

## A GLIMPSE AT THE LOCAL COURTS

1. Contracts in courts other than K.B/C.P. We could do number on tort, but it would be a lot harder. These are wonderful cases to write papers about if you are still looking for a paper topic.
2. The Fair court of St. Ives — late 13th century — (the place is in Huntingdonshire); franchisal court of the abbot of Ramsey by charter of 1110; for reasons that are not entirely clear (it may be related to the rise of the Staple courts) the court declined in the 14th century).
3. *Ribaud v. Russell*, Mats. p. VII-33 (1287)

Gilbert Ribaud complains of William Russell and Walter Clerk of Haddenham [Cambs.]. Pledge to prosecute, his faith; pledge of the defendants, feathers.

And Gilbert appears and complains of the said William and Walter, for that they unjustly detain from him and do not pay him 9s. 6d.; and unjustly because, whereas it was covenanted between him, Gilbert, and the said William and Walter, in the town of Bury St. Edmunds [Suffolk] in the house of Alice Coterun, on the Monday before the feast of St. Nicholas last past, a year ago [3 December 1285], that the said Gilbert should sell eleven sacks of feathers and that he should receive as his stipend 12d. for each sack, the said Gilbert as broker of the said William and Walter sold these sacks to a certain John Waterbailie of Provins [dép. Seine-et-Marne]. And after the said sale had been made the said Gilbert firmly believed that his stipend, 9s. 6d., would be paid to him according to the covenant (*secundum convencionem*); but the said William and Walter have detained the said money from him and still detain it, to his damage a half-mark. And he produces suit.

The said Walter and William are present and deny all which should be denied word for word, and they are at their law. [i.e., wager of law] And because they cannot find pledges to make their law [these guys not only failed at wager of law; they couldn't even find people to stand surety for them while they went out and tried to find oath-helpers], the said Gilbert craves judgment against them, as against those who are convicted, both for the damages and for the principal.

Wherefore it is awarded that the said William and Walter make satisfaction to the said Gilbert and be in mercy for the unjust detention. They are poor: pledge, their bodies. And afterwards they were liberated, each on his own pledge of faith.

- a. The use of the words covenant and detain
- b. Another wager case. p. VII-33 *Eltisley v. Barber*

John, son of John of Eltisley [Cambs.], complains of Roger Barber, for that he has unjustly broken a covenant with him; and unjustly because, whereas the said John was in the vill of Ramsey [Hunts] on the Monday after Epiphany last past, a year ago [7 January 1286], in the house of Thomas Buck, the said Roger came there and undertook (*manucepit*) to cure his, John's, head of baldness for 9d., which the said John paid in advance.

The said Roger was present and denied tort and force, etc., and put himself on his law; and in finding pledges of his law withdrew from the bar without leave. Therefore the said John craved judgment against him as against one who is convicted.

Wherefore it is awarded that the said Roger make satisfaction to the said John for 9d., the sum claimed, and for his damages, which are remitted, and that he be in mercy 6d. for the trespass.

- c. Note that on p. VII-33 (the Rogaine case *Eltisley v. Barber*), the defendant leaves the bar in attempting to find pledges.

Peter Long of London complains of Geoffrey of Cam [probably Caen in Normandy] and says that he unjustly detains from him 600 ells of canvas, which he, Peter, through his broker Hamon of Bury St. Edmunds, bespoke [i.e., ordered] and bought from him in his booth in the vill of St. Ives, on the Friday after the feast of St. John before the Latin Gate [6 May or 13 May 1300], for 29s. the hundred and a farthing as a God's penny, to his damage 40s. And he produces suit.

The said Geoffrey is present and denies tort and force, etc., and says that he never sold the said canvas to the said Peter or to any broker of his; but he says that the said Hamon came to his booth and offered him 27s. for each hundred ells of the canvas and thereupon threw down a farthing as a God's penny, [i.e., earnest money, called 'the God's penny' all over Europe] against the will and without the assent of Geoffrey. And that this is true he craves may be inquired, and the adverse party does likewise; and a day is given them on Monday.

On that day the inquest comes and says that the said Geoffrey of Cam never granted the said canvas to the said Peter at the price alleged by the said Hamon, his broker. Therefore it is awarded that the said Peter be in mercy for his false claim. He is pardoned by Brother John of Eton (Warden of the Fair).

- d. In *Long's Case* (p. VII-34), an inquest is used to determine what happened in a sales action. It may be that we have a survival here of the notion that real function of the judge is to determine who is to prove what and how.

