidence and caution needs to be exercised when drawing conclusions from an investigation of the same as the surviving documentation may not be as representative as one would like.

L. Beverley Smith, commenting on the Welsh legal triad mentioned above, has stated that it is difficult to judge how the principles set out in the Welsh law-texts for settling disputes were translated into legal practice because our early illustrative material is exiguous.[46] With the help of the charts in Appendix Four, this dissertation will seek to shed more light on the ways in which disputes were settled in Wales *c*.1100 – *c*.1283.

[44] *AWR*, p. 50.
[45] *ibid*., p. 52.
[46] L. B. Smith, 'Disputes and Settlements', 839.

CHAPTER 2 – DOCUMENTS AND AGREEMENTS

This chapter will consider firstly the importance of written records, secondly the type of extant documentation in which individual dispute resolutions are articulated and thirdly the provisions of the agreements or arbitration awards themselves.

Importance of Written Records

The importance of recording agreements in writing and the power of the written word in medieval Wales is clear from the surviving evidence. In a confirmation of gift of lands to the abbey of Strata Marcella, by way charter, in 1191, Gwenwynwyn ab Owain Cyfeiliog stated that 'nothing resisteth forgetfulness and false claim more effectively than a written record.'[47] Similar sentiments are to be found in the extant records of dispute resolution. In the peace agreement between Llywelyn ap Gruffudd and his brother Dafydd of 1269 it was stated that '*Ut forma supradicta in omnibus et singulis suis articulis inposterum firma maneat*'[48] (In order that the aforesaid form might in each and every article remain firm in posterity) Llywelyn has had his seal and those of the bishops attached to the letter.[49] Indeed such was the importance of the written record that one party, who had agreed to transfer to Bishop Elias and the chapter of Llandaff a particular church, insisted on the referral to arbitration if 'the documents relating to this business fall apart with age.'[50]

Of course, as M. T. Clanchy has pointed out, documents tended to be kept by those they benefitted.[51] The Church had, by way of scribes, the means of recording dispute resolution

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[47] *Ystrad Marchell.* Charter no. 14.
[48] *AWR*, p. 547.
[49] See Chart number 44.
[50] *Llandaff Episcopal*, p. 61 and see Chart number 21.
[51] M.T. Clanchy, *From Memory to Written Record: England 1066-1307* , 2nd edn (Oxford, 1993), p. 92.

that was in their favour and the Arwystli case is a good example of this.[52] Wendy Davies has commented that *Liber Landavensis*[53] (*Llyfr Llandaf*), compiled between 1120 and *c*.1129, appears to have been produced to help in Bishop Urban's diocesan boundary disputes with the dioceses of St David's and Hereford.[54] The princes too had the means of documenting favourable agreements, settlements, pacts, and sometimes trials. The entry in *Brut Y Tywysogyon* for the year 1216 states that when Gwenwynwyn (ab Owain Cyfeiliog) sided with King John 'and renounced and scorned the oaths and pledges and charters'[55] which he had given to Llywelyn ap Iorwerth and to the other princes and leading men, Llywelyn 'sent bishops and abbots and other men of great authority to him, and with them the tenor of the cyrographs and the charters and the pact and the homage he had done to him, to beseech him to return.'[56] Similarly the trial of Gruffudd ap Gwenwynwyn and his son Owain, in 1274, on a charge of infidelity against Llywelyn ap Gruffudd, in front of eight arbitrators, was documented.[57]

In the dispute resolution process the production of written evidence (whether in the form of charters or written testimony) could be decisive. In a dispute of the early thirteenth century, written testimony to support the prior grant of easements ('*aisiamenta*') i.e. rights in land, was provided. Morgan ap Caradog 'has ordered this truthful testimony ['*hoc testimonium veritatis'*] to be written so that the truth will be known.'[58] Written evidence was sometimes

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[52] See below and Chart number 16.
[53] J. Gwenogvryn Evans (ed.), *The Text of the Book of Llan Dâv : reproduced from the Gwysaney Manuscript* (Aberystwyth, 1979).
[54] W. Davies, *The Llandaff Charters* (Aberystwyth, 1979), p. 2.
[55] *Brut Peniarth*, p.92.
[56] *ibid.* Llywelyn used force against the lord of Powys Wenwynwyn when this approach failed.
[57] J.B. Smith, *Llywelyn ap Gruffudd, Prince of Wales* (Cardiff, 1998), pp. 370-3 and see Chart number 50.
[58] *AWR*, p. 273 and Chart number 9.

used to support oral evidence. Such a combination produced by, or on behalf of, one side in a case could be overwhelming. A dispute, of 1217, concerning a portion in a church, was resolved after one of the parties, namely Shrewsbury Abbey, offered an inspection of their muniments ('*munimentorum ipsorum*'[59]), which together with oral testimony led the other party, Hywel ap Madog ap Gruffudd, to resign ('*resignavi*') any right ('*iuris*') he thought ('*credebam*') he had in the portion ('*portione*') into the hands of two masters appointed to hear the case.[60] Similarly, in the judgement by Elias, bishop of Llandaff and Morgan Gam of April 1234, concerning various disputes, including one pertaining to hereditary right in land, between *'domum de Margan'*[61] (the House of Margam) and *'Resum Coh juniorem'*[62] (Rhys Goch the younger), it was stated that it had 'been sufficiently shown by the charters … as well as oral testimony, that the said land was given irrevocably to Margam in perpetual alms'.[63]

The importance of written records is highlighted once again by a notarial instrument ('*instrumentum*'[64]) dated 3 July, 1308, which published seven records clarifying the rights and interest of the Hospitallers of Slebech in lands and churches which had been in dispute between them and the abbey of Talley, particularly in the church of Troedyraur. On 31 July, 1308, brother William de Hulles, master of the hospital of St. John of Slebech, recited the records in the presence of witnesses in the chapel of St. Mary of Llawhaden and the notary

[59] *Cart. Shrewsbury*, vol II, p. 333.
[60] See Chart number 18.
[61] *Cartae*, vol. II, p. 499.
[62] *ibid*., p. 500.
[63] *AWR*, p. 309 and see Chart number 22.
[64] B. G. Charles, 'The Records of Slebech', *National Library of Wales Journal*, Series 5, Number 3, (Summer 1948), 179-98 (180-90).

public ('*Notarii publici*') duly recorded the proceedings in his instrument. The first record was of an arbitration of 1148 X 1154.[65]

Type of Documentation

The document containing details of the arbitration (and any subsequent award or settlement) might be a '*carta'*[66] (charter) or a '*litteras*'[67] (letter) or a '*scriptum*'[68] (deed). On other occasions the relevant document is a truce,[69] or the transcript of the account of a trial[70] and on others an act of a Welsh leader[71] or churchman.[72]

One popular method of ensuring that an agreement was not only recorded but also that both parties retained an identical copy of the same was the use of a chirograph. This was in the form of an indenture and its usage continued until fairly recently, such was its user friendly simplicity. Examples include the '*CYROGRAPHUM*'[73] recording '*amicabili compositione*'[74] (an amicable agreement) of 1173 X 1178 between two Welsh abbeys;[75] and the 'bipartite chirograph' of December 1263 recording an agreement between Llywelyn ap Gruffudd and Gruffudd ap Gwenwynwyn.[76] The 1263 agreement concerned not only the general resolution of disputes but also homage and fealty and it reflected contemporary political reality and the power of Gwynedd over Powys and as such the chirograph was the

[65] See Chart number 2.
[66] See for example Chart number 1.
[67] See for example Chart number 24.
[68] See for example Chart number 8.
[69] See for example Chart number 33.
[70] See for example Chart number 50.
[71] See for example Chart number 54.
[72] See for example Chart number 5.
[73] *Cartae*, vol. I, p.152
[74] *ibid.*
[75] See Chart number 6.
[76] See Chart number 38.

perfect instrument for recording it.[77] The Powysian prince could not argue later that he didn't have a copy or didn't recall the terms or didn't agree to certain provisions.[78] Perhaps Llywelyn had in mind his grandfather's altercations with Gwenwynwyn ab Owain Cyfeiliog of 1216, mentioned above.[79]

An exchange of letters patent, such as in the case of the exchange of '*patentibus litteris*'[80] (to which the arbitrators attached their seals) between Richard, bishop of Bangor and Llywelyn ap Gruffudd in April 1261[81], was another way of ensuring powerful men each had a record of the agreed terms.

Provisions of the Arbitration Awards and Dispute Settlements

Whilst the address was often formulaic,[82] the actual provisions of the agreements and arbitration awards were many and varied.

Description of Award or Settlement

The terms used to describe what the parties desired to achieve varied. In 1148 X 1163 the bishop of Hereford wrote to the bishop of St. David's asking him to meet the bishop of Llandaff at Hereford to settle a dispute, for the good of peace and compromise ('*pacis et concordiae bonum'*[83]). The terms used to describe the provisions actually agreed, or the

[77] Similarly, the Treaty of Gloucester, made between Henry III and Dafydd ap Llywelyn, which again concerned, inter alia, homage had for further '*securitatem*' (security) been drawn up '*in modum cyrographi*' (in the form of a chirograph) - See Chart number 26.
[78] Of course, he might argue something else such as duress.
[79] *Brut Peniarth*, p. 92.
[80] *Llyfr Coch Asaph Thesis*, Part I, p. 63.
[81] See Chart number 34.
[82] For example – '*Omnibus tam presentibus quam futuris ad quos presens pervenerit scriptum … salutem'* (*AWR,* p.158. and Chart number 16); '*Notum sit tam presentibus quam futuris quod hec … compositio fuit facta …*' (*AWR,* p.635 and Chart number 31);
[83] *Councils*, vol. I, p. 358 and see Chart number 3.

arbitration award made varied too. Terms included *'concordia'*[84] (agreement, concord, harmony, settlement[85]) and '*compostio'*[86] (agreement, composition, peace, settlement[87]) which are both commonly used; '*conventio*' (agreement[88]) is used less frequently.[89]

Agreement to Accept Arbitration

Occasionally there would be a prior agreement, an agreement to accept arbitration. In a boundary dispute of 1279 between the abbot and convent of Strata Florida and Cynan ap Maredudd ab Owain and his men of Caron, an agreement to accept arbitration was drawn up and executed. This was followed in January 1280 with an arbitration award (by way of letters patent). In the agreement to accept arbitration the parties swore to adhere by the arbitration and 'accept whatever the three arbitrators shall determine.'[90] A penalty of 100 marks for contravention of the judgement of the arbitrators was specified. Any expenses incurred by the innocent party '*ad inquirendum iustitiam*' (in seeking justice) were to be paid by the disobedient party to '*parti obedienti*' (to the obedient party). The king (Edward I) was to have 20 of the marks to distrain and compel the '*partem rebellem*' (rebellious party) to fully observe the arbitration.[91]

In the Treaty of Gloucester Henry III and Dafydd ap Llywelyn bound themselves to accept either a unanimous or a majority verdict of the arbitrators appointed by the treaty to deal with land disputes, 'so that each side will accept and observe for ever the arbitration of all

[84] See for example Chart number 39.
[85] R. E. Latham and D. R. Howlett et al., *Dictionary of Medieval Latin from British Sources* (London, 1975 -), p. 423.
[86] See for example Chart number 42.
[87] Latham, *Dictionary of Medieval Latin,* p. 410.
[88] *ibid*., p. 479.
[89] See for example Chart number 2.
[90] *AWR*, pp. 215-6.
[91] See Chart number 55.

or the majority of these.'[92] In a '*compositio*'[93] of September 1268, made between Gilbert de Clare and '*Dominum Lewelinum principem Wallie Dominum Snawdonie*' (Lord Llywelyn prince of Wales Lord of Snowdon), both parties bound themselves in good faith ('*bona fide iniungent*') to stand by the judgement, ordinance, arbitration or award ('*stabunt per omnia et in omnibus iudicio, dicto et ordinacioni, arbitrio seu laudo*') of those chosen ('*electorum*').[94]

On other occasions one party might suggest various methods of dispute resolution, binding himself to the method chosen and the outcome. This was the case in 1275 when Llywelyn ap Gruffudd wrote to Robert, the archbishop of Canterbury, concerning various disputes with Anian II, bishop of St. Asaph, suggesting, inter alia, arbitration, inquest or resolving the disputes according to their consciences.[95]

Even if there was no current dispute, if two parties thought that there was the possibility of a dispute arising in the future they could build into their agreement provision for arbitration. Thus in *c*.1217 X February 1241, in a charter of grant and confirmation made by Morgan Gam in favour of Margam Abbey; *'si aliqua controversia emerserit'*[96] (if any dispute arises) either from Morgan Gam's side or from the monks' side, '*emendabitur inter nos amicabiliter si fieri potest*' (amends will be made amicably between us if it is possible). If not, amends will be made by arbitration. Resolution was to be had *'per arbitrium duorum vel trium bonorum virorum ex utraque parte ad hec electorum'* (by the arbitration of two or three

[92] *AWR*, p. 457 and see Chart number 26.
[93] *Cartae*, vol. II, pp. 693-4.
[94] See Chart number 42.
[95] See Chart number 52.
[96] *AWR*, pp. 305-6.

good men chosen by both parties).[97] There were similar provisions in 1230 X 1240 in a contract made between Bishop Elias and the chapter of Llandaff and Michael, abbot of Glastonbury Abbey and its convent, mentioned earlier in this chapter. The contract involved the transfer of the church of Bassaleg to Bishop Elias from Glastonbury Abbey, to hold for a rent of '*xxxv marcarum sterlingorum'*[98] (35 marks sterling) a year payable to the abbot and convent of Keynsham. Various obligations concerning, inter alia, payments, fines ('*sub pena*') for late payment, expenses and the church and its lands, are set down in the document. If at a later date it should seem to Glastonbury Abbey that it was not well treated, the bishop and his successors would 'allow the arbitration of the archbishop of Canterbury; the same if the documents relating to this business fall apart with age.'[99]

Provisions Dealing with Procedural Matters

In a well drafted agreement there would be provisions dealing with various procedural matters. Thus in the abovementioned agreement of 1268, made between Gilbert de Clare and Llywelyn ap Gruffudd, it was agreed that the chosen arbitrators were to begin their office ('*officium*'[100]) on Wednesday, 10 January 1269 at Eadbryn in Brecon. A time limit was imposed. If those chosen were unable to settle ('*non terminaverint*') the matters, the prince and earl would provide for another means of settlement ('*de alia via terminandi*') by 2 February. It was agreed that if a full settlement was not reached by either the first or the second way by 2 February, the matters were to go before Henry III.[101]

[97] See Chart number 19.
[98] *Llandaff Episcopal*, pp. 61-2.
[99] See Chart number 21.
[100] *Cartae*, vol. II, p. 694.
[101] See Chart number 42.

