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LEX MERCATORIA AND LEGAL PLURALISM: A LATE THIRTEENTH-CENTURY TREATISE AND ITS AFTERLIFE

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Et licet per antiquitatem premissam in nulla parte contra per gentilitatem efficitur de ipsam tamen
 scriptis le. scriptis in gentile anno supradictum ibidem electi de statu suo et illi in melius
 gubernandis electi sunt sibi per consiliores et assessores et de negotiis illis dignitatis et expe-
 diens de vi assensu quod dignitas eorum de perennibus et distinetur illi per dicitur videtur.

~~Petrus Engel~~ ~~f. 100 v. 100~~ ~~Georg Engel f. 100 v. 100~~ ~~Georg Engel f. 100 v. 100~~

~~Petrus Engel~~ ~~f. 100 v. 100~~ ~~Georg Engel f. 100 v. 100~~ ~~Georg Engel f. 100 v. 100~~

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~~Die 26~~ ~~Die 27~~ ~~Die 28~~ ~~Die 29~~

John De Calington ~~John De Calington~~ ~~John De Calington~~ a James De Calington
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Johan Blom Jof de Colindou Niche de Grolle Adriaen de Schinkel

St hie sende qd de Dogelsh meim p sumoniam gheue sup negre conde ghehuip

cor regis ad p[re]sentem negoti[um] p[ro]cedi. Et si aliquis aliter dixerit: tunc p[ro]cedi.

ponas neque eum ostendat. Et si non fuerit tunc p[ro]mittit ex. ad m[er]it[um]. quoniam

fora expensum 17 mactuum 06 ali g de pous 20m. 15 1/2 equi 1m

Bristol Record Office, *Little Red Book of Bristol*, fol. 13r. See the introduction, sec. App.B.

LEX MERCATORIA

[fol. 22r] Incipit *Lex mercatoria*,

[j.] Que, quando, ubi, inter quos et de quibus sit.¹

Lex mercatoria a mercato provenire² sentitur et inde primo sciendum est ubi mercatum se tenet de quo huiusmodi leges proveniunt. Unde advertendum est quod mercatum huiusmodi se habet in quinque locis tantum[,] scilicet in civitatibus, nundinis, portubus supra mare, villis mercatoriis et burgis[,] et hoc ratione mercati. Unde³ ulterius est videndum, quod sicut mercatum se habet in quinque locis,⁴ ita semper sequitur lex mercatoria sive lex mercati, videlicet, quia in civitatibus et nundinis sive feriis (quod idem est) fiunt empciones et vendiciones mercandis arum continue, scilicet, vestium[,] victualium et quasi omnimodorum bonorum mobilium[:]; ideo⁵ lex ista consequitur se ipsam continue in hiis duobus, sicut et mercatum[,] et ita est attachiamentum[,] sive adiornacio, harum legum de hora in horam; ut deante horam nonam post horam nonam, seu

¹ In the manuscript the first two lines are run together and written in a larger script. The chapter numbers throughout (where they are visible) are in the margin of the section to which they apply. See the introduction, sec. App.D, note 58. ²pervenire. ³burgis et hoc ratione mercati | unde—with a flourish on the final letter of mercati. Something may be missing; see opposite, note 1. ⁴locis; ita—a curiously formed punctus elevatus that looks like a virgula topped with a check mark. ⁵mobilium ideo ¶ | lex.

LEX MERCATORIA

Here begins *Lex mercatoria*:

1. What, When, Where, Among Whom, and Concerning What It Is.

Mercantile law is thought to come from the market, and thus we first need to know where markets are held from which such laws derive. So it should be observed that such markets take place in only five [types of] place, specifically in cities, fairs, seaports, market-towns, and boroughs, and this by reason of the market.¹ From this it should further be seen that just as markets are held in five [types] of place, so mercantile law or the law of the market always follows, namely: In [i] cities and [ii] fairs (whether *nundine* or *ferie*, for they are the same thing), where purchases and sales of merchandise, specifically of clothes, foodstuffs, and almost every type of movable good, are continually made, the law follows after itself continuously in these two like the market. And so attachments or adjournments of mercantile law here are from hour to hour, as from before noon² to after-

