

Graham A. Loud

## Frederick II and the Criminal Jurisdiction of the Abbot of Cava

### Abstract

There were various types of boundaries (*confini*) in the Middle Ages. One of the most important *within* kingdoms was the boundary between different legal jurisdictions. Sometimes, as within the kingdom of Germany, and to a lesser extent France, these jurisdictions were a major factor in the fragmentation of central, and even provincial, authority. In other, more centralised, states – if one can use such loaded term for this period – such as the kingdoms of England and Sicily during the twelfth and thirteenth centuries, legal franchises were strictly limited, and the superior functioning of royal justice prevailed, with rare exceptions, throughout the realm. The case study that follows from southern Italy reveals the abortive creation of jurisdictional immunity in a period when royal power was temporarily weakened, and sheds further light upon the restoration of effective monarchical authority after the return of Frederick II to the *regno* following his imperial coronation in November 1220. It examines an important, but hitherto neglected, episode in the history of one of the richest and most important monastic houses on the mainland of southern Italy, the Abbey of the Holy Trinity at Cava, near Salerno, and requires some consideration of the problem of forgery – widespread throughout the monasteries of the kingdom of Sicily, and an activity to which the monks of Cava were seemingly addicted in the mid- to late thirteenth century.

In December 1209 Abbot Balsamon of Cava travelled to Messina, where Frederick, the fifteen year old King of Sicily, issued a privilege at his request. According to this document, and no doubt this claim reflected what the abbot had alleged to the royal court, the men subject to the abbey had been harassed by the undue demands of various royal justiciars and had often suffered injury from them. As a result the king decreed that in future royal justiciars should no longer have jurisdiction over the abbey's men, and instead appointed Balsamon himself to be justiciar over the abbey's men, for his lifetime. After his death his successors should be allowed to select whichever justiciar they wished

from among those currently in office to hear cases among the abbey's men and concerning its lands.<sup>1</sup>

This privilege has been known to scholars since the nineteenth century, but it still raises problems that have not been satisfactorily resolved.<sup>2</sup> Not the least of these is that it does not survive in the original, but only in a transcript copied into the record of a court case of March 1216.<sup>3</sup> It has indeed even been claimed, on the basis of alleged morphological irregularities, that this charter is a forgery, and by clear implication therefore so too is the royal privilege.<sup>4</sup> While the editors of the modern edition of Frederick II's charters do not accept this argument and consider the privilege to be genuine, they suggest that this was a purely personal appointment and the provision about what would happen after the death of Abbot Balsamon was never put into effect. In the discussion which follows, I shall attempt to put this privilege into its proper context, and to resolve the issues around it, while explaining its significance within the framework of the governance of the kingdom of Sicily both before and after the German conquest of 1194.

First of all, it should be made clear that historically such a privilege was decidedly unusual. Higher justice within the kingdom of Sicily was administered by royal officials who were overwhelmingly laymen, and the involvement of clerics was rare, if not absolutely unprecedented. Under the Norman kings, before 1189, there were two instances of prelates acting as royal justiciars, but only two. William, archbishop-elect of Capua, seems, according to the contemporary chronicler Alexander of Telese, to have been appointed as justiciar within the principality in 1135, and in January 1142 this same William, by now Archbishop of Salerno, acted with a lay official, Lampus of Fasanella, as *regie iusticie justificatores* in hearing a dispute about property at Angri in the principality of Salerno. The title, as recorded here, was unusual, probably because the development of the royal judicial and administrative system on mainland south Italy was still in its

I am grateful to don Leone Morinelli, archivist of S. Trinità, Cava, Prof. Maureen Miller and Dr. Christian Friedl for their assistance in preparing this study.

1 Die Urkunden Friedrichs II., ed. by Walter Koch et al., 5 vols. to date, Hanover 2002–2018 (Monumenta Germaniae Historica. Diplomata Regum et Imperatorum Germaniae 14 [= MGH DD F. II.]), vol. 1, no. 105, pp. 202–203.

2 Earlier editions: *Historia Diplomatica Friderici Secundi*, ed. by Jean Louis Alphonse Huillard-Bréholles, 6 vols. in 11 parts, Paris 1852–1861, vol. 1, pp. 151–152; Paul Guillaume, *Essai Historique sur l'Abbaye de Cava, Cava dei Tirreni* 1877, pp. XLI–XLII, appendix Q.