Agreements might also provide for other eventualities; a good example is the provision in the Treaty of Gloucester 1240 in which Henry III and Dafydd ap Llywelyn agreed that if any of the 'arbitrators dies before this arbitration is completed, or is unable to be present at the arbitration owing to a reasonable impediment, a substitute shall be found who is not suspect to either party.'[102] A similar provision is found in the '*forma compositionis*'[103] between Llywelyn ap Gruffudd and Richard, bishop of Bangor in 1261, where it was stated that if any of the men appointed to adjudicate on a particular boundary could not be present, for a necessary reason, on the day and at the place agreed, three of the arbitrators could arrange for other honest men ('*alii viri honesti*') to be chosen instead of those absent.[104]

Compromise

Stephen White drew attention to Fredric L. Cheyette who wrote that, prior to about 1250, disputes over property in southern France were usually 'settled by arbitration and compromise, when not by war.'[105] The settlements arranged by such arbiters almost invariably took the form of compromises. Usually, the arbiters 'tried to divide the object in litigation, occasionally asking one party to divide the property and giving the other the first choice, thus demonstrating true paternal wisdom. Even when a charter gave the prize to

[102] *AWR*, p. 458 and see Chart number 26.
[103] *AWR*, p. 518.
[104] See Chart number 35.
[105] S. D. White "*Pactum... Legem Vincit et Amor Judicium*" - The Settlement of Disputes by Compromise in Eleventh-Century Western France', *The American Journal of Legal History* , Vol. 22, No. 4 (Oct., 1978), 281-308, (282) referring to F. L. Cheyette, "*Suum Cuique Tribuere*," *French Historical Studies*, VI (1970), 287-99. (291).

one side the other was almost always paid off.'[106] Echoing the comments of Giraldus Cambrensis, in his *Expugnatio Hibernica,* concerning Henry II's decision in the arbitration of 1177, mentioned above, 'No one left empty-handed.'[107] According to Giraldus, the English king 'decided to tread a middle path and worked towards ending the quarrel by means of an agreed settlement, so that each should give something and retain something.'[108] It is clear from the documentation that that is precisely what the arbitrators often sought to do in Wales. So in 1146, in a dispute between Uthred, the bishop of Llandaff and Abbot Roger and the convent of Tewkesbury, concerning tithes, in return for a concession made by one side ('*pro hac concessione*'[109]) the other side remitted ('*remiserunt*') to the other certain tithes.[110] In a dispute of 1216 X 1229, inter alia, the abbot and convent of Talley relinquished ('*remiserunt*'[111]) all actions ('*omnes … actiones*') at that time relevant to the Hospitallers and in return the Hospitallers relinquished ('*remisit*') to Talley all right ('*omne ius*') in the church of St. Michael of Penbryn with its appurtenances ('*pertinentiis*').[112] Sometimes the consideration for one party remitting rights or claims was the payment of money by the other party. In 1190 seven Welshmen, in return for three silver marks (*'tres marcas … argenti*'[113]), abjured and remitted ('*abiurauerunt … et remiserunt*') upon the altar of St. Teilo and the cathedral's relics ('*reliquias*'), to the abbot and monks of Margam, all claim ('*omnem calumpniam*') on the land of Bradington for six years.[114] Similarly in a dispute that was

[106] *ibid*., 293. The division of property by one person whilst another has first choice is seen in Wales when land is divided between brothers.
[107] *ibid*.
[108] Breeze, 'Gerald of Wales's *Expugnatio Hibernica*', 337.
[109] *Cartae*, vol. I, p.102.
[110] See Chart number 1.
[111] *St David's Episcopal*, p. 108.
[112] See Chart number 17.
[113] *Llandaff Episcopal*, pp. 36-7.
[114] See Chart number 7.

submitted to arbitration in December 1247, the lay arbitrators, in their arbitration award, adjudged that there should be a public renunciation of the rights claimed by one of the parties, on a day and place to be determined, before the arbitrators and many others. They '*renunciabunt*'[115] (will renounce) 'once and for all whatever right they used to say they had.' The other party was to pay them five pounds of silver (or its equivalent value) for doing so.[116] The last two cases have an additional element as part of the compromise, as part of the reciprocal 'give and take', namely that of some form of public renunciation of one party's rights or claims in favour of the other.

Legal Status of Agreement and Articles

It is clear that, as in the modern day, those determining the actual terms of the settlement, the fine detail, wished to spell out the status of the agreement. Thus, in the Treaty of Montgomery of 1267, made between Henry III and Llywelyn ap Gruffudd, clause xv stated that 'all agreements and pacts ['*conventiones et pacta*'] between the aforesaid king and Llywelyn, or letters and documents ['*littere et scripture*'] concerning these, which contain anything contrary to the present peace and agreement or ordinance ['*paci et concordie seu ordinationi*'] shall be considered null and void.'[117]

Similarly, they were keen to make a distinction between the agreement, and its status as a whole, and that of its constituent provisions or articles. Lawyers versed in the modern day law of contract of England and Wales, as a way of ensuring that an agreement continues to be effective, will usually specify that just because one provision or article of an agreement fails this does not mean that others will also fail. This concept is hinted at in the medieval

[115] *AWR*, pp. 714-5.
[116] See Chart number 27.
[117] *AWR*, p. 538 and see Chart number 41.

documentation analysed when, on amongst other occasions, there is the ratification of all and singular articles, '*expresse ratificans in omnibus et singillis suis articulis*';[118] and again in the peace agreement of 1269, already mentioned, between Llywelyn ap Gruffudd and his brother Dafydd, it was stated that they desired each and every article to remain firm in posterity.[119] Further, following mediation in a dispute between the two princes, in 1274, there was a provision for the articles of the agreement to be submitted for interpretation and/or explanation if any doubt or obscurity should subsequently arise. It was agreed that those who had mediated, namely the bishops of Bangor and St. Asaph, would interpret and explain obscurities in the agreement, if any should emerge. A dispute did subsequently arise concerning certain articles which were 'dubious and obscure in some part'[120] and the two bishops, 'in accordance with the terms of submission,' made a 'prudent and salutary interpretation and explanation concerning the doubt and obscurity' in the articles.[121]

Other wording to better ensure the primacy and longevity of the agreement or settlement was also employed. The 1269 peace agreement, stated that '*omnio beneficio iuris tam canonici quam civilis quod super hanc formam impedire possit vel infringere'*[122] (all the benefits of both canon and civil law which could impede or infringe this agreement) are excepted.[123] Further, in a dispute resolution agreement made between Llywelyn and three

[118] *AWR*, p. 541 and see Chart number 41.
[119] See Chart number 44.
[120] *AWR*, p. 558.
[121] See Chart number 46.
[122] *AWR*, p. 547 and Chart number 44.
[123] In similar fashion Gruffudd ap Maredudd ab Owain renounced appeals ('*appellationibus*'), exceptions ('*exceptionibus*'), objections ('*cavillationibus*') and all legal remedy ('*omni iuris remedio*') with respect to a judgement to be made by Richard, Bishop of St. David's in 1274 – Chart number 48. When considering the renunciation of exceptions and the canonistic re-working of rules which were originally Roman, D. B. Walters comments that, following the twelfth-century civil lawyers' reasoning that 'the separate Roman categories of contract were capable of generalisation by reference to consent … the canonists … allowed that a

English bishops, on behalf of Henry III, in 1271, one of the clauses of the agreement stated that whichever of the parties '*hanc ordinationem infregerit*'[124] (shall infringe this agreement) in full or in part will be understood to have acted '*contra communis pacis formam*' (against the terms of the common peace). However, even if this were to happen and even if thieves or malefactors were to commit thefts or other trespasses on either side, the agreement would still remain in force.[125]

In Perpetuity or Time-limited

Usually the agreement or award either stated that it bound both parties in perpetuity (thus the first document in the Arwystli case stated that the '*rata*'[126], the agreement, was intended to be '*inviolabilia in perpetuum*', inviolable in perpetuity[127]) or that provision could be readily implied. The binding of one's heirs tended to be reserved for grants that emanated from and were pursuant to the arbitration award. Thus in the '*compositione*'[128] made between the rector of a Welsh church and a parishioner, the latter '*concessit pro se et heredibus et assignatis suis*' (granted for himself and his heirs and assigns) common pasture on his fee to the rector.[129] Sometimes an agreement settling a dispute would be time-

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litigant's reliance' on defences (*exceptiones*) and other devices could 'be voluntarily renounced.' – D. B. Walters, 'The Renunciation of Exceptions: Romano-Canonical Devices for Limiting Possible Defences in Thirteenth-Century Welsh Law Suits'. *Bulletin of the Board of Celtic Studies,* 38 (1991), 119-28 (119-20). It is clear that Welsh draftsmen were familiar with such practices.

[124] *AWR*, pp. 551-3.

[125] See Chart number 45.

[126] *AWR*, p. 159.

[127] See Chart number 16.

[128] *St David's Episcopal*, p. 133.

[129] See Chart number 29.

limited, like a truce, as in the dispute between Margam Abbey and seven Welshmen in 1190 where the agreement was limited to six years commencing on 29 September 1190.[130]

Binding Nature of Award and Sanctions

Provisions regarding the binding nature of the award, and sanctions for non-compliance were very important. They went to the heart of the enforceability of the document. Of course, as today, the provisions agreed upon or accepted, tended to reflect the relative bargaining strengths of the parties concerned.

L. B. Smith has argued that even if the decisions of the arbitrators were made in painstaking detail we cannot be sure whether they were honoured by the parties. The arbitral process probably required a level of forbearance and accommodation from the parties which it may have been hard to achieve in practice.[131] No doubt the litigants and the arbitrators themselves were aware of the problem and as such legal and non-legal devices to secure compliance with an award must have been uppermost in the minds of those who wished see the dispute in question resolved once and for all.

In the twelfth and thirteenth centuries devices and sanctions more earthly than the warning found at the end of the *Surexit* Memorandum are normally in use, although in a grant to St. Michael's church, Trefeglwys, Powys as late as 1132 X 1151, the sanction was 'A blessing on whoever keeps [this], a curse on whoever does not.'[132] One device has been mentioned already, namely a pre-arbitration agreement to abide by the terms of the award.

[130] See below in this chapter and see Chart number 7.
[131] L. B. Smith, 'Disputes and Settlements', 836.
[132] *AWR*, p. 680.

Another device was to provide human sureties or pledges before an action commenced.[133] Dafydd Jenkins when considering juries and the problem of the enforcement of awards made by them in England and Wales, said that 'in medieval Wales that problem would certainly have been solved by the parties giving *meichiau* - enforcing sureties - before the arbitration began.'[134] The use of sureties is confirmed in relation to disputes involving land, by one[135] of those examined in 1281 by the commission of inquiry appointed by Edward I to elicit who were the judges who heard cases between the princes and magnates, and whether the pleas were adjudged 'according to the law of Hywel Dda called *cyfraith*.'[136]

Warranties are not uncommon in charters of the time gifting land, interests or rights,[137] and they also occur from time to time in dispute resolution agreements and documents emanating from such resolutions. The quitclaim in the form of a '*carta*'[138] *c*.1 November 1234, by Rhys Goch the younger in favour of Margam Abbey, followed an arbitration and judgement of April that year, concerning, inter alia, a dispute over forest rights in Llangeinor. The quitclaim included a clause '*Et ego et heredes mei warantizabimus hanc quitam clamationem contra omnes homines et omnes feminas in perpetuum*' (and I and my heirs will warrant this quitclaim against all men and all women in perpetuity).[139]

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[133] See the discussion about the provision of human sureties in the law-texts in the Land Disputes section of Chapter 4.
[134] D. Jenkins, 'The Significance of the Law of Hywel : The Hartwell Jones Lecture for 1976', *Transactions of the Honourable Society of Cymmrodorion* (1977), 54 -76 (65).
[135] Namely, Tegwared son of John, one of the judges of the town of 'Rothelan' (i.e. Rhuddlan) – see Chapter 4.
[136] J. B. Smith, 'Judgement under the Law of Wales', 71 and *Calendar of Welsh Rolls*, pp. 190-1.
[137] See Appendix Five. The Llaneilian '*carte'* (NLW Bodewryd 187), of the thirteenth century, which concerned the transfer of all the rights of Hwfa ap Madog ap Dafydd in the *abadaeth* ('*Abbadayth*') of Llaneilian, in north-east Anglesey, to Henry, the rector of the church there, included a warranty given by Hwfa and others ('*Warantizabimus*').
[138] *Cartae*, vol. II, p. 488.
[139] See Chapter 3 and see Chart numbers 22 and 23.

If the Church was a party to a dispute with a prince or lord it might content itself with merely extracting an obligation from the other party to 'observe these terms inviolably'[140] or some other such undertaking by way of security. However, when it was dealing with men of not so great a status it would often demand greater security, such as in the 1190 case between Margam Abbey and seven Welshmen, settled in Llandaff Cathedral. The lay party was obliged not only to swear on their Christianity ('*suam oppignoraurent Christianitatem*'[141]) that they would keep the agreement without trickery ('*sine dolo*') but they were also obliged to provide pledges and warranties.[142]

Excommunication ('*sub pena excommunicationis*'[143]) was a sanction that could be threatened against secular and ecclesiastical litigants alike,[144] whilst banishment was a sanction that could be threatened against an ecclesiastical party. The parties in a 1209 dispute between Dore and Strata Florida, not only undertook to abide by the arbitrators' decision ('*in quos compromiserunt*'[145]), but were further bound in that any monk or conversus of either house who '*hanc pacem infregerit*' (infringes this peace) '*eliminetur*' (shall be banished) from his house, and would return only by permission of the General Chapter.[146] Likewise various sanctions were imposed, including sanctions of banishment and excommunication, in an arbitration award of 1227, concerning a land dispute between the Abbey of Pool [Strata Marcella] and the Abbey of Cwmhir.[147] 'Whosoever of the monks …

[140] *AWR*, p.515 and see Chart number 34.
[141] *Llandaff Episcopal*, p. 37.
[142] See Chart number 7.
[143] See Chart number 51.
[144] See Chart number 35 also.
[145] *AWR*, p. 384.
[146] See Chart number 12.
[147] See Chart number 20.

will have striven to refute this form of peace shall be banished from their particular houses to remote houses outside Wales and shall not be readmitted except through permission of the General Chapter, and whosoever will have concealed some instrument which might further this composition or will absent themselves from the rest except by the consent of the father abbot shall be excommunicated.'[148]

Financial penalties could also be applied. Thus in the case just mentioned, one of the other sanctions was a 'penalty of a hundred marks to be paid by one party to the other';[149] the same amount was also specified in the 1279-80 dispute between Strata Florida and Cynan ap Maredudd ab Owain mentioned above.[150] Fines (for, inter alia, '*contumacia*', contumacy, and false accusation) are threatened in another.[151]

The affixing of seals together with the sealing and attestation clauses that often appear at the end of the documents were the most common means of ensuring the agreement or award, contained within the document, was binding. The wording was usually formulaic, although did vary according to circumstance. The act which recorded, in 1248 X 1249, '*compositione … in forma subscripta*'[152] (the agreement … in the form underwritten) settling a dispute between the rector of a Welsh church and a parishioner ended with '*ad maiorem securitatem una cum signo nostro signa partium presentibus fecimus apponi'* (for more security we have caused to be affixed to the presents our sign together with the sign of the parties).[153] The '*compositio*'[154] of 1268 '*in modum chirograghi*' (in the form of a chirograph),

[148] *ibid.*
[149] *Ystrad Marchell.* Charter no. 70.
[150] See Chart number 55.
[151] See Chart number 35.
[152] *St David's Episcopal*, p. 133.
[153] See Chart number 29.
[154] *Cartae*, vol. II, pp. 693-4.

mentioned above, went further; Llywelyn ap Gruffudd and Gilbert de Clare swore to observe faithfully and without guile all the things agreed ('*ad hec omnia fideliter et sine dolo observanda*') and for greater security ('*et ad majorem securitatem*') attached their seals to the chirograph.[155]

Arguably the grander and more numerous the witnesses to an agreement, the more bound were the parties to perform the provisions of it. In the 1190 agreement the lay and ecclesiastical witnesses included all of the chapter of Llandaff, no doubt to emphasise the importance of its contents to the seven Welshmen.[156] There were thirteen witnesses to the 1234 quitclaim of Rhys Goch the younger,[157] the result of an earlier arbitration and judgement.[158] The first six witnesses were ecclesiastics (including a notary of the bishop – '*notario episcopi*'[159]) and the next seven were Welsh laymen.[160] The witnesses to the 1240 Treaty of Gloucester, which sought to curtail Dafydd ap Llywelyn's princely and territorial ambitions, were grand indeed and included the papal legate Otto, the archbishop of York, bishops, archdeacons, earls '*et aliis*' (and others).[161]

Conclusion

As recognised by those who caused the *Surexit* Memorandum to be inserted into Matthew's Gospel, written records were the ultimate method of evidencing not only grants, gifts, contracts and transfers but also dispute settlements, especially if they were in one's favour.