¹The Latin is awkward. The first clause of the first sentence may have an etymological import, but the thought turns rapidly to what a modern reader would regard as substance. Two, possibly three, senses of *mercaturum* are involved: (1) the legal institution, or the franchise; (2) concrete instances of the institution in the five types of place (translated above in the plural), and (3) the buying and selling associated with the institution. See Niermeyer, *Lexicon*, s.v., *mercatus*. PB suggests that we should assume at the end “by reason of the market [activity that takes place there],” i.e., that the third meaning is

dominant. It is also possible that the first meaning is here intended. See the introduction, sec. 1D at note 25. Something may be missing. The text may originally have read something like: *Et hoc est videndum quod lex mercatoria de hiis quinque locis provenit ratione mercati. Unde ulterius est videndum*, etc. “And by this it should be seen that mercantile law comes from these five places by reason of the market. From this it should further be seen,” etc.

²*horam nonam*—the alternative meaning, “the ninth hour,” i.e., mid-afternoon, is possible but less likely.

de diebus in dies contiguatos, ut de die lune ad diem martis, et de die martis, in diem mercurii, nisi forte partes in largius seu brevius consenciant.

In portubus attachiamenta[.] sive adiornaciones, sunt similiter ordinatim,⁶ sicut et res venales veniunt ad portum et exeunt portum, scilicet de daytyda in daytydam, nec computari debent tide noctuales.

In villis mercatoriis et burgis debent⁷ fieri attachiamenta et adiornaciones de mercato in mercato⁸ in mercatum.

Ad leges istas pertinent naturaliter omnia placita preter placita terre tantum,⁹ sed si domini et partes placitantes¹⁰ maius voluerint deducere et prosequi placita de appellis in dictis locis coram eis inchoata in aliis curiis ad communem legem, et recusare legem mercatoriam bene possunt, et ita faciunt communius quam aliter per totum regnum.

⁶ See opposite, note 3. ⁷ burgisdebent—run together and separated with vertical line. ⁸ See opposite, note 4. ⁹ A hand in the left margin points away from this clause, and it seems to have been underlined. ¹⁰ placitantes, maius.

[ij.] Quomodo lex mercatoria differt a lege communi.

Lex mercati differt a communi lege regni tribus modis in genere[:] primo quod celerius deliberat se ipsam.

Secundo quod qui plegiat aliquem ad respondendum de transgressione, convencionem, debito seu catallorum detencione plegiat totum debitum, dampnum et expensas querentis, si plegiatus suus convictus sit et non sufficiat infra bundas mercati, et si forte plegiatus ille primo sit attachiatus per vadium sive per catalla et postea¹ vadium illud elongaverit vel² dimissum

¹ postea—e inserted with a carat.

² See opposite, p. 3, note 3.

noon, or from one day to the next, as from Monday to Tuesday and from Tuesday to Wednesday, unless the parties agree on a longer or shorter time.

In [iii] ports, attachments or adjournments follow in the order³ that things for sale come into and leave the port, specifically from one day's high tide to the next (but nocturnal high tides are not to be included).

In [iv] market-towns and [v] boroughs, attachments and adjournments should be made from one market to the next.⁴

To these laws naturally pertain all pleas excepting only those of land. But if the lords⁵ and pleading parties would rather withdraw and prosecute pleas of appeals⁶ begun before them in the aforesaid places in other courts at common law,⁷ and refuse mercantile law, they certainly can, and they do so more often than not throughout the whole kingdom.

³ *ordinatim*—unusual but classical; see OLD, s.v. Alternatively, emend to *ordinata* and translate “are likewise arranged just as,” etc.

⁴ Translation assumes that *in mercato* is redundant.

⁵ Subsequent chapters, e.g., 5, 9, 17, and 18, indicate that the *dominus* referred to here is the *dominus curie*, ‘lord of the court’, who also appears to be the *dominus mercati* (see chs. 13 and 15).