3 Archivio della badia di S. Trinità di Cava [= Cava], Arm. Mag., M.8.

4 Carmine Carlone, *Falsificazioni e falsari cavensi e verginiani del secolo XIII*, Altavilla Silentina 1984, p. 38. Carlone's views of forgery tend to be extreme, and need to be assessed critically.

infancy, but it seems clear that these two men were functioning as royal justiciars, particularly since Lampus is well-attested as holding this position during the later 1140s. Subsequently, during the reign of King William II, Bishop Leonard of Capaccio, was justiciar in the principality of Amalfi c. 1175. But the role of each of these prelates as justiciars was attested only by a single case, and neither can have held such office for very long.<sup>5</sup> Bishop Leonard may well have died soon after 1175, but Archbishop William, who died only in 1152, is well-attested during his pontificate. In particular, he issued a privilege as archbishop of Salerno in June 1140 for a church in the Holy Land, and he presided over a dispute between Cava and the bishop of Nola in December 1143.<sup>6</sup> But in neither of these documents, nor in a number of other contemporary charters in which he was mentioned, from December 1142 onwards, was he described with the title of justiciar.<sup>7</sup> There was indeed good reason for this. Both the cases cited above were property disputes, in other words civil law cases. But, as we shall see, the competence of royal justiciars also extended to criminal cases, where the penalties imposed might, and indeed usually would, involve bloodshed. Presiding over such cases was therefore unsuitable for clerics. Furthermore, as Hubert Houben has recently pointed out in a broader context, it remained relatively rare for clerics, and particularly members of the monastic orders, to hold secular office, even relatively minor posts, under Frederick II

5 For the archbishop, *Alexandri Telesini abbatis Ystoria Rogerii regis Sicilie Calabrie atque Apulie*, ed. by Ludovica De Nava, *Commento storico a cura di Dione Clementi*, Roma 1991 (*Fonti per la storia d'Italia* 112), lib. 3, c. 32, p. 77. Cava, *Arca*, XXV.3 (*ibid.*, XXV.38 is a copy of the same case, from January 1143). For Bishop Leonard all we have is a retrospective mention in the final judgement of a long-running legal case between the men of Amalfi and those of Ravello in June 1178, referring to an earlier stage of this dispute, probably c. 1175; Matteo Camera, *Memorie storico-diplomatiche dell'antica città e ducato di Amalfi*, 2 vols., Salerno 1876, vol. 1, p. 365; Evelyn M. Jamison, *The Norman Administration of Apulia and Capua, More Especially under Roger II and William I, 1127–1166*, in: *Papers of the British School at Rome* 6 (1913), reprinted as a separate monograph, ed. by Dione Clementi/Theo Kölzer, Aalen 1987, pp. 308, 365–366, 368–369, 409, 415.

6 *Le Pergamene dell'archivio diocesano di Salerno (841–1193)*, ed. by Anna Giordano, Battipaglia 2014, no. 100, pp. 190–193; Cava, *Arm. Mag.*, G.42, ed. in: Ferdinando Ughelli, *Italia Sacra*, 2<sup>nd</sup> ed. by Nicola Colletti, 10 vols., Venezia 1717–1721, vol. 6, pp. 255–257. The privilege of June 1140, which Giordano suggests is forged, is in fact genuine, although preserved in a copy rather than an original; Graham A. Loud, *A New Document Concerning the Bishopric of Sebastea*, in: *Crusades* 16 (2017), pp. 21–32.

7 *Le Pergamene dell'Archivio diocesano di Salerno (841–1193)*, ed. by Anna Giordano, Battipaglia (SA) 2015 (*Schola Salernitana. Documenti* 2), no. 104, pp. 201–203; nos. 107–108, pp. 207–229; nos. 110–111, pp. 230–233.

and his sons, a situation that only changed, and that relatively slowly, after the Angevin conquest of 1266.<sup>8</sup>

Even more to the point was the reluctance of the kingdom's rulers to sanction franchises outside the jurisdiction of royal officials. Churches possessing landed seigneuries might indeed possess their own courts, as lay lords did, but the competence of these courts was strictly limited, and usually only to civil disputes. Sandro Carocci has indeed gone so far as to refer to these clerical seigneuries as 'second-class lordships'. Cava possessed courts, notably at the monastery itself and at Castellabate in Cilento, but, insofar as we can see from the limited evidence at our disposal, their jurisdiction seems to have confined to disputes between the abbey and its men over such issues as illegal possession of property or non-payment of rent, or between these dependents themselves. A similar situation prevailed on the lands of Montecassino during the later twelfth century, even though these formed a much more compact and cohesive lordship than did the generally scattered lands of Cava. It is possible that minor criminal cases may have delegated to these abbatial courts, but certainly not 'high justice', serious cases which might be punished by loss of life or limb.<sup>9</sup> Furthermore, both the Montecassino manuscript of King Roger's assizes (clause 36) and a charter of the Count of Molise, himself a royal justiciar, in 1153 listed those serious cases which were reserved exclusively to the jurisdiction of royal justices, notably robbery (*latrocinia*), house breaking, attacks on the highway, rape, murder, arson, „and all crimes for which someone shall be subject to the mercy of the court with regard to their body and property“. All of these offences were to be judged by royal justiciars.<sup>10</sup>

8 Hubert Houben, *Religious in Secular Office in Late Medieval Southern Italy*, in: Frances Andrews/Maria Agata Pincelli (Eds.), *Churchmen and Urban Government in Late Medieval Italy, c. 1200 – c. 1450*, Cambridge 2013, pp. 307–318.