[155] See Chart number 42.
[156] Mentioned above in this chapter. See Chart number 7.
[157] *c*.1 November 1234 - mentioned above in this chapter.
[158] See Chart numbers 22 and 23.
[159] *Cartae*, vol. II, p. 489.
[160] *ibid.*, and see Chart numbers 22 and 23.
[161] See Chart number 26 and *AWR*, p. 459.

Charters, chirographs and letters patent were all tried and tested formats for encapsulating the written record. The use of chirographs and the exchange of letters patent had the added benefit of ensuring both parties had, *mutatis mutandis*, an identical record for safe keeping.[162]

The actual provisions of the awards and resolution agreements, whilst many and varied, do portray arbitrators as knowledgeable about procedure and the essentials of compromise and settlement, with a ready understanding of the possible problems that could arise and the means by which those eventualities might be dealt with. Further, in order to try to ensure compliance with their awards, arbitrators had in their arsenal, inter alia, financial penalties, the use of sureties and warranties as well as banishment and ecclesiastical censure.

[162] Safe keeping was very much in the mind of those benefitting. Llywelyn ap Iorwerth informed Philip Augustus, king of France, in the summer of 1212, that he would keep the French king's letter, confirming a treaty between the two rulers, 'in the aumbreys of the church as if it were a sacred relic, so that it may be a perpetual memorial and an inviolable testimony … .' - *AWR,* p. 392.

CHAPTER 3 – ARBITRATORS AND PROCEDURE

This chapter will examine the importance of extra-curial dispute resolution as well as analysing the role and identity of arbitrators and other persons instructed to settle disputes and the procedures they employed in seeking to do so.

Extra-Curial Dispute Resolution

That extra-curial arbitration was central to the application of law in medieval Wales was recognised, at least in part, by the Statute of Wales 1284[163] which stated that as regards land disputes 'the truth may be tried by good and lawful men of the neighbourhood, chosen by consent of the parties.'[164] It is because of this, R. R. Davies argued, there are so few land disputes which survive in the legal records of late medieval Wales.[165] They were settled extra-curially. However those land disputes, and the settlements of the same, that were documented and have survived from the late medieval period show that arbitration was often integral to the dispute resolution process.[166] One can cautiously assume that the same was as true before the Edwardian conquest of 1282-3 as after.

L. Beverley Smith states that, as in England, arbitration was embedded in the repertoire of dispute-solving mechanisms and that the arbitration process itself was composite and richly variegated taking many forms.[167] Welsh law gave arbitration and conciliation a prominent

[163] Also known as The Statute of Rhuddlan.
[164] *Ancient Laws*, ii, p. 925.
[165] Davies, 'Ynad Cwmwd', p. 260.
[166] *ibid*. In fact such extra-curial settlements in late medieval Wales were not confined to land pleas, arbitration was used in cases as diverse as a debt payable in hay in Abergele (where the arbitration was termed '*cyflafareddiad*'), a case of assault in Dyffryn Clwyd in 1330 where four arbitrators drew up an agreement between the parties and the settlement of a vicious feud by arbitration in Aberystwyth in 1441.
[167] Smith, 'Disputes and Settlements', 845.

role alongside curial judgement.[168] Historians have distinguished between professional judgement and collective judgement in examining legal practices in several lands of western Europe,[169] and J. Beverley Smith has referred in particular to the work of Susan Reynolds.[170] When noting 'arbitration-like'[171] procedures in early medieval France, Reynolds describes them not as an alternative to more formal law-suits but as the only type of action available. Bodies of judgement-makers are noted in France and Italy where they are referred to as '*jurati*' or '*scabini*' or simply as 'good men'.[172] Having a panel of men of more or less equal status helped facilitate decisions when there was a difference of opinion.[173] Reynolds' main argument is that collective activity was more important and pervasive in Europe than has previously been accepted. Indeed she is quoted by R. R. Davies when arguing that some kind of collective judgement was normal.[174]All the collectivities which abound in the sources of the twelfth and thirteenth centuries, she states, were due to ideas and values which were already deep-rooted.[175]

The Description, Identity and Role of Arbitrators, Goodmen and Others

As mentioned above, a legal triad, in a late thirteenth-century Welsh law-book states that there are three ways in which a dispute might be determined. The second method is by the decision of arbitrators, that is *kymrodeddwyr* (‘*vel terminus per arbitros, id est, kymrodeddwyr*’).[176]

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[168] *ibid*. 844 and see the legal triad mentioned in the Introduction to this dissertation.
[169] J. B. Smith, ‘Judgement under the Law of Wales’, 89.
[170] S. Reynolds, *Kingdoms and Communities in Western Europe, 900-1300* (Oxford, 1984).
[171] *ibid*., p. 27.
[172] *ibid.* p. 145.
[173] *ibid.* p. 30.
[174] Davies, ‘Ynad Cwmwd’, p.260.
[175] Reynolds, *Kingdoms and Communities,* p.1.
[176] *Latin Texts*, p. 357. See also *Ancient Laws*, i, p. 467 – in A. Owen’s Dimetian Code.

Showing that the provisions of the above-mentioned law-text were not just theory, the second method was put into action in the multi-stage dispute resolution process of 1216 X *c*.1226, at Llandinam, Arwystli, when twenty-four arbitrators ('*arbitros*'[177]) 'known in our tongue as *dadferwyr* ' were appointed from the better men of Arwystli.[178] The noun *dadferwyr* is derived from the verb *dadfer* meaning 'to proclaim, reprounce (judgement) … adjudge.'[179]

Latin words for 'arbitrators' and 'arbitration' occur more frequently in the extant documentation than Welsh words. In 1209 '*omnes lites et querele'*[180] were settled '*ad preces arbitrorum'* (at the entreaties of the arbitrators) in a dispute between the abbeys of Dore and Strata Florida.[181] In a dispute of 1210 between St. Peter's Abbey, Gloucester and Roger, rector of Llaneleu chapel, the '*compositionem*'[182] was made '*coram arbitrariis viris discretis*' (in the presence of discreet arbitrators).[183] The resolution, of April 1234, in the dispute regarding, inter alia, forest rights between Margam Abbey and Rhys Goch the younger, was '*per arbitrium virorum fidedignorum et discretorum*'[184] (by the arbitration of trustworthy and discreet men).[185]

The term 'goodmen', in one guise or another, appears frequently as a description of those instructed in the dispute resolution procedures. '*Degion*' is the Old Welsh for goodmen used

[177] *AWR*, p.159.
[178] See Chart number 16. This case is discussed in more detail later in this chapter.
[179] Thomas (ed.), *Geiriadur Prifysgol Cymru*, p. 870 and *AWR*, p. 160.
[180] *AWR*, p. 384 and see page 37 of this dissertation.
[181] See Chart number 12.
[182] *St David's Episcopal*, p. 85.
[183] See Chart number 14.
[184] *Cartae*, vol. II, p. 499.
[185] See Chart number 22.

in the *Surexit* Memorandum, 'the goodmen said to each other let us make peace…'[186] In *Geraint ac Enid* the dispute involved 'Gereint going off with his "gwyrda"'[187](i.e. goodmen) to look at and fix the boundaries. Dafydd Jenkins pointed out that '*gwrda*' (a goodman) could mean '*breyr*' or '*uchelwr*' (a noble) but in a legal context appeared to imply a special class who were suitors of court and that by the thirteenth century their functions 'seem to have been advisory and concerned with policy in the exercise of discretion.'[188] It is true that in some cases they were just described as goodmen such as in the dispute of 1209 when the arbitration of five abbots, a Welsh prince and other goodmen (*'aliorum bonorum virorum'*[189]) was required[190]; whilst in others, additional attributes are evidenced, such as in the Arwystli case, which, at one stage, was to be dealt with '*ad arbitrium bonorum virorum et iura terre illius scientium'*[191] (by the arbitration of good men knowledgeable in the laws of that land).[192] This latter description may well have been referring to the *obtimates* (nobles), who are mentioned in the Arwystli documentation. Wise men ('*sapientes*'[193]) are also referred to in the Arwystli case; the plaintiffs, the so-called *ffetaniaid* ('sack-men'), later requesting that the case should be decided '*per iudicium sapientum*'[194] (by the judgement of wise men). Yet another case was settled *'per meliores et seniores probos viros'*[195] (by better and elder

[186] Jenkins and Owen, 'The Welsh Marginalia', 51.
[187] Ellis, 'Legal References, Terms and Conceptions in the "Mabinogion"', 146-7.
[188] *Law of Hywel Dda*, p. 348.
[189] *AWR*, p. 384.
[190] See Chart number 12.
[191] *AWR*, p. 159.
[192] See Chart number 16 and discussion below.
[193] *AWR*, p. 161.
[194] *ibid*., p. 159.
[195] *Llyfr Coch Asaph Thesis*, Part I, p. 99.

trustworthy men) of the locality,[196] and the adjectives 'trustworthy' and 'worthy' are frequently used to describe those appointed.

R. R. Davies referred to the wording '*ad arbitrium bonorum virorum et iura terre illius scientium'* to make the comment that the men chosen at the outset of the Arwystli case were chosen not only for their social standing, but also for their knowledge of the laws.[197] He mentioned that in south Wales the arbitrators who settled land disputes, calling themselves 'judges' (*barnwyr*), were chosen for their knowledge of Welsh law and supported their judgements by reference to the law-texts (*kyfraith yn dywedut*).[198] J. B. Smith considers that the *sapientes*, in the Arwystli case, may have conceivably been lawmen.[199] One of the *sapientes*, namely Cynyr ap Cadwgan, is referred to by Huw Pryce as a clerical jurist.[200] Whilst arbitration did not necessarily involve a knowledge of native law, it was an important part of a jurist's duties.[201] In Cynyr ap Cadwgan's case it appears he did have a thorough knowledge of medieval Welsh law as a law-book, which was passed on to his sons and grandsons, is attributed to him.[202]

In Powys, according to one of the witnesses to give evidence at Edward I's commission of inquiry in 1281, there was a man called an *ynad* in Cyfeiliog but that he did not adjudicate in cases, having received the designation simply because he had gone to Gwynedd to learn the laws.[203] Llywelyn ap Gruffudd claimed that there were professional judges in the lands he disputed (Arwystli and part of Cyfeiliog) with Gruffudd ap Gwenwynwyn, and named them

[196] See Chart number 39.
[197] Davies, 'Ynad Cwmwd', p. 261.
[198] *ibid.*
[199] J. B. Smith, 'Judgement under the Law of Wales', 90.
[200] H. Pryce, *Native Law and the Church in Medieval Wales* (Oxford, 1993), p. 34.
[201] *ibid*.
[202] *ibid*. The fifteenth-century law-text NLW Wynnstay MS 36 (Q) refers to the law-book.
[203] *Calendar of Welsh Rolls*, p. 209.

as Iorwerth Fychan in Cyfeiliog and the sons of Cynyr ap Cadwgan in Arwystli.[204] The man named by the Cyfeiliog witness was also named Iorwerth Fychan. D. Stephenson believes that both testimonies may have been correct, in that the professional *ynadon* may have acted as arbitrators in extra-curial settlements made according to Welsh law.[205]

In disputes between lay litigants the arbitrators were sometimes laymen themselves[206] but on occasion the arbitrators were drawn, partly at least, from the Church.[207] In disputes involving two ecclesiastical parties it was common for the arbitrators to be drawn solely from the Church but not always.[208]

Examples of laymen who were in the service of Welsh princes or lords and who were nominated to participate in arbitrations include; Ednyfed Fychan (in the service of Llywelyn ap Iorwerth and later, his son, Dafydd and described as '*Justiciarius Wallie*'[209] (justiciary of Wales)) was appointed as one of the arbitrators in 1240 in the Treaty of Gloucester made between Dafydd and Henry III[210]; Cynfrig ab Ednyfed (in the service of Llywelyn ap Gruffudd) appears as an arbitrator at least twice in the extant documentation, firstly as one of the arbitrators in the 1263 agreement between Llywelyn and Gruffudd ap Gwenwynwyn,[211] and secondly, as an arbitrator in the 1274 trial brought by Llywelyn against Gruffudd and his son Owain after a failed assignation attempt;[212] and Dafydd ab Einion (in the service of Llywelyn

[204] *ibid*., p. 190.
[205] Stephenson, *Welsh Law Courts*, p. 9.
[206] See for example Chart number 33.
[207] See for example Chart number 44.
[208] See Chapter 5.
[209] By the Chronicle of St. Werburg's Abbey, Chester - R. C. Christie (ed.), *Annales Cestrienses* (London, 1887), p. 66.
[210] See Chart number 26.
[211] See Chart number 38.
[212] See Chart number 50.

ap Gruffudd) who also appears at least twice as an arbitrator, once in 1268 in a dispute with the Marcher lord, Gilbert de Clare[213] and again in the 1274 trial.[214]

Number of Arbitrators

The documents analysed show that there is no standard number of arbitrators. Sometimes there was an even number of arbitrators[215] and sometimes an odd number.[216] Sometimes there was a mixture of ecclesiastics and laymen,[217] sometimes the arbitrators were comprised of just ecclesiastics[218] and on other occasions just laymen.[219]

Sometimes the number of arbitrators would change during the course of legal proceedings. In a long-running, multi-stage, boundary dispute between the bishop of St. Asaph and two successive bishops of Hereford, the first arbitration saw three arbitrators appointed, whilst the second arbitration saw one arbitrator appointed. An independent commission was proposed for the next stage and the final stage involved a commission of canons.[220]