⁶ Probably to be understood in its common-law sense of criminal appeal. See the introduction, sec. 1D, text and notes 5–6.

⁷ At a minimum this refers to the central royal courts, the itinerant justices, and the county courts. The possibility mentioned below (ch. 9) that the lord of the court of the market might have a court at common law suggests that various kinds of franchisal courts were also conceived of as being ‘at common law’.

2. In What Way Mercantile Law Differs from the Common Law.

The law of the market differs from the common law of the kingdom in three general ways. First, it generally delivers itself [of a judgment] more quickly.

Second, whoever pledges someone to answer for a trespass, covenant, debt, or detinue of chattels pledges the whole debt, damages, and costs of the plaintiff, if the one pledged is convicted and does not have enough [to pay the judgment] within the bounds of the market. And if the one pledged happens to be first attached by gage or by chattels¹ and afterwards he takes

¹ These are probably not two different processes, but alternative ways of referring to the same goods taken in attachment.

fuerit per huiusmodi plegiacionem per prepositum mercati extra bundas mercati, respondeat plegius de huiusmodi vadio seu eius precio curie seu querenti.

Et tercio modo differt in eo quod non admittit aliquem ad legem in parte negativa, sed semper in ista lege querentis est probare, ut per sectam vel per factum seu per utrumque et non defendentis.

Et quoad alia, ut quoad prosecuciones, defensiones, essonia, defalte, dilaciones, iudicia et execuciones iudiciorum, observandus est idem processus in utrisque legibus.

Et sciendum quod quicumque³ emerit aliquid vel permutaverit cum mercatore, sive emptor ille seu permutator fuerit mercator sive non[,] dum tamen res illa sit de mercandisa sua seu ad mercandisam suam spectans [fol. 22v] et emptor ille diem suum versus mercatorem inde non servaverit, tenetur eidem mercatori respondere secundum legem mercatoriam, ubicunque apprehendi seu attachiari poterit infra metas dictorum quinque locorum. Et⁴ est idem iuris, si mercator non servaverit diem suum versus alium, quicumque³ ille alius sit, sive sit mercator sive non, nisi forte partes consensierunt, et maluerunt placitare ad communem legem in eisdem civitatibus et in eisdem, ubi habent curias post feriam, tidam et mercatum et in quibus deducit[ur] lex communis.

³ quicumque

⁴ locorum | Et.

iiij.¹ De plegiis ad prosequendum et preceptis ad attachiandum.

“Adam Bernard mercator lane[,]” “draperius,” vel “lyndraperius”, vel

¹ iiij—the first visible marginal chapter number.

the gage away, when² the market-reeve lets him take it³ outside the bounds of the market on account of such a pledging, the pledge should answer the court or the plaintiff for a gage of this sort or its value.

And [the law of the market] differs in a third way because it does not admit anyone to [wager of] law on the negative side, but in this law it always belongs to the plaintiff to prove, for example, by suit or by deed or both, and not to the defendant.

And with respect to other matters, such as prosecutions, defenses, essoins, defaults, delays, judgments, and executions of judgments, the same process should be used in both laws.

And it should be known that whoever buys or exchanges anything with a merchant, whether or not the buyer or exchanger is a merchant, so long as the thing is of his [the merchant's] merchandise or belongs to his merchandise, and the buyer does not keep his [appointed] day against the merchant about it, he is held to answer the same merchant according to mercantile law wherever he can be arrested or attached within the boundaries of the said five places. And the same law applies if the merchant does not keep his [appointed] day against the other, whoever the other is, whether or not he is a merchant, unless the parties happened to agree and prefer to plead at common law in the same cities and the same [places] where they have courts after the fair, tide, and market and in which [courts] the common law is observed.

²Reading *ubi*, because only one situation seems to be contemplated, in place of *vel*, "or." See the introduction, sec. 2(2).

³ Literally, "releases [the gage] outside the bounds of the market."