9 Maria Galante, *L'Abbazia di Cava e l'esercizio della giustizia*, in: ead./Giovanni Vitolo/Giuseppa Z. Zanichelli (Eds.), *Riforma, esperienze e poteri locali. La badia di Cava nei secoli XI–XII*, Firenze 2014, pp. 199–215; Graham A. Loud, *The Social World of the Abbey of Cava, c. 1020–1300*, Woodbridge 2021, pp. 278–84; Luigi Fabiani, *La Terra di S. Benedetto*, 2 vols., Montecassino 1968 (*Miscellanea Cassinese* 33–34), vol. 2, pp. 39–41; more generally, Sandro Carocci, *Lordships of Southern Italy. Rural Societies, Aristocratic Powers and Monarchy in the 12<sup>th</sup> and 13<sup>th</sup> Centuries*, trans. Lucinda Byatt, Roma 2018, pp. 106–108, 366–371 (quote from p. 106).

10 Gennaro Maria Monti, *Il testo e la storia esterna delle assise normanne*, in: id., *Lo Stato normanno-svevo. Lineamenti e ricerche*, Trani 1945 (*Documenti e monografie* 26), pp. 83–184, at p. 159; Evelyn M. Jamison, *The Administration of the County of Molise in the Twelfth and Thirteenth Centuries*, in: *English Historical Review* 44 (1929), no. 2, pp. 556–557. This charter gives a little more detail and qualification; robbery referred especially to the theft of animals, house breaking had to be accompanied by violence, thefts to be of goods worth more than 5 *romanati*, and the cutting down

Even in the one instance from the later twelfth century where the king did grant an ecclesiastical franchise, what he granted may in fact have been limited, and the provisions of King Roger's legislation were probably maintained. In his foundation charter for the abbey of Monreale in August 1176, and in addition to the provision of a very extensive territorial endowment and fiscal exemption, William II appointed the abbot to act as justiciar over all the lands of the monastery, including those which were acquired in the future. This might therefore be seen as a precedent for Frederick II's privilege to Cava in 1209, and in some senses it was, in that it was the first express grant of the title of justiciar to an abbot with jurisdiction over the lands and men of his monastery. But the 1176 privilege added a qualifying clause to this grant; what it meant was that the abbot was empowered to hear cases between the men of the monastery.<sup>11</sup> This would seem to imply that these would concern civil rather than criminal matters. In practice, therefore, the legal jurisdiction to be exercised by the abbot of Monreale may well have been little different from that of his counterparts at Cava and Montecassino. The wording of this privilege would seem therefore to suggest, if only by inference, that criminal jurisdiction over serious crimes was still reserved to the Crown, even for the church which was the monarch's own cherished foundation and where he intended to be buried.

The real innovation came with the conquest of the *regno* by Emperor Henry VI. On the day of his coronation as king of Sicily, at Christmas 1194 in Palermo, the emperor issued a privilege to Montecassino – no doubt as a reward for that abbey's consistent support for his claims to the Sicilian throne – in which, *inter alia*, he granted not only civil, but also criminal, jurisdiction over the abbey's men to its own court, to the exclusion of any claims by royal and imperial justiciars.<sup>12</sup> That the emperor was willing to do

of fruit trees and vines was added to the list, as was some limited jurisdiction over cases of adultery, which would later be surrendered to church courts to be judged according to canon law.

11 L'edizione digitale del Liber Privilegiorum Sanctae Montis Regalis Ecclesiae, URL: <http://vat-lat388o.altervista.org/home.html> (13. 10. 2022), doc. I.1: „Preterea providentes quieti et paci ipsius monasterii, ne aliquo tempore occasione aliquorum iusticiariorum molestias vel vexationes aliquas substinerent, perpetuo concedimus ut quicumque fuerit abbas ipsius monasterii constitutus, sit iusticiarius omnium terrarium et tenimentorum eiusdem monasterii, tam eorum que possidet modo quam illorum que Deo volente in posterum ab ipso monasterio fuerint acquisita, nec liceat alicui iusticiariorum nostrorum de causis que inter homines ipsius monasterii emergerint se aliquo modo intromictere, sed abbas ipsius monasterii eas determinet et decadat et de hoc quod de causis ipsis ad abbatem ipsum pervenerit nichil curia nostra habeat, sed totum eidem monasterio cedat.“.