4. *Colne v. Marshall, Mats.* p. VII-33 (1287). No problem with damages in covenant.

John, son of Alan of Colne, complains of Robert Marshall and his son Adam, and says that, whereas on Wednesday last he brought a certain horse of his to the workshop of the said Robert and Adam to have three of the said horse's feet shod with new shoes and to have a fourth shoe removed for 2d., the said Robert and Adam removed the shoe from one foot of the said horse and put a new shoe on another foot, but they broke their covenant as to the other two feet; wherefore the said John by the delay of the said Robert and Adam lost the sale of his horse on that day from the third to the ninth hour, to his damage a half-mark.

5. *Spicer v. Chapman, Mats.* p. VII-34 (1300).

- a. John Spicer, Sat before Candlemas 24 Edw I, 1295/6 February; Peter Chapman gave J 60s, J gave P a horse worth 30s; 2d journey gave him another horse worth 25s; 3d journey lost 33 marks (433s, 4d), demands 1/3 of the loss (146s 8d), delivers 10s plus 50s worth of land (which must be a wash) and 10.5d to his great damage 100s; what we have below suggests that the damages claimed should have been 146s 8d, i.e., 11 marks

Spicer		Chapman		For
+60s		-60s		initial capital
-30s		+30s		horse
-25s		+25s		horse + saddle
+55s	10.5d			C's share of gain
-146s	8d			C's share of loss

-60s		+60s		messuage + cash
	-10.5d		+10.5d	cash

Bottom line Chapman owes Spicer 11 marks (146s 8d) but he's only claiming 100s, why?

Jury's version:

Spicer	Chapman	For
+60	-60	initial capital
-40	+40	land
-20	+20	2 horses

One way to reconcile the figures in the complaint: the jury is right about the numbers and Spicer is right about the deal. If so, Chapman to Spicer 60s:

Chapman is owed: 60s + 55s 10.5d. (profit) =	115s	10.5d
Spicer has paid	60s	
Spicer owes	55s	10.5d
Chapman owes	148s	8d
Net (Chapman owes)	93s	2d

(add 6s 10d for costs or rounding and you get 100s)

- b. Can we speculate as to why this deal went bad? The jury's ultimate verdict is implausible. Chapman (the word means merchant) is almost certainly not lending Spicer money gratuitously. Either they agreed to share in the profits and losses, in which case (assuming that the jury's evaluations are right) Chapman owes Spicer 93s 2d, or Chapman was to get profits but not share in losses, in which case Spicer owes Chapman 55s 10.5d. Hence the jury split the difference. Why?
- c. Clearly the sale of porret seed in Scotland was a high-risk enterprise, but the potential rewards were also great. The first two trips (assuming that Spicer put in 120s to match the 60s) yielded a profit of 165s on an investment of 180s. That's a 92% return. Of course, the third trip, if we believe Spicer's numbers, yielded roughly a 360% loss. (Hard to imagine how that could have happened unless the 120s was only for buying the porret seed, and the Scots not only stole the seed but also stole Spicer's animals, etc., on the third trip.)
- d. The principal thrust, however, of Spicer's argument may not have anything to do with the harshness of the deal. It may be that if you (Chapman) are going to avoid the usury prohibition by taking a share of profits rather than direct interest, you have to share in the losses as well. This, then, is the proposition that the jury refuses to buy. One of the reasons, however, why it refuses to buy it is that it is able to see the transaction as wash for Chapman. If we take the jury's evaluations, then Chapman got no profits, so we don't have to get into the question whether he should share the losses as well.
- e. Apart from this speculation we can add a few solid legal points:
  - No rule about single claim
  - Complex cases can be brought
  - Account, partnership

6. The City of London (*Whittington*, Mat. p. VII-35) —special jury —big deal —debt in a jury (blue-ribbon jury)
7. Staple courts —cutting out a certain class of cases
8. Royal courts with a special arrangement for big deals, e.g., Assizes at Southampton (*Dunstable v. Le Bal*, 1278, p. VII-37):