The number twenty-four, mentioned in the Arwystli dispute, is referred to again, later in the century, during the royal inquiry of 1281. Einion ap Madog (*Eynon ab Madoc*) of the Welshry (*Walescheria*) of the cantred of Oswestry (*Albi Monasterii*), stated that 'when a plea is moved between them [i.e. the Welshry] as to demanding lands, then it shall be determined by the verdict of twenty four jurors by means of an inquisition according to the truth of the

[213] See Chart number 42.
[214] See Chart number 50.
[215] See Chart number 33.
[216] See Chart number 31.
[217] See Chart number 12.
[218] See Chart number 14.
[219] See Chart number 27.
[220] See Chart number 56.

matter.'[221] A knight, Sir Urian de Sancto Petro, who was examined at Chester, during the same royal inquiry, stated that he recalled a plea involving 'Griffin ab Madok, lord of Haal' (Gruffudd ap Madog, lord of Iâl) before the king's justices, which was 'adjudged at Rothelan [Rhuddlan] by twelve jurors of the four cantreds, so that there were three men sworn from each cantred, and sentence was pronounced by their verdict.'[222] Perhaps, by the thirteenth century, twenty-four was the number preferred by the Welsh and twelve by the English.[223] Dafydd Jenkins pointed out that the jury had 'already been introduced to some parts of Wales at least, under the name *rhaith gwlad*[224], which suggests that the Welsh lawyers recognized the similarity of the jury to a body of compurgators.'[225] In fact one Welsh law-text refers to a jury of fifty[226], and scholarly work elsewhere in Europe that has shown that 'the almost mystical significance' of the number twelve appears relatively late in the development of the jury.[227]

Welsh Propensity for Advocacy

Giraldus Cambrensis noted that 'nature has endowed [the Welsh] with great boldness in speaking and great confidence in answering, no matter what the circumstances may be, and even in the presence of their princes and chieftains.'[228] 'In their lawsuits … they use almost all devices of public speaking: putting a case, inventing pretexts, shaping an argument,

[221] *Calendar of Welsh Rolls*, p. 202.
[222] *ibid*., p. 191.
[223] Albeit Llywelyn ap Gruffudd does, in 1269, instruct his bailiffs of the Perfeddwlad, by means of 12 honest and trustworthy men of the neighbourhood/locality, to investigate local customs – see below and see Chart number 43.
[224] See Glossary of Legal Terms.
[225] D. Jenkins, 'The Significance of the Law of Hywel : The Hartwell Jones Lecture for 1976', *Transactions of the Honourable Society of Cymmrodorion* (1977), 54 -76 (65).
[226] *ibid*., fn. 28 – 'Bleg. 106.22-26'.
[227] *ibid.,* 'Brunner (*Die Entstehung der Schwurgerichte*, Berlin, 1872: re-printed, Aalen, 1967, 273) says that twelve has not even the status of the predominant basic number, and refers to juries varying from four to 66.'
[228] *Journey and Description*, p. 245.

refuting an opponent, supporting a contention.'[229] This readiness to speak up for themselves and to use natural rhetoric suggests that parties were more than ready to plead their cause of action ('*defnydd hawl*'[230]) before arbitrators, courts, commissions, inquests and the like.

Description of Legal Action

The terminology, used in the documents recording settlements, to describe a legal action is varied. In 1146, a '*calumpnia*'[231] had been set in motion ('*moverat*'[232]) by Uchtryd (Uthred), bishop of Llandaff, against the abbot and convent of Tewkesbury.[233] '*calumnia (calumpn-)*' has been defined as, inter alia, 'accusation, charge' as well as 'claim.'[234] '*movere*' has been defined as, inter alia, 'to bring about, initiate … [a] legal action.'[235] In a dispute of 1154 the terms '*causam*'[236] and '*litem*'[237] were used in the settlement document.[238] '*lis*' has been defined as, inter alia, a 'dispute at law' or a 'lawsuit.'[239] '*Causa*' is variously defined as a 'legal cause', 'plea' and an 'action'.[240] In the account of the trial of Gruffudd ap Gwenwynwyn and his son Owain on a charge of infidelity, the description of the action against them was '*causa accusationum*.'[241] In 1209 '*omnes lites et querele'*[242] were settled at

[229] *ibid.,* pp. 239-40. For 'In their lawsuits … ' the Latin reads '*In causis, actionibus …* ' – J. F. Dimock (ed.), *Giraldi Cambrensis Opera*. vol. vi, Rolls Series, (London, 1868), p. 187.
[230] T. P. Ellis, *Welsh Tribal Law and Custom in the Middle Ages,* 2 vols, (Oxford, 1926), vol. ii, p. 343.
[231] *Cartae*, vol. I, p.102.
[232] *ibid.*
[233] See Chart number 1.
[234] Latham, *Dictionary of Medieval Latin*, pp. 245-6. (It can also mean 'dispute (as to title)' – *ibid*).
[235] *ibid*, p. 1849.
[236] *Cartae*, vol. I, p.139.
[237] *ibid.*
[238] See Chart number 4.
[239] Latham, *Dictionary of Medieval Latin*, p. 1623.
[240] *ibid*., p. 304.
[241] *AWR*, p. 797 and see Chart number 50.
[242] *AWR*, p. 384.

the entreaties of the arbitrators.[243] '*querela*' or '*querella*' has been defined as, inter alia, a 'plaint' or 'suit (usu. instituted without a writ)'.[244] '*lis*'[245] ('*cum lis mota esset'*) was used twice to describe the two suits in a 1216 X 1229 dispute between Talley Abbey and Hospitallers. In 1261 arbitrators were appointed '*ad diffiniendas querelas motas*' (with a view to settling the plaints moved).[246] The resolution of the Hospitallers' dispute with Talley included one side relinquishing all actions ('*omnes … actiones*') that were extant at the time vis a vis the other side.[247]

Examples of verbs used, in the extant documentation, to describe the settling, determining or bringing to an end of a legal action, include '*diffinio'*[248] (or '*deffinio'*), '*pacifico*'[249] and '*termino*'[250]. The verbs '*diffinio'* (or '*deffinio'*) and '*termino*' are commonly used, '*pacifico*' is used much less often.

Procedure

The extant manuscripts of Welsh law, mentioned in the Introduction, contain detailed enunciation of the laws and procedures applicable to various actions, rights, disputes and wrongs.[251] Whilst the law-texts lay down clear procedural rules for disputes involving, for example, suretyship (*mechniaeth*) and land (*tir a daear*) it is difficult to know, as R. R. Davies stated, how far these rules were followed in practice.[252] When looking at ducal Normandy

[243] See Chart number 12.
[244] Latham, *Dictionary of Medieval Latin*, p. 2624
[245] *St David's Episcopal*, pp. 107-8.
[246] See Chart number 34.
[247] See Chart number 17.
[248] See Chart number 34.
[249] See Chart number 57.
[250] See Chart number 9.
[251] *Law of Hywel Dda*, p. xxi.
[252] Davies, 'Ynad Cwmwd', p.258.

and discussing the Normans' understanding of the difference between law and custom Mark Hagger has stated that the understanding of the difference can be traced in narrative sources and *acta* but not in the records of lawsuits which do not refer to law at all - perhaps because the cases turned on matters of fact rather than law or custom.[253] Similarly in the conclusion to a book concerned with early medieval Europe it has been said that law codes did have some practical reality, but legal practice was more matter-of-fact.[254] Whilst this might be so, it will be argued in Chapter 4 that the strict constraints on the alienation of land to be found in the Welsh law-texts, could have been, at the very least, a contributing factor to the prominence of disputes concerning land and rights in land in the extant documentation from medieval Wales. This in turn would necessarily have made the procedural rules for the resolution of such disputes, laid down in the law-texts themselves, more widely known.

The procedure for the selection of arbitrators tended to be that they were chosen with the consent of the parties, although this could depend on the bargaining strength of those involved**.** It was stated in a charter of grant and confirmation, made between a local lord, Morgan Gam, and Margam Abbey *c*.1217 X February 1241, that if any dispute arose amends were to be had *'per arbitrium duorum vel trium bonorum virorum ex utraque parte ad hec electorum'*[255] (by the arbitration of two or three good men chosen for this by both parties).[256] Similarly, the settlement of various disputes between Llywelyn ap Gruffudd and Richard, bishop of Bangor in April 1261 was reached following arbitration by persons chosen

[253] M. Hagger, 'Secular Law and Custom in Ducal Normandy, c. 1000-1144', *Speculum* 85 (2010), 827-67 (827).
[254] W. Davies, and P. Fouracre (eds.), *The Settlement of Disputes in Early Medieval Europe* (Cambridge, 1986), p.228.
[255] *AWR*, p. 306.
[256] See Chart number 19.

by each side.[257] However in the 1234 dispute between the abbey of Valle Crucis and the heirs of freemen of Llangollen, five ecclesiastics, namely the prior and four monks of the abbey were appointed as arbitrators. It appears that the laymen were compelled, under duress from the abbey and their patron Madog ap Gruffudd Maelor, to nominate the five.[258]

Sometimes the parties gave advice or instructions to the arbitrators before the arbitration commenced, as did Gilbert de Clare and Llywelyn ap Gruffudd in the agreement of 1268; the prince and the earl urged those chosen to proceed without regard for '*odio favore timore reverentia vel dominio seu amore'*[259] (the hatred, favour, fear, reverence or dominion or love) of anyone.[260] Interestingly similar sentiments are found in 'The Justices' Test Book' of the Welsh laws; namely that as part of the training to become a justice the person concerned must swear 'that he will never give false judgement knowingly, either for anyone's entreaty or for value or for love or for hatred of anyone.'[261]

When it is possible to identify the procedure employed in a particular dispute resolution the procedure may have been seemingly straightforward, or portrayed as such, as in the case of the boundary dispute of late 1279 and early 1280, mentioned above, where 'having heard the cases of both sides the arbitrators have determined…'[262]; an arbitration award by way of delineation of boundaries then followed.[263] Thus, there was a hearing and a decision was made, resulting in an award. Similarly in the arbitration of December 1247 the arbitrators

[257] See Chart number 34.
[258] See Chart number 24 and *AWR*, p. 710.
[259] *Cartae*, vol. II, pp. 693-4.
[260] See Chart number 42.
[261] *Law of Hywel Dda*, p.142.
[262] *AWR*, p. 210.
[263] See Chart number 55.

stated that '*adiudicavimus*'[264] (we have adjudged) the case '*communi consideratione nostra et aliorum virorum proborum'* (by our common consideration and that of other worthy men).[265] However, in other cases there seems to be something more akin to mediation where the parties are encouraged to come to a compromise. Thus the 1209 dispute between Dore and Strata Florida was settled '*ad preces arbitrorum'* (at the entreaties of the arbitrators).[266]

Another type of procedure is seen in the 1234 case concerning, inter alia*,* forest rights in Llangeinor, where arbitration preceded the judgement of Elias, the bishop of Llandaff and Morgan Gam. On the advice of discreet men ('*discretorum virorum*'),[267] 'Rhys the younger may enjoy the forest right which his father and then he enjoyed … if he can prove, by the arbitration of trustworthy and discreet men ['*per arbitrium virorum fidedignorum et* discretorum'] and without contradiction by the monks, his right to the pasture of three houses which he claims by reason of the said forest right, let him have it … if he cannot, let him cease from claiming ['*petere*'] it.'[268] As a direct result of the said arbitration and judgement, Rhys Goch the younger quitclaimed and renounced on oath ('*quitum clamavi et abjuravi*'), for himself and his heirs, and by charter confirmed ('*et hac carta mea confirmavi*') to the monks all his claim and right ('*totum clamium meum et totum jus'*) in the land by virtue of forest right, including the three houses.[269]

[264] *AWR*, p.714.
[265] See Chart number 27.
[266] See Chart number 12.
[267] See Chart numbers 22 and 23.
[268] *AWR*, p. 309.
[269] See Chart numbers 22 and 23.

If the first arbitration failed a second arbitration might be successful. Such was the case in the 1226-7 dispute between the abbeys of Pool and Cwmhir.[270] The mandate given to the first three arbitrators was revoked and they were replaced by five arbitrators who reported that the abbots of the two abbeys 'appeared with some fifty persons from the seniors and counsellors of their respective houses and compromised.' The 'form of composition was read in the chapter houses of both houses and was not contradicted.'[271]

An example of a much more complicated procedure is detailed in the multi-stage dispute resolution process in Arwystli, 1216 X *c*.1226 recorded in two documents. Llywelyn ap Iorwerth, as lord of Arwystli, set a specified day on which the dispute should be settled by the arbitration of good men knowledgeable in the laws of that land. As he could not be there on the said day he appointed Maredudd ap Rhobert to preside over the case in his place. Firstly the litigants known as the *ffetaniaid* were offered, '*difinitio proborum virorum*' (the decision of worthy men), '*quod dicitur deduriht*' (which is called '*dedfryd*' [modern Welsh]), but they rejected this.[272] Then they accepted that twenty-four nobles of the province of Arwystli ('*obtimates provincie de Arwistli*') should decide; although not completely clear[273], these appear to be the twenty-four arbitrators ('*arbitros*') 'known in our tongue as *dadferwyr* from the better men of Arwystli.' Diligent and prudent discussion ('*diligenter atque prudenter discussa*') resulted in the decision of the *dadferwyr* (who found against the *ffetaniaid*). A further discussion of this arbitration by the *dadferwyr* followed and 'it was adjudicated again' resulting in their decision being upheld. Finally, there was an

[270] Mentioned in Chapter 2.
[271] See Chart number 20.
[272] See below in this chapter for further discussion of this point.
[273] The two documents containing the record of the proceedings are not completely *ad idem.*

appeal where 'wise men ['*sapientes*'] proceeded in the case' and 'asserted' their judgement 'before many witnesses.' The wise men also found against the *ffetaniaid.*[274]

The fact that nobles of the province of Arwystli ('*obtimates provincie de Arwistli*'[275]) are referred to accords with *Leges Henrici Primi*[276]*,* whose author 'emphasizes a local, peer-based approach to judgment'[277] in his treatments both of ecclesiastical procedure and of secular jurisdiction. Concerning the latter he announces such principles as: everyone should be judged by his or her peers (*pares*) from the same district, rather than by strangers or outsiders (*peregrina*).[278] Whilst the *obtimates,* by their very status as noble men will not be everyone's peer, those in the Arwystli case are from the same province as both of the litigants and the province where the lands concerned lie.

Due to the obvious bias displayed in these two documents by the scribes of Strata Marcella Abbey (who drew up the documents) they cannot, David Stephenson argues, be considered, as routine records but they do illustrate the ever-shifting regional and local variations in the application of Welsh law.[279] J. Beverley Smith, developing Stephenson's comments, states that it is difficult to determine whether the Arwystli case provides any indication of the judicial procedures to which litigants would have been subject but it does seem to show that collective judgement prevailed (at least in Powys Wenwynwyn).[280]

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[274] See Chart number 16.
[275] *AWR*, p. 160.
[276] Written in England in the twelfth century.
[277] R. L. Keyser, '"Agreement Supersedes Law, and Love Judgment:" Legal Flexibility and Amicable Settlement in Anglo-Norman England'. *Law and History Review* 30 (2012), 37-88 (61).
[278] *ibid.*
[279] Stephenson, *Welsh Law Courts*, pp. 12-14.
[280] J. B. Smith, 'Judgement under the Law of Wales', 90.