12 Die Urkunden Heinrichs VI., vol. 4: Urkunden Heinrichs VI. für Empfänger aus dem Regnum Siciliae, ed. by Peter Csendes (preliminary version), URL: [https://mgh.de/storage/app/media/uploaded-files/Urkunden\\_Heinrich\\_VI\\_EmpfaengerRegnumSiciliae\\_DD\\_Vorabedition\\_Czendes\\_2013-12-23.pdf](https://mgh.de/storage/app/media/uploaded-files/Urkunden_Heinrich_VI_EmpfaengerRegnumSiciliae_DD_Vorabedition_Czendes_2013-12-23.pdf) (13. 10. 2022), no. 390. Summary by Dione Clementi, Calendar of the Diplomas of the

this was not just so as to benefit a bastion of his cause within the kingdom. In his native Germany a great many important churches possessed judicial rights over their lands, including criminal jurisdiction, usually exercised on their behalf by lay advocates to avoid churchmen having to stain their hands with bloodshed – and notice that in the Montecassino privilege both civil and criminal cases were to be heard before the judges of the monastery, not by the abbot himself. Henry and his advisors would therefore have seen nothing unusual in such a concession, although it was not subsequently repeated for other south Italian churches. (We may note that a third great mainland abbey, Montevergine, both under Henry VI and subsequently, appears only ever to have enjoyed civil jurisdiction over its lands and men – assuming that we can trust documents only preserved in very late copies).<sup>13</sup>

Why, however, should King Frederick and his counsellors have been prepared to make what was in practice an analogous grant to Cava in December 1209? We should remember that at that time the king, who had been brought to Sicily as a baby, had not as yet even set foot on mainland southern Italy. The abbot had to travel to see him. Admittedly the institutions and officials of royal government were still present in the mainland provinces, but their operations had become increasingly localised, and those who acted in the king's name were largely detached from the royal court and all too often exercising their offices to their own advantage, and not to the benefit of the ruler.<sup>14</sup> We have no information as to what the „undue demands“ of these justiciars on the abbey were, and it is possible that this meant simply infringements on the various fiscal exemptions that Cava had long enjoyed. But by granting the abbot the right to

Hohenstaufen Emperor Henry VI Concerning the Kingdom of Sicily, in: *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 35 (1955), pp. 86–225, no. 36, p. 130. The key passages read: „nulla umquam persona ecclesiastica vel secularis idem ecclesie subdita ab aliquibus regni vel imperii iustitiariis in iudicium trahatur aut distringatur ... omnes questiones tam civiles quam criminales adversus homines ipsius ecclesie movende coram iudicibus eiusdem ecclesie tractentur et decidantur“.

13 Henry VI's privilege to this monastery in March 1195 and that of Frederick in December 1220 confirming it both refer expressly to jurisdiction *in civilibus questionibus*: in both cases, however, we are reliant on copies made in 1536, and this phrase may be a later interpolation. Nevertheless, the consensus of opinion is that both documents are fundamentally genuine. Cf. *Die Urkunden Heinrichs VI.*, ed. by Csendes (see note 12), no. 413; *Clementi, Calendar* (see note 12), no. 66, pp. 153–154; *MGH DD F. II.*, vol. 4, no. 766, pp. 268–274, at p. 271; Hubert Houben, *Sfruttatore o benefattore? Enrico VI e Montevergine*, in: Placido Maria Tropeano (Ed.), *Federico II e Montevergine. Atti del convegno di studi su Federico II*, Roma 1998, pp. 49–63, at pp. 57–58.

14 Jean-Marie Martin, *L'administration du Royaume entre Normands et Souabes*, in: Theo Kölzer (Ed.), *Die Staufer im Süden. Sizilien und das Reich*, Sigmaringen 1996, pp. 113–140.

exercise judicial authority over his own men the king was, in 1209, hardly weakening his own authority, which had largely disappeared on the mainland.