The lord King commanded his beloved and trusty Salomon of Rochester and Master Thomas de Sutherland<sup>2</sup> that, whereas from the grave complaint of William of Dunstable, his citizen of Winchester, he had understood that, whereas the same William had bought from Robert le Bal' of Winchester 103 sacks of good merchantable wool sewn up in 86 sarplers,<sup>3</sup> namely, every sack out of 53 sacks for 8 marks and every sack out of the remaining 50 sacks for 6 marks, of which sarplers the same Robert in the presence of the aforesaid William caused 8 sarplers to be opened, namely 4 of the greater and 4 of the lesser price, whereof the same William had been content, and faithfully promised that the remaining wool sewn up in the sarplers was like the wool opened; and whereas the said William, attaching faith to the statements of the said Robert herein, carried the whole of the wool aforesaid, save two sacks and a half which were stolen in the custody of the said Robert, to St. Omer: yet, when the same William caused it to be opened and exposed for sale at St. Omer, he found the wool sewn up in 68 sarplers. Of which he had not made inspection, vile and useless and altogether differing from his agreement; whereby the same William, through the default of the aforesaid Robert herein, incurred a loss in his goods and merchandises of a hundred pounds.

And because the lord King is unwilling to leave such great malice unpunished, if it should have been perpetrated, he has appointed the aforesaid Salomon and Thomas to inquire in the presence of lawful and discreet merchants and citizens of Winchester by the oath of good and lawful men of the same city through whom the truth of the matter can best be known in the premises, and for swift and competent amends thereof to be made according to the law merchant. Wherefore the aforesaid Salomon and Master Thomas commanded the Sheriff of Southampton that he should cause to come before them at Winchester in the Feast of St. Vincent in the sixth year so many and such good and lawful men of the city aforesaid as through them the truth of the matter might best and most fully be known and inquired.

- a. The record is an extract from an assize roll of 1278. The commissioners of assize are one Solomon of Rochester and Mr. Thomas de Sutherland were almost certainly to take the assizes in Hampshire and perhaps also to deliver the jails. Our case, is heard pursuant to a commission of oyer and terminer that issued out of the chancery, which tells the commissioners, in effect, "oh, by the way, as long as you're out there, hear this case too."
- b. The writ is not one of the standard writs in the register for beginning litigation (though G.D.G. Hall's edition for the Selden Society of *Early Registers of Writs* does contain a couple of writs in which matters are to be determined "according to the law merchant"). The writ recites, in a long "whereas" clause (foreshadowings of the famous "whereas" clause in trespass on the case), the basics of Dunstable's complaint. The king orders his commissioners to inquire into the matter in a rather precise way: They are to do it in the presence of lawful and discreet merchants and citizens of Winchester and by the oath of

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<sup>2</sup> Justices itinerant, holding the Assises in the County of Southampton.

<sup>3</sup> Sarpler = a large canvas sack for packing wool: used also as a measure of wool.

upright and lawful men of Winchester. By these two groups the commissioners are to find out the truth of the matter and swift and appropriate amends are to be made in accordance with their findings and in accordance with the law merchant.

- c. Is the “law merchant” a set of substantive rules or whether it is simply a set of procedures. That the procedure/substance distinction does not come easily to the men of this period makes it all the harder. We can read the writ in two ways: (1) if you find this to be true, then make an award according to the law merchant (in which case the law merchant simply tells you how to calculate the remedy for something that has already been determined to be actionable), or (2) if you find this to be true and if it is the sort of thing for which the law merchant provides redress, then supply redress. I lean toward the first interpretation, but you don’t have to.
- d. What’s Dunstable’s gripe? He bought wool on the basis of samples. When he opened up the wool in a foreign market (S. Omer, Artois, modern Pas de Calais, close to the border of Flanders), it did not conform to his samples, indeed it was “vile, useless and altogether differing from his agreement.” Hence, he lost £100.
- e. What kind of action is this? An action for breach of warranty of quality in sales of goods. One hundred years later such actions will be heard in the CB using a variety of the action on the case. In 1307, such an action was maintained in King’s Bench on the theory of deceit (*Ferrers v. Dodford, Mats*, p. VII-19), but that case had a special royal interest. In all probability this action could not have been maintained in the central royal courts in this period, at least not as a matter of course.
- f. There was probably one or more merchant or local court which would have been competent to hear this case, and the writ itself shows that there is nothing about the case that is conceptually beyond what the men of this era could conceive of as actionable. So why the special procedure?
- g. We know that Edward I was interested in providing a forum for merchants. Whether this is because he perceived, if dimly, that an effective court structure is an important element of commercial infrastructure or whether he had more personal reasons is perhaps unknowable, but the fact is that he did this.
- h. Some clue as to the reason for royal intervention in this case can be found in the numbers. If my arithmetic is right, the total sales price is £482 13s 4d, or 724 marks. This is a huge deal. You could hire 241 carpenters for a year for this amount of money.
- i. The numbers also tell us something else. “Vile and useless” is almost certainly an exaggeration. Even the plaintiff is only claiming a 20% reduction in value. The jury, as we will see, puts the loss at less than ten percent.