Preliminary Examination or Assessment

Sometimes there was a requirement for an investigation into a matter at issue before the same could be resolved. Thus in the agreement of 29 April 1261, made between Richard, bishop of Bangor and Llywelyn ap Gruffudd, clause vi, which concerned a man seized in a church and the question of refuge, stated 'let trustworthy ['*digni*'] men from both Llywelyn's side and the bishop's be sent to see the place where he was seized' in order that it may be determined whether or not it is a place of refuge.[281]

A type of assessor appears to be referred to in the Arwystli case when the *ffetaniaid* were offered '*difinitio proborum virorum*'[282] (the decision of worthy men), '*quod dicitur deduriht*' (which is called '*dedfryd*' [modern Welsh]), but they rejected this.[283] *Dedfryd* is a possible reference to '*dedfryd gwlad*' (verdict of the country), in which '*henaduriaid gwlad/cantref*' (elders of the country/cantref) hear both parties and return a verdict which forms the basis of the judges' judgement.[284] Interestingly, there is a reference to '*senioribus patrie'* (elders of the country) giving consent to a grant of land in 1132 X 1151.[285] There is clearly some similarity between the *henaduriaid gwlad* and Carolingian *scabini.* Indeed there is a general recognition that the latter were 'collective assessors or judgment-finders'[286] and they have been described as 'local landowners who ought to know the law and customs.'[287]

On other occasions too, in the extant Welsh documentation, there is mention of a preliminary examination or assessment of the evidence. So in May 1208, in a dispute

[281] Chart number 34.
[282] *AWR*, p. 160.
[283] Chart number 16.
[284] *AWR*, p. 160.
[285] *ibid.*, p. 680.
[286] S. Reynolds, 'Law and Communities in Western Christendom, c. 900-1140', *The American Journal of Legal History* 25 (1981), 205-24 (213).
[287] *ibid*.

between the abbeys of Margam and Neath, it was made quite clear that four abbots '*sint assessores non judices*'[288] (should be assessors not judges) whilst the arbitration itself was to be conducted by a further three abbots.[289] Similarly, in 1274, in a dispute between Llywelyn ap Gruffudd and Anian II of St. Asaph; '*Cum … fuissent controversia orta, volens idem episcopus expressius investigare tam per clericos quam per laicos antiquiores et fidedigniores*' (Since … a dispute had arisen, the bishop wished to have an investigation by clerics and older, trustworthy laymen) for the purpose of a *'diligent examinacione.'*[290] Llywelyn had, himself, some years earlier ordered his own investigation of certain matters in dispute with Anian.[291]

Inquisition

Sometimes the procedure, in the documents analysed, is described as an inquisition or an inquest. Cymer Abbey was given the right, by Llywelyn ap Iorwerth in 1209, to recover its own cargoes if wrecked by storm at sea[292] but this was subject to inquest by jurors.[293] In a dispute of 1265, an '*inquisicio facta fuit'*[294] (an inquisition was made) by better and elder trustworthy men after which '*deposuerunt sub hac forma...*' (they deposed in the following form…). An itemised award followed.[295] Further, in 1275, Llywelyn ap Gruffudd suggested that one particular dispute might be decided, amongst other methods, by the truth of an inquisition ('*secundum veritatem inquisitionis*').[296]

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[288] *Cartae*, vol II. p. 330 .
[289] See Chart number 11.
[290] See Chart number 47.
[291] See Chart number 43.
[292] *AWR*, p. 379 and see Chart number 13
[293] H. Ellis, (ed.), *Record of Carnarvon,* (Record Commission, 1838), p.199
[294] *Llyfr Coch Asaph Thesis*, Part I, p.99.
[295] See Chart number 39.
[296] See Chart number 52.

In Powys, according to one of the witnesses to give evidence at the royal inquiry of 1281, verdict by inquisition was normal.[297] Further north, Tegwared, one of the judges of the town of 'Rothelan' (Rhuddlan), said that in a land dispute, if one party 'demand the law of Howel Dda and the other one demand an inquisition, the prince can grant an inquisition with one party dissenting, if he wish, for money or by special favour.'[298] On being asked whether he had heard that Llywelyn ap Gruffudd 'proceeded to judgement according to the laws of Hywel Dda when [one] party demanded an inquisition, he says that neither he [i.e. Llywelyn ap Gruffudd] nor Llywelyn, his grandfather, nor David, his uncle, ever wished to judge according to that law but according to inquisition, and he assigns as a reason that the Welsh have a proverb in their tongue that 'truth is worth more than law.''[299] A marginal note beside this reads '*proverbium contra Howelda*'.[300] Inquistions were doubtless employed for dispute resolutions but Tegwared's account does seem biased.[301]

Testimony and Witnesses

The importance of the testimony of witnesses during a hearing is evidenced more than once. At the 1156 synod in Cardiff, discussed in Chapter 5, the bishop and the synod '*diligenter*

[297] *Calendar of Welsh Rolls*, p. 209.
[298] *ibid*, p. 200.
[299] *ibid.*
[300] *ibid.*
[301] Indeed D. Stephenson refers to the 'obvious bias in the data' of the 1281 inquiry – Stephenson, *Welsh Law Courts*, p. 5. However, T. Jones Pierce says that 'while all allowance is made for prejudice and intimidation, the general force of the evidence given' leaves no doubt that English methods were increasingly being used in Wales – Jones Pierce, *Medieval Welsh Society*, p. 366. Likewise J. Beverley Smith has stated, inter alia, that whilst 'most of the evidence was gathered in lands under royal lordship' the detailed consistency in the substance of the evidence presented establish the essential authenticity of it – J. B. Smith, 'Judgement under the Law of Wales', 71.

inquisiuimus veritatem cause'[302] (had diligently inquired into the truth of the case) by '*acceptis … legitimorum testium iuramentis'* (hearing … the oaths of lawful witnesses).[303]

Further, as has been seen, Morgan ap Caradog provided a 'truthful testimony' to assist the settlement of a dispute between the abbeys of Margam and Neath.[304] His wish was that the truth should be known to all and as such the '*controversia*' between the two houses 'will be settled more easily and justly.'[305] Similarly he writes another testimony in the same dispute 'so that the recipients will be able to deliver a more secure judgement' ('*securius … sententiam*').[306] In this second testimony, when referring to an earlier charter that is relevant to the dispute, he states that 'there are still witnesses ['*testes*'] who were present at this agreement who know how true this is.'[307] In other words they would be able to testify in the dispute resolution process. Indeed he goes on to say that 'all, both old and young, living in Morgan's land know'[308] ('*norunt enim omnes senes cum iunioribus qui habitant in terra mea'*) that certain things are so.

The recommendation of one side's witnesses as good men whilst at the same time criticising the other party's witnesses is also seen. So it was that in 1156 a notification was sent to Theobald, the archbishop of Canterbury, stating that the seven men produced by the abbot of Gloucester as witnesses at the synod in Cardiff were good men ('*boni testimonii viros*'[309]) and believed to be worthy of credit by their neighbours. Four of them were said to be in holy orders and to have ministered without reproach from their ordination to the present

[302] *Llandaff Episcopal*, p. 10.
[303] See Chart number 5.
[304] See Chart number 9.
[305] *AWR*, p. 273.
[306] *ibid*., p. 279 and see Chart number 10.
[307] *ibid.*
[308] *ibid.*
[309] *Llandaff Episcopal*, p. 12.

day. The other three were said to have led an innocent and uncontentious life. However, the same notification criticised the veracity of the evidence of other witnesses, as well as the unwillingness of others to testify. Thus the witnesses produced by the earl of Gloucester were accused of avoiding the truth ('*ueritatem abscondunt*'), fearing to incur the said earl's ill will ('*maliuolentiam ipsius incurrere metuentes*'). The same notification suggests that they could be forced to speak up if it suited the archbishop.[310]

Conclusion

Extra-curial arbitration was clearly of great importance to dispute resolution in medieval Wales and (as the next chapter will show in more detail) not only for land disputes. Various procedures were employed and if one method did not at first succeed another might be tried. The overriding theme, however, was the collective nature of decision making especially by goodmen of the locality. Sometimes the arbitrators would be knowledgeable in the laws and customs of the district, sometimes they would just be goodmen with a standing in the community, trustworthy and honest. Witnesses too had a part to play in this collective responsibility and their trustworthiness as well as the veracity of their evidence was equally important.

[310] See Chart number 5.

CHAPTER 4 – TYPES OF DISPUTE

This chapter will consider in more detail the types of dispute which are revealed by an analysis of the extant documentation as having been submitted to arbitration or dispute resolution.

Description of Disputes

The sources use a variety of terms for a 'dispute'. In 1148 X 1163 the terms used to describe the boundary dispute between two bishops of Welsh sees were '*contentione et discordia*'.[311] In a dispute settlement concerning tithes and involving arbitration, of 1154,[312] the term used to describe the dispute was '*controversia*'.[313] The case between Margam Abbey and Rhys Goch the younger in 1234, as well as detailing disputes concerning forest rights and hereditary rights to land, included a 'catch-all' namely 'damages ['*dampnis*'] and injuries ['*iniuriis*'] which each party claimed to have been inflicted upon it by the other.'[314]

The peace agreement between Llywelyn ap Gruffudd and his brother Dafydd of 1269 provided for reference to a dispute resolution process '*si autem transgressiones, alique offense seu rancores*'[315] (if trespasses, injuries or grievances) should arise.[316] '*contentio*' has been defined as 'contention, dispute, strife.'[317] '*controversia'* and *'controversio'* have both been defined as 'argument, dispute.'[318] '*discordia'* has been defined as, inter alia, 'discord, disagreement.'[319]

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311 *Councils*, vol. I, p. 358 and see Chart number 3.
312 See Chart number 4.
313 *Cartae*, vol. I, p.139.
314 *AWR*, p. 309 and see Chart number 22.
315 *AWR*, p. 547.
316 See Chart number 44.
317 Latham, *Dictionary of Medieval Latin*, p. 465.
318 *ibid*., p. 476.
319 *ibid*., p. 681.

Disputes over Custom, Jurisdiction and Law

It is clear that the jurisdiction applicable to a particular case was sometimes a point of contention. When jurisdiction was disputed between two parties, the case was usually, although not always, one involving a Welsh prince on the one hand and the king of England or an Anglo-Norman Marcher lord on the other; and the dispute over jurisdiction usually concerned whether the laws of Wales should apply to the case as opposed to the laws of the March[320]; or whether the customs of Wales should apply as opposed to the customs of the March.

It seems reasonably clear that the parties understood the difference between law and custom. They certainly understood the desirability of ensuring the law or custom most favourable to them applied to a particular case. Referring to scholarly works concerning England, France, Germany and Italy, it has been said that 'all through western Europe custom formed the bedrock of law.'[321] Whilst in ducal Normandy it has been suggested that a Norman's understanding of the differences between law and custom was informed by the definitions to be found in Isidore of Seville's *Etymologies*.[322] For Isidore a law was a written statute and a custom a usage tested by time or an unwritten law.[323] This definition is very similar to a statement set out in *Leges Henrici Primi*.[324] The latter work would no doubt have

[320] Although sometimes it was a contest between the law of England and the law of Wales as is shown by the detailed provisions, concerning the same, in the agreement between King John and Llywelyn ap Iorwerth dated 1201. See *AWR*, p. 372.
[321] Reynolds, 'Law and Communities in Western Christendom', 207.
[322] Hagger, 'Secular Law and Custom', 827.
[323] *ibid*. 832.
[324] *ibid.*

been familiar to the more world-wisely of Welsh princes, bishops and abbots. Furthermore at least one Welsh monastic house had a copy of Isidore's works.[325]

In the Treaty of Montgomery of 1267, made between Henry III and Llywelyn ap Gruffudd, one of the clauses provided that justice should be observed according to the customs of the March ('*iustitia secundum consuetudines hactenus in Marchia observatas'*). Whilst another provided for justice to be done according to the laws and customs of Wales ('*secundum leges et c[on]suetudines Wallie*') and yet another stated that those claiming certain rights were to receive justice as has been customary amongst their peers ('*inter pares suos fieri consuevit'*).[326] It is interesting to note that the treaty only mentions customs when referring to the March but laws and customs when referring to Wales; thus recognising the status of the Welsh laws. That said, there is a proviso to the clause which states that justice will be done according to the laws and customs of Wales. The proviso states that justice is to be done in the presence of one or two men sent by the king to see what kind of justice ('*qualis iustitia*') will be done.[327] On the face of it, the caveat seems to be derogatory although it is possible that Henry wanted to know more about the Welsh laws.

In 1280 Llywelyn wrote to Edward I arguing that a '*contentio*'[328] between the king's men of Ceredigion and the prince's men of Meirionnydd, 'should be settled in the manner accustomed in times past according to the nature of the pleas of both sides' ('*in forma que consueta fuit temporibus retroactis secundum exigenciam querelarum utrobique'*). Instead, Llywelyn wrote, John de Knovill, the king's bailiff of Llanbadarn, contrary to the long-

[325] Llanthony Prima - N. R. Ker (ed.), *Medieval Libraries of Great Britain*. 2nd edn (London, 1964), p. 120.
[326] See Chart number 41.
[327] *ibid.*
[328] *AWR*, pp. 611-2.

established custom of those parts ('*longevam consuetudinem partium illarum*'), ordered Llywelyn to send his men before him at Llanbadarn to do and receive justice there ('*iusticiam facturos et recepturos ibidem*'). He therefore 'humbly asks the king to order the said justice … to settle such matters within those lands in the manner which was always customary' ('*semper fuit hactenus consuetum*'). It is clear from the endorsement on the letter that the king rejected Llywelyn's argument, ordering his bailiff that whatever used to have to be done in the March should be done to Llywelyn at Llanbadarn or elsewhere in the king's court ('*Sed rex mandate ballivo suo quod quodquod deberet fieri in Marchia, fiat ei apud Lampad' vel alibi in curia regis*').[329]

Sometimes the conflict over customs was a purely Welsh affair. Llywelyn ap Gruffudd, in 1269, ordered his bailiffs of the Perfeddwlad that if there was any doubt concerning certain '*consuetudines*'[330] which had been conceded to the predecessors of Anian II, bishop of St. Asaph, the bailiffs should diligently discuss the matter by means of twelve honest and trustworthy men of the neighbourhood, in which the doubt had arisen.[331]

Land Disputes

Even a cursory glance at the charts in Appendix Four will confirm that disputes concerning land or rights pertaining to land are one of the most common types of dispute in the extant documentation.