What did the privilege actually mean? The answer comes in the text of the charter within which the royal privilege was copied – and, in contrast to the privilege itself, the full text of this document has never been published (see now the appendix below). The story that it records is as follows. At a court in Salerno in March 1216, at which four of the five city judges were present,<sup>15</sup> the prior of Cava's most important dependency in the city, St. Maria *de Dompno*, requested that a man accused of murdering a woman, whom the *stratigotus* (the city governor or mayor) had imprisoned, be handed over to the abbot's jurisdiction to be tried in his court, since he was a man of the monastery. The prior then justified his claim by stating that the abbot was „justiciar of the whole of the land of Cava and all of its men“. As proof, Frederick's privilege, which we are told had a red wax seal, was produced, read out to the court and entered into the record. After some discussion the judges then accepted the prior's claim, and released the accused into the abbot's custody, saying that should any of his men be charged with murder „or of anything else that pertains to the office of justiciar“, then he should receive justice in the abbot's court. It is thus clear that the appointment of the abbot as justiciar specifically included the right to exercise criminal justice over Cava's dependents.

The question remains as to why this document is the only evidence for such a privilege, and why, if Frederick did indeed grant Abbot Balsamon the right to act as justiciar over his own men during his lifetime, there is no further record of this jurisdiction, although the abbot only died in December 1232.<sup>16</sup> The answer is in fact obvious, in the revocation of privileges ordered by Frederick in his „Constitutions of Capua“ promulgated in December 1220, immediately after his return to the *regno* after eight years' absence in Germany. Among many other provisions for the restoration of royal authority, the recently-crowned emperor announced that all the privileges issued by his parents should be presented for inspection and authentication by Easter of that year, for recipients on the mainland, and by Pentecost for those on the island of Sicily. The ostensible justification for that was that after his parents' death, his father's former steward, Markward of Annweiler, had gained possession of their seals and confected false diplomas in their name. But he added that any previous privileges that he himself had granted should also similarly be presented for inspection. Any such privileges not so submitted would

15 The number of judges was increased from five to six in 1292; cf. Codice diplomatico Salernitano del secolo XIII, ed. by Carlo Carucci, 3 vols., Subiaco 1931–1946, vol. 3, no. 125, pp. 154–155.

16 *Annales Cavenses*, ed. by Fulvio delle Donne, Roma 2011 (Fonti per la storia d'Italia. Rerum Italicarum Scriptores, ser. 3 9 / *Analecta Cavensia* 5), p. 57.

automatically be void.<sup>17</sup> In practice, therefore, what Frederick was doing was have all royal privileges granted since 1189 reviewed, not just in case of forgery, but to cancel those which had been unduly generous or were damaging to royal authority. We know, indeed, that this was the case at Montecassino, despite Abbot Stephen doing everything he could to ingratiate himself with the emperor, including attending his imperial coronation in November 1220. Even before he had issued the Constitutions of Capua Frederick had already revoked his father's grant of the *ius sanguinis* to the abbey, although he subsequently did confirm its right to exercise jurisdiction over its men in civil cases.<sup>18</sup>

We have no such explicit testimony that Frederick also cancelled his own earlier grant to Cava, but this is the obvious explanation of why there is no further evidence of the abbot and his court, which continued to function in civil cases, exercising such powers. This surely explains too why we only know of Frederick's 1209 privilege through a copy, and that no original of this survives. To ensure its cancellation the original privilege would have been handed in and cut up. Furthermore, this is a strong argument against the (to my mind very dubious) suggestion of forgery. The abbey of Cava was indeed a hotbed of forgery from the middle of the thirteenth century onwards, and many of the documents of south Italian rulers preserved today in its archives are to a greater or lesser degree suspicious. But in almost every case these are preserved as pseudo-originals, and sometimes also with authenticated notarial copies as well. These forged, or certainly suspicious, documents included ones ascribed to Frederick II, such as a detailed privilege allegedly issued at Salerno in July 1221, which is considered doubtful („zweifelhaft“) by the modern editors, and another privilege dated February 1231 which is a clear and undoubted forgery.<sup>19</sup> If the monks in the later thirteenth century had wished to create a claim for the abbot to exercise the powers of a justiciar, including criminal jurisdiction, why was there no supposed original of Frederick's privilege preserved in the abbey's archives?

In addition, one might note that while the two suspicious pseudo-original privileges ascribed to Frederick mentioned above embody both comprehensive confirmations of

17 Rycardi de Sancto Germano Notarii Chronicon, ed. by Carlo Alberto Garufi, Bologna 1938 (²Rerum Italicarum Scriptores 7,2), p. 91.