At which day the aforesaid Salomon and Thomas came there. William and Robert came before them. And William complains of the aforesaid Robert and says that, whereas he should have bought from the aforesaid Robert 103 sacks of good merchantable wool sewn up in 86 sacks, namely every sack out of 53 sacks for 8 marks and every sack out of the remaining 50 sacks for 6 marks, of which sarplers the same Robert in the presence of William himself caused 8 sarplers to be opened, namely 4 of the greater and 4 of the lesser price, of which he himself had been content, and faithfully promised that the remaining wool sewn up in the sarplers was like the wool opened; and whereas the same William, attaching faith to the statements of the said Robert, carried the whole wool aforesaid, save two sacks and a half which were stolen in

the custody of the said Robert, to St. Omer; yet, when he had caused it to be opened there and exposed for sale, he found the wool sewn up in 68 sarplers, of which he had not made inspection, vile and useless and wholly differing from his agreement; whereby the same William and his men stood in peril of death in the foreign parts aforesaid. And moreover he complains that, whereas he had bought the aforesaid 103 sacks of wool from the aforesaid Robert and had in good faith and according to the custom of the country handed them to him to be kept until he had sent for them, two sacks and a half, of the price of 20 marks, were abstracted thence by the aforesaid Robert and his household. Whereby he says that he is damaged and has loss to the value of a hundred pounds. And thereof he brings suit.

- j. When the parties are present before the court, the plaintiff counts. We may be in the strange world of the law merchant and a special royal authorization for something that is called an inquest, but there are some constants. Lawsuits begin with the plaintiff laying out his claim orally before the court. The claim is basically the same as in the writ, except that Dunstable adds that when the S. Omer merchants discovered that they were being cheated, he, Dunstable, stood in peril of his life.

And Robert comes and says that he was not summoned nor attached; indeed, he says that now he was brought from his house by force to come before the aforesaid Justices to answer the aforesaid William. And hereupon it is said to him that every man is free, and ought to be, from all force and coercion in coming to the court of the lord King and in departing thence at his own will. And the sheriff testifies that he was sufficiently warned, and that he used no force or coercion to him in coming now before the aforesaid Justices, namely by three days before the aforesaid day. And the citizens and other merchants of Winchester present testify that such previous notice suffices for answering a merchant according to the law merchant. Therefore it is said to the aforesaid Robert that he must answer. And he says that he will not answer; but he departed in contempt of the court. Therefore let an inquest be taken upon the aforesaid trespass.

- k. The next thing that happens is strange (this is in the full record not in Fifoot's extracts). Ball challenges the jurisdiction of the court on the ground that he was not properly summoned. He also says that the sheriff forced him to come. The justices (apparently) say that coercion should not be used in this type of case (their statement is very broad, and cannot be maintained as a general matter). Then the sheriff denies coercion and says that he gave Ball three days' notice, which the assessors say is adequate under the law merchant. The speed with which a case in law merchant can proceed is one of its chief characteristics. Ball then leaves court in a huff, but the justices make no attempt to bring him back; they simply call his departure contempt and proceed to take the jury's verdict.

The jurors says upon their oath that the aforesaid Robert le Bal' sold to the aforesaid William of Dunstable five score and three sacks of wool, namely fifty and three sacks, every sack for eight marks, and every sack of fifty sacks for six marks; so that the same Robert in the presence of the aforesaid William caused eight sacks to be opened, namely four sacks of the greater price and four of a lower price, asserting in good faith, according to the law merchant and the custom of merchants, that it [the wool] was alike and of the same clip, wherefore the same William on the statement and faith of the aforesaid Robert accepted the rest of the wool, which he had not previously seen, and settled with him for it. And afterwards he deposited the aforesaid hundred and three sacks in the custody of the aforesaid Robert, who received them to be kept until the aforesaid William should have sent for them. And they say that in the

custody of the aforesaid Robert and by his household one sack and a half was abstracted, of the value of 12 marks. And they say that the aforesaid William received the residue of the aforesaid wool from the aforesaid Robert on the faithful promise as is aforesaid, and when he exposed the aforesaid wool for sale in parts beyond sea, namely at S. Omer, the merchants buying the same on his testimony, because he understood that it was true to sample as aforesaid, found it false and useless, whereby the same William on every sack of fifty-three sacks incurs a loss of ten shillings, except on four sacks of the same price. And of the residue of the five score and three sacks, except four sacks of the lower price, he had a loss of half a mark.