Giraldus Cambrensis said that 'The Welsh people are more keen to own land and to extend their holdings than any other I know. To achieve this they are prepared to dig up boundary

[329] See Chart number 57.
[330] *AWR*, p. 548.
[331] See Chart number 43.

ditches, to move stones showing the edges of fields and to overrun clearly-marked limits. So prone are they to this lust for possession, from which I may say they all suffer, that they are prepared to swear that the land which they happen to occupy on some temporary or longer-established tenancy agreement of lease, hire, renting or any other similar arrangement is their own freehold and has always belonged to their family, even when they and the rightful owner or proprietor have publicly sworn an affidavit about his security of tenure. Quarrels and lawsuits[332] result, murders and arson, not to mention frequent fratricides. Things are made worse by the ancient Welsh custom of brothers dividing between them the property which they have.'[333]

Perhaps the strict constraints on the alienation of land, to be found in the law-texts, were the real reason for, or at least a contributing factor to, the prominence of disputes concerning land and rights in land. *Llyfr Iorwerth* (an early thirteenth-century redaction from Gwynedd) states that 'No one is entitled to sell land or to gage it without the leave of a Lord, but let him lease it every year if he wants to. Men who are under abbots and men who are under a bishop are entitled to gage their land if they want to, by their leave.'[334] Further *Llyfr Iorwerth* states that 'A person's coming to land is not valid save by the judgement of the law, or by the investiture of a Lord.'[335] The prohibition of alienation was designed to perpetuate hereditary succession and preserve continuity of control by kindred over *gwely* territory and

[332] The original Latin reads '*Hinc itaque lites in curia, et contentiones …* ' - Dimock (ed.), *Giraldi Cambrensis Opera*. vol. vi, p. 211.
[333] *Journey and Description*, pp. 260-1. The 1278 '*carte'* made by Gruffudd ap Gwenwynwyn, in making territorial provision for his sons and providing for disputes between the brothers to be settled in a certain court, was no doubt partly designed to try to avoid such conflict – see Chart number 54.
[334] *Law of Hywel Dda*, p. 114.
[335] *ibid*., p. 110.

the *gwely*'s constituent family holdings.[336] Such tight restrictions could explain why locals took the drastic actions to which Giraldus refers. The moving of a boundary marker or the digging up of a boundary ditch would be an instant solution to acquiring more land, if it went unnoticed. The gains could outweigh the possible penalties or possible violent consequences. Without taking steps to acquire extra land a family unit or an individual within that family would be forever confined to a certain plot without hope of advancement.

Real actions 'are sharply distinguished in the law-texts from personal actions – a distinction which the lawyers eventually came to express'[337] in the terms *hawliau personol*[338] and *hawliau anianol.*[339]According to thirteenth-century law-texts, there were four real actions under the old law namely; 1. *Priodolder,* 2. *Dadannudd,* 3. *Ach ac edryf* and 4. *Mamwys.*[340] The common element in all four suits is *priodolder*, this type of free tenure is represented in the law-books as the 'primal source of right in land'.[341] New tenures (which in the event of contention, required new remedies) were coming into being, at the latest, in the thirteenth century. These new tenures can be seen as modifications of the *priodolder* principle and included leases for terms certain, exchange of holdings and *prid* (enabling a *priodor* to part with land for a consideration – *pridwerth* – for a term of four years).[342]

Strict procedural rules are set down in the law-texts for an action concerning land and the enduring nature and importance of these procedures (as ultimately recognised in the Statute of Rhuddlan 1284 and their continuing use after that date) has been highlighted by T.

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[336] Jones Pierce, *Medieval Welsh Society*, p. 362.
[337] *ibid*., p.361.
[338] *Ancient Laws*, ii, pp. 386-9.
[339] *ibid.*
[340] Jones Pierce, *Medieval Welsh Society*, p. 361.
[341] *ibid.*
[342] *ibid.,* pp. 363-4.

M. Charles-Edwards.[343] As mentioned earlier, the prominence of disputes in respect of land would have made the procedural rules, laid down in the law-texts, rather well known in medieval Welsh society.

According to *Llyfr Iorwerth*, such actions[344] could only be brought during two well defined periods of the year.[345] If someone wished to claim land he had to approach the local lord to ask for a day for hearing his claim, 'and that on the land.'[346] After following rules which allowed the occupier of the land time to obtain 'aid', the two parties and their aid were to meet on the land in question and 'to sit legally'. The laws lay down clear seating positions for those attending, including the 'King or the man who is in his place', court and commote justices, elders, goodmen, two serjeants, the defendant's *canllaw* and *cyngaws* and the claimant's *canllaw* and *cyngaws*.[347] When everyone was seated 'let surety be taken for law. Sureties for land and earth will be pledges in the form of living persons, two or more from each party; and those pledges go into the control of the Lord.'[348] There then follow detailed rules involving, inter alia, pleading and oath taking, to govern the conduct of the case. In Deheubarth, however, a procedure in real actions was operating which was different from the very precise procedure described in the law-books of Gwynedd. Thus, in south-west Wales, verdict was reached by men of standing in the *patria*, chosen by consent of the parties, one of whom delivered the judgement. They are described in the vernacular law-

[343] Charles-Edwards, *The Welsh Laws*, p.93.
[344] For actions involving the fixing of boundaries, see below in this chapter.
[345] *Law of Hywel Dda*, p. 83 – the reason was so as not to disrupt agriculture during spring and during the harvest.
[346] *ibid*., p. 84.
[347] *ibid*.
[348] *ibid*., p. 85.

book of Deheubarth, *Llyfr Blegywryd*, as *brawdwyr o fraint tir* (judges by privilege of land)[349] and in the records as suitors (*sectatores*).[350] However, it is clear that they were expected to be conversant with the law.[351]

Elements of the provisions relating to land disputes, laid down in the law-texts, are confirmed in the testimony given at the 1281 commission of inquiry, which is, despite the bias discussed in Chapter 3, instructive. Tegwared, the judge from Rhuddlan, confirms the requirement for sureties as set out in *Llyfr Iorwerth*. He stated that he had often seen that when 'anyone demands land against another, he ought first to find sureties [*pleg*'] to prosecute and the tenant ought also to find sureties.'[352] According to the evidence taken in Gwynedd Is Conwy there were (in Is Conwy, and therefore by implication Gwynedd Uwch Conwy) two means of judgement available in a plea concerning land namely either granting the parties 'the law called *cyfraith'* or the truth of the matter would be inquired by a jury ('*per patriam*') and it was the lord's prerogative to decide which method should be followed.[353] Certain witnesses at the inquiry testified that 'the law called *cyfraith*' was used for 'old possession' and the jury for cases of 'new seisin'.[354] A judge, Griffin ab Jorverth, of 'Cantred Deffrehincloyt' (Gruffudd ap Iorwerth of the cantref of Dyffryn Clwyd) also attested

[349] Jones Pierce, *Medieval Welsh Society*, p. 367. The provisions of *Llyfr Blegywryd*, in this respect, are echoed by Latin D, Bodelian Rawlinson MS C281, which states that there are three kinds of judges. Whilst the first type of judge (*iudex*) was a judge of one of the principal courts of Dinefwr (Deheubarth) and Aberfraw (Gwynedd) and the second was one in the court of law in each commote or cantref in Gwynedd and Powys, the third were judges (*iudices*) by privilege of land, in each cantref or commote of Deheubarth, namely every possessor of land – J. B. Smith, 'Judgement under the Law of Wales', p. 63.
[350] *Calendar of Welsh Rolls*, pp. 206-8.
[351] Davies, 'Ynad Cwmwd', p. 262 and see Chapter 3.
[352] *Calendar of Welsh Rolls*, p. 200.
[353] J. B. Smith, 'Judgement under the Law of Wales' 71 and *Calendar of Welsh Rolls*, pp. 195-200.
[354] *ibid.*

that 'if the law of Kevrith [*cyfraith*] be granted to the parties, then the judge ought always to go to the tenement that is being demanded.'[355]

Disputes concerning realty and/or rights in land could involve anything from '*ius hereditarium'*[356] (hereditary right)[357] to boundary disputes.[358] The '*compositione'*[359] reached in 1248 X 1249 between the rector of a Welsh church and Richard Melin, a parishioner, was described as '*amicabili et reali compositione*' (an amicable and real agreement) and settled a '*controversia'* which, inter alia, *'super communa pastura*' (concerned common pasture). The rector had claimed rights '*per totum iam dicti Ric' Melin feudu[m] quod habet in parrochia de Kaer*'' (throughout the entire fee of Richard Melin in the parish of Carew) and over the '*iure*' (right) to take gorse or furze '*quod anglice vocatur vursen*' (which is called *vursen* in English) for '*focale*' (fuel).[360]

Boundary Disputes

Echoing the observation of Giraldus Cambrensis, mentioned above, boundary disputes account for the most numerous single type of dispute in the extant records. Indeed *Llyfr Iorwerth,* in allowing that 'Fixing boundaries is free at all times'[361], facilitates their year-round resolution.[362]

[355] *Calendar of Welsh Rolls*, p. 200.
[356] *AWR*, p.159.
[357] See Chart number 16.
[358] See below in this chapter.
[359] *St David's Episcopal*, pp. 132-3.
[360] See Chart number 29.
[361] *Law of Hywel Dda*, p. 97.
[362] Tied with this is the fact that boundary disputes were less likely than disputes concerning ownership and possession to disrupt agriculture.

As mentioned in the Introduction, a dispute concerning boundaries (*camderwynnu*[363]) is referred to in *Geraint ac Enid* and involves 'Gereint going off with his "gwyrda"' [364] (goodmen) to look at the boundaries in question and fix them. Indeed at least one law-text envisaged arbitration in such a case. Where 'two lands coequal in privilege' are involved, the elders are to decide the matter in that 'the oldest men in common are to assign its boundary.'[365] Where there was a boundary dispute between two ecclesiastics, either bishops or abbots, certain law-texts including *Llyfr y Damweiniau,* declare that the right of determining the boundary belongs to the 'higher in dignity of the two or, if they were equal, to the one with prior custody of his episcopal or abbatial estate. The appropriate ecclesiastic should then swear an oath on the crosier and gospel book as to the correct boundary.'[366] 'If the boundary is on land between a church and the country or king, then the church is entitled to determine it by 'crosier and gospel book', in contrast to the procedure for royal land, where the *maer* and *cynghellor* (local officials) have to swear to the boundaries.'[367] It is clear, however, that these laws were not always adhered to. Bishop Anian II of St. Asaph, in his *gravamina* against Llywelyn ap Gruffudd, accused the Prince of Wales of usurping the power of determining boundaries on episcopal territory.[368] Further, although boundary disputes between the Church and a secular lord should, according to the law-texts mentioned above, have been settled by the former, in the agreement between Richard, bishop of Bangor and Llywelyn ap Gruffudd of August 1261, five ecclesiastics and four secular lords were appointed as arbitrators. They declared in favour of Llywelyn in respect of

[363] Ellis, 'Legal References, Terms and Conceptions in the "Mabinogion"', 146.
[364] *ibid*., 146-7.
[365] *Ancient Laws*, ii, p. 77.
[366] Pryce, *Native Law*, p.209.
[367] *ibid*., pp.208-9.
[368] *ibid.*, p.210.

the boundaries in Tal-y-llyn and ordered a sworn inquest into disputed boundaries between Llanwnda and Bodellog. The boundaries were to be fixed on 13 October 1261 by Dafydd Goch ap Cyfnerth and fourteen other named men, 'meeting on the land where the boundary is disputed, under oath and pain of excommunication, who shall adjudicate the boundary between the said townships as they believe it was in the time of Llywelyn [ap Iorwerth] of good memory and the bishop of Bangor and his predecessors.'[369] Similarly, the boundary dispute between the abbot and convent of Strata Florida and Cynan ap Maredudd ab Owain and his men of Caron was, in the winter of 1279 - 80, submitted to '*arbitrio … trium arbitrorum*'[370] (the arbitration … of three arbitrators) namely the abbots of Whitland and Caerleon and Gruffudd ap Maredudd ab Owain.[371]

Non-Land Disputes between The Church and the Secular World

This subsection will analyse disputes, other than those involving pure realty, between ecclesiastical litigants on the one hand and secular litigants on the other. The matter or matters in dispute might have been generically described as in 1275 when Llywelyn ap Gruffudd wrote to the Archbishop of Canterbury, concerning '*libertatibus et consuetudinibus*'[372] (liberties and customs) which were disputed by Anian II, bishop of St. Asaph.[373] Alternatively the subject of the conflict might have been more specific.

A not uncommon area of legal conflict between lords and laymen on the one hand and the Church on the other concerned portionary churches. A. N. Palmer, referring to the evidence contained in *The Taxatio of Pope Nicholas* of 1291, states that 'while in the two northern

[369] *AWR*, p. 518 and see Chart number 35.
[370] *AWR*, p. 216.
[371] See Chart number 55.
[372] *Llyfr Coch Asaph Thesis*, Part I, p.117.
[373] See Chart number 52.

dioceses of Wales, to each parish there belonged, for the most part, but a single priest, there was in almost every deanery at least one parish (generally more than one), the revenues of which were divided into 'portions', - the shares of an equal number of priests to the same parish belonging.'[374] The tithes receivable were thus divided into distinct portions. Taking as an example the collegiate church of Caergybi (Holyhead), which was formerly served by a college of twelve canons or prebendaries, Palmer states that the names of the priests occupying the several canonries are known, as are the names of those in whom the patronage of the said canonries rested.[375] Each patronage was in the hands not of a single person but rather a group of persons with a common forefather. The patrons of the several canonries 'were the existing representatives of certain 'cenedloedd' or 'kins', who occupied a corresponding number of 'gwelyau', or tracts of tribal land, within the parish of the same.'[376] As Giraldus Cambrensis said, churches 'had almost as many parsons and comportioners ('*personae et participes*') as there were *kins* of chief men, that is tribes of 'uchelwyr' (*cenedloedd uchelwyr*) in the parish ('*capitalium virorum in parochial genera*').'[377] These comportioners 'obtain the churches not by appointment but by succession, sons following fathers, possessing thus and defiling, by hereditary right, the sanctuary of God. And if by chance the prelate should presume to appoint or institute any other person, the *kin* ('genus') would, I doubt not, revenge the injury either upon the institutor or upon him that was instituted.'[378] Examples of disputes concerning portions, include the dispute heard on 17

[374] A. N. Palmer, 'The Portionary Churches of Mediaeval North Wales', *Arch. Camb.* 5th series. 3 (1886), 175-209 (175).
[375] *ibid.*, 177.
[376] *ibid.*, 178.
[377] *ibid.*, 184-5.
[378] *ibid.*, 185.