18 Ibid., pp. 82–83, 88; MGH DD F. II., vol. 4, no. 775, pp. 294–945 (issued at Naples, 4<sup>th</sup> January 1221).

19 Cava, Arm. Mag., M.16, ed. MGH DD F. II., vol. 4, no. 790, pp. 335–358; Cava, Arm. Mag., M.29, ed. Historia Diplomatica, ed. by Huillard-Bréholles (see note 2), vol. 3, pp. 259–562. I have benefited from the advice of Dr. Christian Friedl, one of the editors of the MGH edition of Frederick's *diplomata*, concerning this second document. For forgery at Cava, cf. now Loud, *The Social World* (see note 9), chap. 4, pp. 110–128.

the monastery's possessions and wide-ranging exemptions from the fiscal demands of the crown, neither makes any claim for its legal jurisdiction. And while Carmine Carlone has suggested that the claim to exercise criminal justice in the 1209 privilege matched similar claims in other, and undoubtedly, forged, documents, this is not in fact the case.<sup>20</sup> None of the documents he cites to support this assertion contain such a claim. A forged privilege of Prince Gisulf II of „August 1058“ is concerned only with validating the abbey's claim to various possessions and with its exemption and that of its men from fiscal dues and other services to the state.<sup>21</sup> Forged papal bulls ascribed to Urban II deal with exclusively canonical issues, and especially the exemption of the monks and churches and clergy subject to Cava from the authority of the archbishop of Salerno.<sup>22</sup> Most tellingly, a forged privilege of Duke Roger Borsa of „May 1087“ not only does not claim criminal jurisdiction for the abbey but expressly reserves such jurisdiction for the ruler, „nichil nobis vel reipublice nostre in vassallis ipsius monasterii reservantes, nisi tantum criminalem potestatem“ (the terminology is of course anachronistic for a supposedly eleventh-century document).<sup>23</sup> Similarly, and in addition, a forged privilege of King William I, dated „April 1154“ but actually confected c. 1285–1286, while confirming the wide-ranging fiscal exemption of Cava's lands and men and allowing the abbot to appoint judges and to knight vassals of the monastery, still expressly reserved criminal justice for the crown.<sup>24</sup> Thus far from there being an attempt by the Cava forgers of the later thirteenth century to claim such jurisdiction, they clearly recognised that this was a royal prerogative to which they could not make a convincing claim. It may also be the case that because no original of the privilege of 1209 had survived, memory that the abbey had once, albeit briefly, possessed jurisdiction over criminal cases had faded.

Therefore the grounds for claiming that this privilege was forged are flimsy in the extreme. Its format, is admittedly, seemingly incomplete. It has the *promulgatio* and the *corroboratio*, the two most important parts of a formal diploma, but it lacks the *arenga* and the full dating clause that would normally also be part of a diploma, nor does it name

20 Carlone, *Falsificazioni e falsari cavensi* (see note 4), p. 38.

21 *Codex Diplomaticus Cavensis*, vol. 1–8, ed. by Michele Morcaldi/Mauro Schiani/Silvano De Stefano, Milano-Napoli, 1873–1893), vol. 8, no. 1275, pp. 77–81.

22 *Italia Pontificia*, vol. 8: *Regnum Normannorum – Campania*, ed. by Paul Fridolin Kehr, Berlin 1935, nos. †11–13, pp. 319–323.

23 *Codex Diplomaticus Cavensis*, vol. 12, ed. by Carmine Carlone/Leone Morinelli/Giovanni Vitolo, Badia di Cava 2015, no. 50, pp. 126–135, at p. 129.

24 Cava, *Arm. Mag.*, H.14; *Guillelmi I. Regis Diplomata*, ed. by Horst Enzensberger, Köln 1996 (*Codex Diplomaticus Regni Siciliae*, Ser. 1 3), no. †1, pp. 3–6.

the notary, as diplomas did – although this last could simply be a scribal omission by the copyist. It also had, we are told, the red wax seal that was applied to mandates, rather than the *bullā* which the Sicilian chancery traditionally applied to privileges. But from the time of Empress Constance onwards red wax seals were increasingly being used for diplomas as well as mandates, and indeed the previously clear distinction between the two forms of chancery documents was becoming increasingly blurred.<sup>25</sup> This privilege seems to be an example of such a trend. Furthermore, we cannot assume that Frederick's chancery at this early stage of his reign was always functioning as efficiently and in accordance with traditional norms as it did later. We might also note with regard to the court case of 1216 that Sergius Jejunus, the prior of St. Maria *de Dompno* named therein, is well-attested at this time, and the format of this document is unexceptionable.<sup>26</sup> The inescapable conclusion is therefore that what we have here is the record of a genuine privilege that King Frederick granted to the abbey of Cava, which was briefly in force and recognised by the judges of Salerno, but which was cancelled in the revocation of royal rights after December 1220.

25 MGH DD F.II., vol. 1, pp. XLI–XLIV; Theo Kölzer, *Urkunden und Kanzlei der Kaiserin Konstanze, Königin von Sizilien (1195–1198)*, Köln 1983 (*Studien zu den normannisch-staufischen Herrscherurkunden Siziliens* 2), pp. 81–90.