3. On Pledges to Prosecute and Orders to Attach.¹

"Adam Bernard,² wool-merchant," "draper," or "linen-draper," or thus,

¹ In this and in the following chapters where forms for entries are given, the matter to be entered is placed in quotation marks.

² The forms of the surnames of these ciphers could, in some cases, be genitive, and

in the case of 'Bernard Adam' below is clearly genitive. Hence a rendering 'Bernard Ade' or 'Bernard son of Adam' is also possible. For consistency, our translation ignores these genitive forms.

[vj.] De debitis recuperandis sine scripto et tallia et legibus non vadiandis.

Si quis attachiatus sit ad respondendum de¹ debito detento,² convencione vel transgressione vel alio quocumque placito pertinente ad legem mercatoriam,³ et primo in placito debiti defendens querat quid petens habeat de debito, et pretendatur secta bona, licet defendens in hac parte se defendere voluerit per legem suam quod in nullo denario sibi tenetur etc. prout etc.[.] nullo modo ad hoc admitti debet. Cuius⁴ causa est quia frequencius contigit et notorie cunctis constat, quod mercatores bona sua et mercandisas suas sine talliis et scriptis quam per tallias seu scripta aliquando per particulas et aliquando in grosso et eciam quod homines servientes et apprenticii huiusmodi mercatorum, bona et mercandisas dominorum suorum aliis hominibus ubi intendunt per hoc utilitates et commoda dominorum suorum facere, apprestant eodem modo,⁵ cum durum, et maxime tediosum, et quasi onus et impedimentum continuum esset eisdem et presertim mercatoribus victualium si singulis vicibus de omnibus particulis mercandisarum suarum quas in diversis temporum et dierum horis de appresto tradunt tallias seu scripta scribi facere et recipere deberent.

¹ de—*interlined*. ² detento—*may be an error for detencione*. ³ See *opposite*, note 1. ⁴ debet, cuius—*see opposite*, note 2. ⁵ modo ¶ **Cum durum**.

6. On the Recovery of Debts Without Writing or Tally and on Not Waging Law.

If anyone is attached to answer concerning debt, detinue, covenant, or trespass, or any other plea whatsoever pertaining to mercantile law,¹ and first in a plea of debt, [if] the defendant should ask what the demandant has concerning the debt, and good suit should be tendered [by the demandant], even if the defendant wishes to defend himself on his side by his law, [by saying] that he owes him not a penny, etc., according as, etc., in no way ought [the defendant] be admitted to this.² The reason for this is that it happens and is well known to all that merchants sell their goods and merchandise on credit³ more frequently without tallies and writings than by tallies or writings, sometimes by retail, and sometimes wholesale, and also that servants and apprentices of such merchants [sell on credit] the goods and merchandise of their lords to other men in the same way, whenever they understand that they will make profits and benefits for their lords by this. It would be hard and very tedious and a kind of burden and continuous obstacle to them, and especially to merchants of foodstuffs, if they had to make tallies and have writings written and receive [them] every single time for every little bit of their merchandise that they deliver on credit⁴ in different periods and hours of day.

¹ There may be something missing here; we would expect some sort of conclusion to the general condition (such as “he should come”) before we deal with the specific pleas. The punctuation of the Latin suggests that the scribe took all three initial clauses as the protasis of a conditional statement, the apodosis of which appears in the clause “in no way,” etc.

² PB suggests that the logic of the common law concerning wager of law underlies this assertion. At common law, if the plaintiff tendered nothing but suit to support a claim of debt, the defendant could wage his law. If he tendered a sealed instrument, the defendant could not wage his law. (The situation with tallies was complicated and not completely settled at this time.) Our author’s

point is that in the mercantile context, the defendant should not be allowed to wage his law, even if the plaintiff has nothing but suit to support his claim, because merchants do not and cannot use writings, or even tallies, in all situations. He uses here a narrow argument based on the logic of the common law rather than the much broader assertion that he makes on the same point in ch. 2. See further the introduction, sec. 1F.