August 1217 at Oswestry church, referred to in Chapter 2, and a case of 1319.[379] The first dispute was between '*Howelus filius madoc filius Grifini*'[380] (Hywel ap Madog ap Gruffudd) and '*dominum Abbatem et conventum Salopesberie*' (the lord Abbot and convent of Shrewsbury). The '*lis*' concerned a '*portionem quadam*' (certain portion) in the church of Oswestry which, it was said, Seisyll once held by the authority ('*auctoritate*') of the bishop of St. Asaph. The case was heard before Master Adam and Master Richard Sais ('*Seys*') acting on behalf of the bishop. After hearing the right of the abbey concerning the portion in dispute and having carried out an inspection of their muniments ('*inspectione munimentorum ipsorum*') Hywel resigned any right he thought he had into the hands of the two masters. He also resigned, in their presence, all claims concerning that portion ('*super illa portione*').[381]

Another area of conflict involved native *clas* churches. A dispute between the abbot and convent of Enlli (Bardsey) and the secular canons of Aberdaron and the men of the *abadaeth* is recorded in a *'pacis et concordia'* of 1252.[382] An *abadaeth* was a landed endowment of a church, in native Wales, headed by an abbot.[383] It has been speculated that the secular canons were synonymous with portioners (in that portioners are mentioned in relation to the church of Aberdaron in the *concordia*).[384] Both the Iorwerth Redaction of the Welsh laws and *Llyfr Colan* detail rights of the king (i.e. the prince or lord) pertaining to

[379] See Chart number 59. Despite being after the 1282-3 conquest, this case is instructive because of the procedure employed and the matters at issue, as well as one of the parties being a portioner of the church of Llandinam (the place where the Arwystli dispute was heard).
[380] *Cart. Shrewsbury*, vol II, pp. 332-3.
[381] See Chart number 18.
[382] See Chart number 31.
[383] Pryce, *Native Law*, p.186.
[384] *AWR*, p. 637.

ecclesiastical estates. 'Abbot-land', which appears to be synonymous with *abadaeth,* owed the widest range of dues to the king; dues which included the payment of *dirwy*, *camlwrw*, *amobr* and *ebediw*.[385] In 1252 Dafydd ap Gruffudd , as lord of Cymydmaen, had a direct interest in the annual procurations to which the lord was entitled from the *abadaeth* and presided over the arbitration by '*quinque viros fidedignos*'[386] (five trustworthy men). The resulting itemised arbitration award included details of the annual dues in his favour as lord, however *amobr* and *ebediw* were in this instance paid to the abbot of Bardsey (by the tenants of the *abadaeth*) and not the lord. Perhaps the princes of thirteenth-century Gwynedd had relinquished their right to these two dues for the purposes of realpolitik or other reasons. The privileged status of the lands in the *abadaeth*, held by the secular canons or portioners of Aberdaron, was recognised in the award.[387] There is evidence for the existence of an *abadaeth* elsewhere. The transfer of all the rights of Hwfa ap Madog ap Dafydd in the *abadaeth* ('*Abbadayth*'[388]) of Llaneilian, in north-east Anglesey, to Henry, the rector of the church there, is recorded in a thirteenth-century '*carte'*[389].

Another flashpoint between lords and laymen on the one hand and the Church on the other concerned the 'right of presentation' or the 'right of advowson'. The dispute of 1274 between the chapter of St. David's of the one part, and '*nobilem virem Gruff' filium Mareduci filii Owein'*[390] (the noble man Gruffudd ap Maredudd ab Owain) and '*clericum*' (a clerk), named, Hywel ap Llywelyn, of the other, concerned the right of presentation. The '*lis*' concerned the patronage ('*ius patronatus*') of the church of Llandysul, in that Gruffudd

[385] Pryce, *Native Law*, p. 214 and p. 218.
[386] *AWR*, p. 635.
[387] *ibid.*, p. 637.
[388] See Appendix Five.
[389] *ibid.* NLW Bodewryd 187.
[390] *St David's Episcopal*, pp. 162-3.

claimed the right of presentation to the church and had presented the above-named clerk. The '*scriptum*' of Richard de Carew, bishop of St. David's, announced that Gruffudd and his heirs were to retain the right of presentation to Llandysul and that Hywel ap Llywelyn was to be admitted to the church as rector on condition he and his successors paid twenty marks of silver each year to the chapter. Also whoever was rector was to present a vicar who would perform continuous residence and whose vicarage was to consist of a third of all the revenues of the church, once the money due to the chapter had been paid.[391]

Other areas of conflict between lords, especially princes, and the Church included treasure-trove and sanctuary. Both of these were amongst the matters the subject of the agreement of 29 April 1261, made between Richard, bishop of Bangor and his chapter on one side and Llywelyn ap Gruffudd and his magnates on the other.[392] Eleven items concerning princely and episcopal rights were listed. Item ii concerned rights to the goods from a shipwreck and stated that the arbitrators recall ('*recolimus*'[393]) that Llywelyn ap Iorwerth acted in a certain way. The arbitrators, in the same item, go on '*Domino Lewelino bona fide laudamus*'[394] (to commend in good faith to Llywelyn ap Gruffudd) Llywelyn ap Iorwerth's actions. Item vi, concerned a man seized in a church and the question of refuge. The procedure employed to determine the truth has been mentioned in Chapter 3.

Other Types of Dispute

Other types of dispute or potential dispute that are revealed by an analysis of the documentation are many and varied. In 1268 Gilbert de Clare and Llywelyn, prince of Wales, agreed on arbitrators who met '*super contencionibus et discordiis inter ipsos motis super*

[391] See Chart numbers 48 and 49.
[392] See Chart number 34.
[393] *ibid*., p. 516.
[394] *Llyfr Coch Asaph Thesis*, Part I, p. 61.

hominibus terris transgressionibus et rebus aliis' (concerning disputes and disagreements between them over men, lands, trespasses and other matters).[395] Later, in 1274, Llywelyn put Gruffudd ap Gwenwynwyn and his son Owain on trial. The '*causa accusationum*'[396] followed an abortive assassination plot with the prince of Wales as its intended victim.[397]

Conclusion

It is clear that disputes concerning land, particularly those involving boundary disputes, are the most numerous in the extant documentation and they were probably the most numerous in reality also. One possible reason for this, namely the strict constraints on alienation to be found in the law-texts, has been discussed. Certainly the law-texts had plenty to say about the resolution of land disputes and the provision for the hearing of real actions on the land in question makes perfect practical sense, weather permitting, from a modern day evidential point of view. It was the most efficient way of dealing with the matter and ensuring that, on the day set for everyone to congregate, there was the opportunity of a once and only cure. If land disputes were as numerous as Giraldus seems to say they were practical dispute resolution would be all important.

Other disputes can be explained by the clash of Church and state, as well as the realpolitik of powerful men, both ecclesiastical and secular, contesting, inter alia, seigniorial rights. Yet others by human greed and the desire for advancement and betterment.

[395] See Chart number 42.
[396] *AWR*, p. 797.
[397] See Chart number 50.

CHAPTER 5 – PRINCES, LORDS AND THE CHURCH

This chapter analyses the part played by princes and lords, as well as the Church and the community in general in the arbitrative and dispute resolution process.

The Role of the Community and the Importance of Consultation in the Settlement of Disputes and the Dissipation of Anger

The community's role in a conflict was often crucial. It could assist in the resolution of the same by encouraging the parties to settle their differences by submitting themselves to arbitration. In this regard there are some striking similarities with the arbitration found in another kin-based society, that of medieval Iceland, as represented in the country's sagas, which are 'rich in circumstantial accounts of feud, lawsuits, and arbitrated settlements.'[398] As in Wales, there was an ever present threat of violence should conflict go unresolved.[399] As a consequence third parties intervened and convinced a large percentage of those in dispute to resolve their disagreements by arbitration.[400] There is evidence of 'peer-pressure' in Wales too. Welsh poetry of the period comments on the perceived effects of conflict and disharmony upon the fabric of society, and the Welsh language was itself rich in the vocabulary of arbitration and compromise.[401] An analysis of the extant documentation provides examples of community intervention also. The law-texts' requirement for human sureties to be given into the custody of the lord, at the beginning of the legal procedure to settle a land dispute, is one very obvious example.[402] Further, in 1234, it was the advice of discreet men ('*discretorum virorum*') that led to the settlement of the dispute between

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[398] W. I. Miller, 'Avoiding Legal Judgment: The Submission of Disputes to Arbitration in Medieval Iceland'. *The American Journal of Legal History* 28, 2 (1984), 95-134 (95).
[399] See Chapter 4 and the comments of Giraldus Cambrensis regarding the results of land disputes, namely 'Quarrels and lawsuits result, murders and arson, not to mention frequent fratricides.' - *Journey and Description*, p. 261.
[400] Miller, 'Arbitration in Medieval Iceland', 102.
[401] See Introduction.
[402] See discussion of land disputes in Chapter 4.

Margam and Rhys Goch the younger by the arbitration of trustworthy and discreet men ('*per arbitrium virorum fidedignorum et* discretorum').[403] Further, the subsequent quitclaim by Rhys, made pursuant to the settlement, was said to have been on the advice and consent of his friends ('*consilio et consensu amicorum meorum'*).[404] This latter statement echoes English law and *Leges Henrici Primi* which allowed defendants to seek 'counsel ... from their friends and relatives' (*consilium . . . ab amicis et parentibus suis*).[405]

The resolution of disputes was important at all levels of free society in medieval Wales. Cases such as that involving the *ffetaniaid*[406] and the seven Welshmen[407] have already been discussed.[408] At the other end of the social scale the effects of anger and the importance of community (particularly the advice of wise men and women) in the settlement of disputes can be seen most starkly in the *Brut y Tywysogyon*'s entry for the year 1211. Llywelyn ap Iorwerth 'being unable to suffer the king's rage, sent his wife, the king's daughter, to him by the counsel of his leading men to seek to make peace with the king on whatever terms'[409] could be had. Consultation by kings and princes in Europe was common place judging by 'the frequent references to consultation in charters and chronicles, as well as in law-codes.'[410] The result of the visit by Joan (Llywelyn's wife) to her father, King John, was the charter Llywelyn gave to John dated 12 August 1211, which commenced with the words 'In order to receive the king's grace and good will' ('*gratiam et benevolenctiam*'[411]) and

[403] See Chart number 22.
[404] See Chart number 23.
[405] Keyser, 'Agreement Supersedes Law, and Love Judgment', 61.
[406] See Chart number 16.
[407] See Chart number 7.
[408] See Chapter 3 for the *ffetaniaid* and the Arwystli case. See Chapter 2 for the 1190 case involving seven Welshmen.
[409] *Brut Peniarth*, p. 85.
[410] Reynolds, 'Law and Communities in Western Christendom', 212.
[411] *AWR*, p. 386.

continued with Llywelyn agreeing to certain matters as detailed in the charter.[412] The charter also states that the 'bishop of Norwich, the earls William of Salisbury, William Marshall and William de Warenne and Peter fitz Herbert have undertaken that the king has remitted all ill will and anger ['*omnem malivolentiam et ind[ignationem]*'] against Llywelyn.'[413]

Llywelyn ap Gruffudd used the community (or at least those elements of it which were powerful and influential) when he ensured that the arbitrators at the 1274 trial of Gruffudd ap Gwenwynwyn and his son, Owain, should be drawn from those who had witnessed Gruffudd's pledge of fealty to him of 12 December 1263 at Ystumanner.[414] The arbitrators, and others assembled, were necessarily witnesses to Llywelyn's anger (and as the subsequent award shows, his mercy). 'Gruffudd and Owain confessed that they had offended against the fealty due'[415] to Llywelyn. The arbitrators 'therefore unanimously adjudged that Gruffudd and Owain should be subject with their lands and possessions to the grace and will of the prince.' Gruffudd wisely 'fell on his knees before the feet of the prince and sought his mercy.' A show of contrition fitted the circumstances and knitted well with the conciliatory and compromising nature of the arbitration come show trial. Justice had been done and been seen to be done by the assembled magnates and others.

Braint Teilo

It is important, before moving on, to mention the concept of '*Braint Teilo*'. This was an early attempt by the Welsh Church to expound a legal defence not to be subject to secular

[412] See Chart number 15.
[413] *ibid.,* p. 387.
[414] See Chapter 4. See Chart numbers 38 and 50 also and J. B. Smith, *Llywelyn ap Gruffudd*, p. 370.
[415] *AWR*, p. 797.

jurisdiction. In other words the Church was expressing an aspiration to be exempt from secular law. At the same time it claimed full rights over the exploitation of land.[416] Law was increasingly associated with the preservation of privilege and by the eleventh century churches, in particular, were attempting to specify this privilege, as guaranteed by law, in writing.[417] '*Braint Teilo*' of Llandaff, associates the two ideas of law and privilege. Llandaff, as the church of Teilo, produced a privilege in the late tenth or early eleventh century exempting it from judgement by the king of Morgannwg.[418] It has been said that it is difficult to ascertain whether the aspiration became reality, for want of supporting evidence.[419] Of course, it must have been, at the very least, in the thoughts of ecclesiastical litigants, especially when they were in dispute with the secular world. Further, the secular Welsh laws do occasionally recognise the distinct legal status of the Church; for example, as regards an action in respect of land, *Llyfr Iorwerth* states that 'law for church land is not closed at any time between themselves, for it does not belong to our law.'[420] Whether the aspiration became reality will become a little clearer in the remaining sections of this chapter.

Princes and Bishops

The four bishoprics of medieval Wales were Bangor, Llandaff, St. Asaph and St. David's. Power games, realpolitik and the relationship between princes and bishops undoubtedly played a part in determining the number, ferocity and frequency of disputes between the two. Disputes between Llywelyn ap Gruffudd and the bishops of Bangor and St. Asaph were

[416] Pryce, *Native Law*, p.236.
[417] Davies, *Wales in the Early Middle Ages*, p.139.
[418] *ibid,* p.138.
[419] Pryce, *Native Law*, p.236.
[420] *Law of Hywel Dda*, p.97.

far from uncommon[421] and it has been noted that *gravamina* tended to reflect the controversy concerning the exercise of the rights of secular lordship over tenants of Church land.[422] In Llywelyn's case disputes were with his leading freemen generally, both lay and ecclesiastical.[423] Settlement of disputes by arbitration was perhaps a means sometimes favoured by parties to increase or consolidate their power and influence. Indeed it has been convincingly argued that Llywelyn used arbitrations to achieve a general settlement of disputes with the bishops as a means of consolidating his power within Gwynedd and inducing them to co-operate with him.[424]

The Church and Secular Lords – *Quid Pro Quo*

Despite the conflict between the Church and the princes that occurred from time to time, each clearly had a symbiotic role to play vis a vis the other. As patrons of the Church, the princes had a role to play as protectors of it, and there is evidence that they bound themselves legally to do so. In a charter of 1209 in favour of Cymer Abbey, Llywelyn ap Iorwerth promised to fully exercise secular justice ('*secularem iustitiam plenarie exercebimus*'[425]) and willingly sustain ecclesiastical censure ('*ecclesiasticiam censuram*') against those contravening apostolic letters.[426] In turn the Church, inter alia, provided arbitrators in secular disputes.[427] In the peace agreement made between Llywelyn ap Gruffudd and his brother, Dafydd in 1269, it was said that the dispute was subject to the jurisdiction of the venerable fathers the bishops of Bangor and St. Asaph ('*iurisdictioni*

[421] See for example Chart numbers 35 and 47.
[422] L. B. Smith, 'The gravamina of the community of Gwynedd against Llywelyn ap Gruffudd', *BBCS* 31 (1984), 163.
[423] *ibid.*
[424] D. Stephenson, *The Governance of Gwynedd* (Cardiff, 1984), p.169.
[425] *AWR*, p. 382.
[426] See Chart number 13.
[427] See Chart numbers 26 and 38 by way of example.