26 Sergius can be found in Cava documents from November 1212 to April 1223, for example in *Codice diplomatico Salernitano* sec. XIII, ed by Carucci (see note 15), vol. 1, no. 45, pp. 110–111; no. 56, pp. 126–127; no. 63, pp. 128–129; no. 65, pp. 139–141; no. 69, pp. 143–145, as well as in various unpublished charters, notably Cava, Arca, XLVI.58, 92; XLVII.75, 76.

## Appendix

(1216, March)

After the reading of a privilege from Emperor Frederick II, dated September 1209, a court at Salerno grants jurisdiction to the abbot of Cava over a man accused of murder, who has previously been imprisoned by the *stratigotus*.

Cava, Arm. Mag., M.8. Clear and regular Beneventan script, with some damp markings, and fading along the lower left margin. (The privilege of 1209 edited in MGH DD F II., vol. 1, no. 105, pp. 202–203, otherwise unpublished). Capitalisation and punctuation as in the original.

In no(min)e d(omi)ni d(e)i et(er)ni et salvato(ris) n(ost)ri Ih(es)u Christi. Anno ab incar(natione) ei(us) millesimo ducentesimo sextodeci(mo). Et primo an(no) d(omi)ni n(ost)ri Frederici sicilie et ytalie gloriosissimi regis. Et romanor(um) semp(er) aug(usti). Et primo an(no) regni d(omi)ni n(ost)ri Henrici regis ei(us) kar(issim)i filii. / Mense martio quarta indic(tione). In Sacro vet(er)i Salerni(tan)o palatio. Petrus (qui) dicitur mannarinus hui(us) urbis stratigotus ex viris prudentis curiam congregavit; Ubi nos Ioh(ann)es p(ro)toiudex. Matheus. Bartholo(meus). Philippus et mansus iudices iurisdicendi gr(ati)a sedebam(us). Aderet / aut(em) in eadem curia d(omi)n(u)s Sergius Jejunus monachus Caven(sis) monaster(ii). at(que) prior eccl(esi)e S(an)c(t)e Marie que d(icitu)r d(e) dompno. et cum om(n)ib(us) reb(us) suis ipsi monasterio p(er)tinet ac subiecta est. In quo d(omi)n(u)s Balsamus d(e)i gr(ati)a Venerabilis ac religious abbas p(re)est. q(ui) p(ro) parte ei(us)dem mona(sterii) / ip(su)m stratigotum cum multa p(re)cum instantia rogabat ut quendam homi(n)em <sup>ipsi(us) mona(sterii)</sup><sup>27</sup> que(m) ip(s)e stratigotus in carcere detinebat ab ip(s)o carcere liberaret. eo q(uo)d ip(s)e d(omi)n(u)s abbas de eo curiam p(ro) iustitia facienda tenere volebat. Qui stratigotus dicebat q(uo)d nulla ratio(n)e ipsum / homine(m) liberare querebat. eo q(uo)d ip(s)e homo homicidiu(m) co(m)miserat adversus quondam mulierem qua(m) ip(s)e occiderat. in p(er)tinen(tia) ipsius civitatis. Ipse v(er)o d(omi)n(u)s prior obloquendo respondit dicens. q(uo)d ipse nesciebat ipsum homi(n)em p(re)dictum homicidiu(m) co(m)misse; tam si ip(su)m homi / cidiu(m) co(m)misisset; q(ui)a ip(s)e d(omi)n(u)s abbas est iustitarius totius t(er)re Caven(sis). et om(n)iu(m) hominu(m) suor(um). de ip(s)o homicidio debet fac(er)e iustitia(m) accusatis de homicidio ip(s)e in curia p(re)dicti d(omi)ni abb(at)is q(uo)d