And therefore it is awarded that the aforesaid William do recover the aforesaid price, namely [...],<sup>4</sup> against the aforesaid Robert, and likewise his losses, which are taxed by good and lawful citizens and merchants at twenty marks. And let the aforesaid Robert be taken and safely, etc.

- l. The jury basically confirms Dunstable's story. They do say that the amount of wool delivered to Dunstable was only one and half sacks short rather than two and half as Dunstable had claimed. They also considerably reduce Dunstable's claimed damages. Assuming that Hall's arithmetic is right, the total loss on the whole shipment is £39 16s 8d, to which the assessors (note the shift here between the jury and the assessors) add 20 marks in costs (£13 6s 8d). The justices enter the judgment (except that, whether by clerical error or by design we cannot tell, the sum is left out), and Ball is to be arrested (a rather harsh process for execution of judgment, at least as an initial matter, but the justices probably were not too pleased when Ball walked out on them).
  - m. We emphasize, on the one hand, that the ideas are sophisticated and the jury seems to know what it's doing. Yes, you got fewer sacks than you were entitled to but not as many fewer as you claim. Yes, the wool was worth less than you it would have been if it had been what was warranted, but it wasn't worth that much less. How does the jury know this? Clearly, they're "plugged in" to some kind of mercantile gossip market; perhaps it is provided by the assessors. It is possible that Ball was not a crook but simply that the wool deteriorated while it was in his hands, but I think it unlikely. The fact that the wool in the sample sacks was worth what he said it was worth suggests that he deliberately put his best sacks forward. It's an old trick. There are provisions in the Roman law of sale about this.
  - n. On the other hand, and ultimately, we don't know how effective this process was. We've got a sophisticated judgment but the defendant is no place to be found. Without more we cannot tell whether Dunstable ever collected and that is the ultimate test of whether the process is effective. The procedures in the Statute of Merchants and the Statute of Staple give more assurance of collection, but they involve restructuring the deal into the form of penal bonds. That is, of course, the story of how big-time commercial deals were handled in the later Middle Ages, and it is also one of the reasons why it took so long for the common law to develop a sophisticated commercial law.
9. Exchequer — Note the jurisdictional gimmick in *Pylate* (1299, p. VII-40): "James Pylate, yeoman of Walter, Bishop of Coventry and Lichfield, Treasurer of the lord King," while the case makes clear that Pylate is merchant of Douai. Note the bearer paper in *Le Feytur's Case* (1309, p. VII-43) (unclear how jd. was obtained here): "Richard acknowledges himself bound

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<sup>4</sup> Blank in MS. Apparently the sum should be £39 16s. 8d. It will be noticed that only one and half sacks were found by the inquest to be missing instead of two and a half sacks as claimed.

to Betinus de Friscobaldis and Coppus Cottene and their fellows of the Society of Friscobaldi in £55 for 22 cloths of ray of Ghent bought from them in the Fair of St. Botulph, to be paid to the same Betinus or to his fellows or to anyone bearing this letter at London on the Eve of Christmas in the year of Grace 1304.”

10. The ecclesiastical courts: *Chart c. Foster*, York BI CP.F. 321 (1511), p. VII-41:

The aforesaid Oliver Foster, at a time before the feast of St. Lawrence recently past, bought and received from the aforesaid George Chart forty sheep, forty lambs and twenty hogs worth £6 6s 8d.

The same Oliver on the day of delivery and receipt of the said sheep, lambs and hogs, paid 26s 8d in part payment of the said sum of £6 6s 8d.

The same Oliver by his oath faithfully promised the same George to pay £5 the rest of the same £6 6s 8d on a certain day now past.

The aforesaid George by himself and his men long before the present suit duly requested the said Oliver to pay to the same George the said £5, the rest of the £6 6s 8d.

The aforesaid Oliver, thus requested as is aforesaid has delayed and refused to pay or deliver to the same George the said £5, just as he delays and refuses at the present time

The aforesaid are true, public notorious, and manifest, etc.

- a. There are lots of these. The number runs into the 100's on the records, in the 1000's in reality.
- b. This case is typical. The elements.
- c. In the early decades of the 16th century the number declines precipitously.
- d. We will see tomorrow that competition from the king's courts may not be the answer.
- e. Why would Foster Chart bring his case in the York consistory? Why would Foster allow it to stay there?