venerabilium patrum de Bangor et de Sancto Asaph episcoporum'[428]) acting together with worthy men ('*probos viris*').[429] This was most probably to lend greater weight to the agreement and also because, as prince of Wales, it would be out of the question for Llywelyn to submit himself to an arbitration by solely lesser Welsh princes. Further the Church provided witnesses to secular agreements.[430] It could also impose sanctions against those who broke agreed terms. Thus following mediation, in a dispute between Llywelyn and Dafydd, in 1274, by two Welsh bishops, it was agreed that the bishops could exercise ecclesiastical censure against the party contravening the agreement.[431]

The Role of the Secular Lord in Disputes between Two Ecclesiastical Parties

As will become clear, from the penultimate section of this chapter, in the majority of cases the Church succeeded in dealing with disputes between its members 'in-house'. However, sometimes the relevant secular lord was appointed as an arbitrator. In the 1209 dispute between Dore and Strata Florida, five abbots acted as arbitrators together with '*aliorum bonorum virorum, precipue Lewelini*'[432](other good men, especially Llywelyn). This evidences the power of Llywelyn ap Iorwerth at that time and in that place. Similarly, Gruffudd ap Gwenwynwyn presided over the 1265 dispute between the rectors of two Welsh churches, in Gorddwr (a region he had occupied in the summer of 1263), where the case was heard by better and elder trustworthy men.[433] At other times the consent of the secular lord was sought prior to an arbitration (which could lead to a binding agreement) taking place; thus the prior consent of Gilbert de Clare was sought and obtained by two

[428] *AWR*, p. 547.
[429] See Chart number 44.
[430] See Chart number 54 by way of example.
[431] See Chart number 46.
[432] *AWR,* p. 384 and Chart number 12.
[433] See Chart number 39.

abbeys in 1265 to an arbitration that resulted in the remission of tithes.[434]

The Role of Secular Lord in Disputes between an Ecclesiastical Party and a Secular Party

The local secular lord clearly, on occasion, had an instrumental role in the dispute resolution process and was involved (i) because of self-interest, (ii) to lend validity to the resulting award[435], (iii) in compliance with *Cyfraith Hywel*[436] or a combination of two or more of these. As alluded to in the paragraph above, the lord's involvement, no doubt, reflected the realities of power at the relevant time and in the area where the conflict had arisen and was to be settled. Three arbitrations are instructive in this regard. They concern firstly, the Arwystli dispute of 1216 X 1226[437] in which Strata Marcella Abbey had an interest in the outcome, secondly, a dispute between Valle Crucis Abbey and heirs of freemen of Llangollen in 1234[438] and thirdly, the dispute between the abbot and convent of Enlli (Bardsey) and the secular canons[439] of Aberdaron and the men of the *abadaeth.*[440] In the first of these, Llwelyn ap Iorwerth as lord of Arwystli, who 'could not be present at the hearing' appointed Maredudd ap Rhobert, lord of Cedewain, 'to preside over the case in his place' and 'to settle the dispute.' The two documents containing details of the dispute resolution process, which are clearly hostile to the *ffetaniaid*, were both drawn up by scribes from Strata Marcella.[441] Neither Maredudd nor Llywelyn would have had anything to gain by backing the lowly

[434] See Chart number 40.
[435] The validity bestowed by a lord in any sort of legal process or on any legal transaction could have been seen as, at the very least, desirable and in some cases essential. The consent given by Llywelyn ap Iorwerth to Ednyfed Fychan's purchase of the land of Rhosfynaich in 1230, for example, could have been either. *AWR*, p. 427. Cf. Stephenson, *Governance of Gwynedd*, p.80, fn. 76.
[436] See Chapters 3 and 4.
[437] See Chart Number 16.
[438] See Chart Number 24.
[439] For the purposes of this section, assumed to be secular portioners.
[440] See Chapter 4 and Chart Number 31.
[441] *AWR*, p. 160.

ffetaniaid against the interests of the abbey. In the second case 'On the day fixed between both parties by the lord prince and his seneschal I. Fychan'[442] the arbitrators met. Madog ap Gruffudd Maelor was the 'lord prince' who later confirmed and amplified the judgement reached. Madog was patron of Valle Crucis and the extant document gives the strong impression that the freemen were forced to yield in accepting the arbitration of five monks. In the third case, Dafydd ap Gruffudd presided over the arbitration award as lord of Cymydmaen. Dafydd had a direct interest in the agreement as it laid down annual procurations to which the lord was entitled from the *abadaeth*.[443]

The Role of Ecclesiastics and the Forums they Employed in Disputes Concerning the Church

The largest monastic community in medieval Wales was that of the Cistercians and their first house was founded on 9 May 1131 at Tintern.[444] The basis of their economy lay in their acquisition, often by donation but also by purchase and exchange, of large tracts of land and this led to frequent conflict. Giraldus Cambrensis was apparently quoting a contemporaneous proverb when he said 'they are bad neighbours, just like the White Monks.'[445] In particular he alleged that Margam had oppressed neighbouring Neath.[446] However he did acknowledge that the Cistercian avidity for land was due to a desire to sustain sizeable communities and perform acts of hospitality.[447] The Margam-Neath conflicts continued for over half a century and included the disputes concerning Skerra Grange in

[442] *ibid.,* p. 709.
[443] See the discussion of disputes concerning native *clas* churches in Chapter 4.
[444] D. H. Williams, *The Welsh Cistercians,* 2 vols (Tenby, 1984), vol I, p. 5.
[445] J. S. Brewer (ed.), *Giraldi Cambrensis Opera.* vol. iv, Rolls Series (London, 1869-91), p. 207.
[446] Which whilst Cistercian also, was of the family of Savigny, not of Clairvaux.
[447] Williams, *Welsh Cistercians*, vol II, p. 211.

1173-8,[448] local pastures in the lordship of Afan in 1205-8,[449] and a similar dispute in Corneli and Newton Downs *c*.1237.[450]

Litigation between Cistercian abbeys was 'usually conducted before Cistercian abbots commissioned to hear the case by the order's General Chapter,'[451] as in the dispute between the abbeys of Caerleon and Margam in 1253, where five Cistercian abbots, three of whom acted as judges ('*judicibus*'), were appointed. A sixth Cistercian abbot was ordered to enforce the resulting '*sentenciam*' (judgement).[452] Often disputes were referred specifically to arbitration as in the dispute between Margam and Neath in the lordship of Afan in 1208,[453] and a good example of the Cistercian rule of settling disputes in-house, without recourse to secular resolution or courts, where there was reference to arbitration is the dispute between the abbeys of Pool and Cwmhir in 1226-7.[454] In this dispute the first arbitration, in 1226, failed and the three Cistercian abbots who had been appointed as arbitrators were replaced by the General Chapter. The second arbitration (where three abbots and two subpriors acted as arbitrators) of July 1227 was successful.[455]

Recalling the Church's desire to promulgate *Braint Teilo*, secular law was most definitely seen as a threat. The Church's concern about the possible effects of secular justice on one of its own arbitrative decisions is clear to see in the award that flowed from the arbitration of 1227, just mentioned. In that award there were various sanctions imposed including a sanction for approach to secular jurisdiction; 'if either of the parties approached the secular

[448] See Chart number 6.
[449] See Chart numbers 9, 10 and 11.
[450] See Chart number 25.
[451] Pryce, *Native Law*, p.208.
[452] See Chart number 32.
[453] See Chart number 11.
[454] Mentioned in Chapters 2 and 3.
[455] See Chart number 20.

arm against the other party to prevent it from enjoying the possessions adjudged to it, it was to be punished by the authority of the highest order, and if it failed to regain its sense, the arbitrators were to report the matter to the General Chapter following.'[456]

Disputes between bishops are seen from time to time and once again there is clear evidence that they preferred all the arbitrators to be ecclesiastics. Although, as in the 1209 Dore and Strata Florida case,[457] sometimes non- ecclesiastics would be appointed. This is seen in the long-running, multi-stage dispute resolution process, between the bishop of Hereford, Thomas de Cantilupe, and following his death, Richard de Swinfield, of the one part and Anian ap Ynyr, Bishop of St. Asaph of the other.[458] The first three arbitrators appointed were the treasurer of Hereford and the archdeacon of St. Asaph and Gregory of Caerwent elected by consent of the parties. Perhaps the thinking here was that Gregory could cast the deciding (unbiased) vote. If it was, it didn't succeed as no settlement was reached at first instance.[459]

Other forums used by the Church to resolve its internal disputes include the synod and the tribunal. The 1156 synod held in Cardiff, by Nicholas, the bishop of Llandaff has already been mentioned. It concerned a dispute between the abbot of Gloucester and Picot the clerk concerning the church of St. Gwynllyw of Newport.[460] In 1191 X 1196, two ecclesiastics sat *'pro tribunali'*[461] (on a tribunal) beside '*viris discretis et juris peritis'* (discreet men, who are experts of law), in a dispute between '*RIVANUM presbiterum*' (Riuan, the priest), who

[456] *Ystrad Marchell.* Charter no. 70.
[457] See earlier in this chapter.
[458] Mentioned in Chapter 3.
[459] See Chart number 56.
[460] See Chart number 5.
[461] *Cartae*, vol. I, p.206.

calls himself parson of Lantgewi and *'monachos de MARGAN*' (the monks of Margam).[462] It is not clear whether the 'experts of law' were experts in canon law or secular law or both.

Assessors, as has been mentioned in Chapter 3, were used in the settlement of one dispute between two Welsh abbeys (Margam and Neath once again). It was said of four abbots '*sint assessores non judices*'[463] (they should be assessors not judges). Three other abbots, acted as arbitrators under the mandate ('*mandatum*'[464]) of the abbot and General Chapter of Citeaux. It appears that the assessors assessed the facts and the evidence of the case and presented their findings to the abbots who had been ordered to act as arbitrators.[465] An instance where a Welsh bishop employed a preliminary assessment or examination was also referred to in Chapter 3. Here the bishop of St. Asaph wished to have an investigation and examination by clerics and older, trustworthy laymen with a view to an inquiry being held. An ordinary inquiry followed.[466]

Bishops often exercised, in ecclesiastical terminology, 'ordinary jurisdiction' (as opposed to 'delegated jurisdiction'), as did Bishop Thomas of St. David's, in 1248 X 1249, when a dispute between the rector of a Welsh church and a parishioner was '*coram nobis iurisdictione ordinaria*'[467] (before our 'ordinary' jurisdiction).[468] On other occasions, churchmen acted as papal judge-delegates. Chancellors, deans, priors and treasurers are all recorded as acting in this capacity.[469] Sometimes the papal judges-delegate would approve and confirm the

[462] See Chart number 8.
[463] *Cartae*, vol II. p. 330 and Chart number 11.
[464] *ibid.*
[465] Similarly, two of the abbots in the 1253 dispute between Carleon and Margam appear to have acted as initial assessors – see Chart number 32.
[466] See Chart number 47.
[467] *St David's Episcopal*, p. 132.
[468] See Chart number 29.
[469] See for example Chart number 17.

arbitrators' award. This happened in a dispute of 1210 between St. Peter's Abbey, Gloucester and Roger, rector of Llaneleu chapel, where the '*compositionem*'[470], after having be made '*coram arbitrariis viris discretis*' (in the presence of discreet arbitrators), was afterwards '*approbatam et confirmatam*' (approved and confirmed) by two abbots and a rural dean as papal judges-delegate.[471]

Conclusion

The community's important role in encouraging secular disputants to settle their differences or submit them to arbitration is clear. The Church too had its own version of this, played out behind closed doors and often more tenacious, it prompted and cajoled its members to settle or arbitrate; no matter how many arbitrations it took or how many different types of forum had to be tried.

Recalling the Church's desire to rely on *Braint Teilo,* often, as it has been seen, the Church was able to deal with internal disputes 'in-house' without recourse to secular arbitrators, jurisdiction or law. However, the example of the involvement of '*aliorum bonorum virorum, precipue Lewelini*'[472] (other good men, especially Llywelyn [ap Iorwerth]), alongside five abbots, as arbitrators in the dispute of 1209,[473] shows that this was either not always possible or that on occasion it was desirable to have an external presence such as a powerful prince or secular lord.[474] Perhaps the prince lent extra validity to the award or perhaps the prince was so powerful the abbeys could not refuse his involvement.

[470] *St David's Episcopal*, p. 85.
[471] See Chart number 14.
[472] *AWR*, p. 384.
[473] See above in this chapter and Chart number 12.
[474] In 1208 Llywelyn ap Iorwerth had annexed southern Powys and occupied northern Ceredigion as far as the river Ystwyth - *AWR,* pp. 384-5.

Despite the well documented disputes between, for example, princes and bishops, which were to some extent a matter of powerful men posturing, the symbiotic relationship between princes and lords on the one hand and the Church on the other was clearly of value. As well as being patrons, princes could promise to fully exercise secular justice and willingly sustain ecclesiastical censure in their protection of the Church. The Church in its turn could provide arbitrators in secular disputes and witnesses to secular agreements as well as threaten to exercise ecclesiastical censure against a defaulting party. Further, once *gravamina* had been addressed and redressed, via arbitration and settlement, princes and bishops could better get on with day to day business with a clearer understanding of each other.

CONCLUSION

The law of Wales, Dafydd Jenkins said, was a law 'whose starting point was [its] function of reconciling the parties to a dispute.'[475] It was concerned more with 'justice and reconciliation than with … punishment.'[476] It is clear, despite the extant documentation being mainly concerned with princes, lords and the Church, that arbitration and dispute resolution were integral to this function of the law throughout medieval Welsh society.

Giraldus Cambrensis, when commenting on the prevalence of land and boundary disputes, remarks on the 'lust for possession' which led to *contentiones, lites* and murder.[477] Land disputes, particularly those involving contested boundaries, are indeed the most common type of dispute revealed by the extant documentation and the procedures and forums available to try to achieve a reconciliation of the disputants must have been vitally important to the fabric of society.

Arbitration, and extra-curial dispute resolution processes in general, involved the community to a greater extent than did court proceedings, certainly in secular disputes. Thus the arbitrators, the goodmen from the local area, the sureties, the assessors, and the witnesses all contributed to the peace-making and had a stake in its successful outcome as well as in the compliance of the parties with the decision or award. Of course not all arbitrations were successful nor were all decisions and awards complied with and this must have been a strain on community relations. Further arbitrators may at times have been

[475] Jenkins, 'The Significance of the Law of Hywel', 66-7.
[476] *ibid.,* 71-2.
[477] *Journey and Description*, pp. 260-1 and Dimock (ed.), *Giraldi Cambrensis Opera*. vol. vi, p. 211.

partisan,[478] those selected usually reflecting the bargaining strength of the respective parties. However, the aim was invariably the same namely to resolve conflict and avoid the consequences of not doing so; and the Welsh law-texts, together with the extant documentation analysed and presented in the charts to this dissertation, provide us with evidence of the varied means of achieving this goal and the central role of arbitration and extra-curial dispute resolution.

[478] See for example Chart number 24 where the prior and four monks of Valle Crucis act as arbitrators in a dispute with the heirs of freemen of Llangollen in 1234.