27 Interlinear addition.

p(ro)bandum ip(s)e prior ostendit q(uo)ddam privilegiu(m) s(upra)s(crip)ti d(omi)ni n(ost)ri Frederici glo(rio)sissimi regis. / cereo rubeo sigillo insignatum. q(uo)d est co(n)tinentie talis. Fredericus d(e)i gr(ati)a Rex Sicilie. ducatus Apulie. et principatus Capue. P(er) presens scriptum notum facimus univ(er)sis fidelib(us) n(ost)ris. tam presentis quam futuris. q(uo)d cum tu. Balsame vener(abilis) Cavensis abbas, fidelis n(ost)er / ad nostram nup(er) accesseris devotus p(re)sentiam. et in humiliatatis sp(irit)u supplicaris. Ut q(ui)a p(ro)pt(er) diversos iustitiaros q(ui) p(er) contrata(m) co(n)stituunt(ur). homi(n)es Caven(sis) monaster(ii); indebitis sepe fatigantur molestiis et eor(um) iustitia leditur in plerisq(ue); dignaremur tibi co(m)mittere iustitiaratus / officium sup(er) om(n)es homi(n)es ac t(er)ram monasterii tui. Nos attendentes sinceritatem tue devoctionis et fidei; et de honestate tua. ac prudentia circumspecta laudabile testimoniu(m) ab om(n)ib(us) audientes. de solita n(ost)re benignitatis gr(ati)a co(n)cedimus ac co(m)mittimus tibi predicto abb(at)i / iustitiariatus officium. sup(er) totam t(er)ram et homi(n)es monaster(ii) tui. volentes et regali statuente edicto. ut nullus deinceps iustitiarius in t(er)ra Caven(sis) monaster(ii) et de ho(min)ibus ei(us) potestatem habeat iustitiariatus officium exercendi. v(e)l eos ad faciend(a)m seu recipiend(a)m iustitiam / coercendi. set sibi ta(n)tum p(re)nomi(n)ato abb(at)i in vita tua hui(us)modi permittat(ur) officium in hom(in)ib(us) et t(er)ra monasterii tui libere ac sine contradictione qualibet exercere. sic(u)t tibi est in vita tua tantu(m) sub p(er)sonali ben(e)ificio a n(ost)ra serenitate co(m)missum. Post mortem v(er)o tuam / hoc tantum suis successorib(us) indulgemus. ut liceat eis. quecumq(ue) iustitiarium voluerint ex his eligere. q(ui) p(er) curiam n(ost)ram constituti fuerint p(er) co(n)tratam. et ip(su)m vocare. ut d(e) hom(in)ib(us) ac t(er)ra Caven(sis) monasterii cause que emerserint; ordine iudiciario / t(er)minentur. Ad hui(us) aut(em) n(ost)re concessionis memoriam. et robor p(er)petuo valiturum presens scriptum fieri. et sigillo n(ost)ro mandavimus co(m)munituri. Data Messane. anno dominice incarnationis millesimo ducentesimo nono. mense Septembris. t(er)tedecime indic(ationis). / Quo videlic(et) privilegio a nob(is) cum sum(m)a reverentia suscepto. et sole(m)pnit(er) lecto et bene intellecto. Ipse d(omi)nus prior allegando p(ro)ponebat q(uo)d postquam ipse d(omi)nus abbas sec(un)d(u)m tenorem s(upra)s(crip)ti privilegii est iustitiarius s(upra)s(crip)te t(er)re Caven(sis). et om(n)iu(m) hominu(m) suor(um). ip(s)e homo / accusatus de ip(s)o homicidio est a carcere liberandus. Auditis itaq(ue) rationib(us) et allegationib(us) variusq(ue) partis. et considerato et circumspecto tenore ipsius privilegii. In partem nos traximus q(uo)d iuris esset sup(er) omnib(us) p(ro)positis et allegatis p(ro)visuri. Ubi nos habuimus / nob(is) cum multa consultatione et deliberatione premissa. redeuntes in eandem curiam d(e) communicato consilio iudicavimus ut accusatus de homicidio ab ipso carcere liberetur; et ut p(re)nomi(n)ates d(omi)nu)s abbas sit iustitiarius totius s(upra)s(crip)te t(er)re Caven(sis). et / om(n)iu(m) hominu(m) suor(um). et ut om(n)es ho(m)i(n)es

ei(us). si de homicidio co(n)veniant(ur) vel d(e) quolibet alio q(uo)d ad officiu(m) iustitiarie p(er)tinet; iustitiam faciant in curia p(re)dicti do(m)ini abb(at)is. Salvo tamen eo; q(uo)d in curia ei(us)d(e)m d(omi)ni abb(at)is de om(n)ib(us) ali(is) questionib(us) iamdicti om(n)es / [homin]es<sup>28</sup> Caven(sis) monaster(ii) iustitiam facere teneant(ur). Et taliter s(upra)s(crip)ta om(n)ia ad posteritatis memoriam. et ad perpetuam defensionem et securitatem p(re)dicti d(omi)ni abb(at)is et successorum ei(us). et partium prefati monaster(ii); te alfanu(m) not(arium) et advocatu(m) / [in] scriptis redigere iussimus. memorantes q(uo)d sup(er)i(us) int(er) virgulos script(um) est legit(ur). ipsi(us) mon(asterii).

† Ego qui s(u)p(ra) ioh(annes) P(ro)toiudex † Ego qui s(u)p(ra) Matheus Iudex † Ego qui s(u)p(ra) Bartholomeus Iudex † Ego qui s(u)p(ra) Philippus Iudex † Ego qui s(u)p(ra) Mansus Iudex

28 Illegible.