³ *apprestant, appresto*—Latham, *Dictionary*, s.vv., *appraestare, appraestatio, appraestum* suggests ‘advance payment’ or ‘loan’, though the examples given, including this one, do not fully support the suggested meanings. Cf. OED, s.v., *prestation*, ‘the action of lending’.

⁴ *appresto*—see above, note 3.

Unde cum defendens in curiam venerit et precise⁶ neget et demandam, seu querelam querentis contra ipsum factam omnino dedicat, extunc detur⁷ querenti dies ad proximam curiam ad ducendum⁸ et probandum, et defendenti ad audiendum probationes querentis et ad ulterius apponendum⁹ et defendendum partem¹⁰ suam si viderit expedire nisi forte sectam suam ad illam primam curiam¹¹ adduxerat paratam; quod si fecerit statim admittantur et examinentur. Que¹² examinatio sic fiat. Primo¹³ iuret primus adductus sub hac forma:

“Hoc auditis senescalle et mercatores istius curie quod ego dicam veritatem de hiis que a me requiretis de quodam debito quod Adam Bernard mercator petit in ista curia versus Bernardum Ade.”

Vel sic “de quadam convencione quam Adam Bernard fecisse debuit Bernardo¹⁴ Ade mercatori, et quam sibi iniuste non tenet ut dicit.”

Vel sic “de detencione quorundam bonorum, catallorum et mercandizarum Ade¹⁵ Bernard mercatoris que Bernardus Ade ei iniuste detinet ut dicit.”

Vel sic “de quadam transgressione contra pacem quam Adam Bernard dicit quod B. Adam sibi in villa presens¹⁶ fecisse debuit,” et sic de aliis; et “in eo nullum falsum dicam, sic me adiuvet deus et omnes sui sancti,” nec debent addi “secundum credulitatem,” sed simpliciter iurabit de veritate

⁶ precise. ⁷ detnr. ⁸ See opposite, note 5. ⁹ See opposite, note 6.

¹⁰ defendendum, partem—probably an abbreviation punctus, not a comma. ¹¹ curiam,

adduxerat. ¹² examinentur que. ¹³ fiat, primo. ¹⁴ Bernardo—bracketed with

punctus. ¹⁵ mercandizarum, Ade—probably the beginning of bracketing punctus

around Ade that never got completed. ¹⁶ See opposite, note 10.

Therefore when the defendant comes into court and flatly rejects and wholly denies the plaintiff's demand or plaint made against him, from that time a day should be given to the plaintiff at the next court to bring forward⁵ and prove [his case], and to the defendant to hear the plaintiff's proofs and to set forth⁶ and defend his part further if he considers it expedient, unless [the plaintiff] happened to have produced his suit prepared at the first court. If he did this they should immediately be admitted and examined. The examination should be made as follows. First, the first one produced should swear in this form:

"Hear this, seneschal and merchants of the court, that I shall speak the truth about these things you ask of me concerning a certain debt that Adam Bernard, merchant, claims in this court against Bernard Adam."⁷

Or thus "concerning a certain covenant that Adam Bernard is alleged⁸ to have made with Bernard Adam, merchant, and that he unjustly does not keep with him, as [Adam Bernard] says."

Or thus "concerning the detinue of certain goods, chattels, and merchandise of Adam Bernard, merchant, that Bernard Adam unjustly withholds from him, as [Adam Bernard] says."

Or thus "concerning a certain trespass against the peace that Adam Bernard says that Bernard Adam is alleged⁹ to have done to him in the afore-said town,"¹⁰ and likewise of other claims. "And in this I will speak no falsehood, so help me God and all his saints." Nor ought there be added "according to belief,"¹¹ but he will simply swear to tell the truth¹² at his

⁵ The text may originally have read *producendum*, "produce [witnesses]." This would correspond with the Romano-canonical "make positions," above. Later the members of the suit are said to be *adducti*—not a standard Romano-canonical term—translated here, along with its variants, by "produced" to avoid neologism.

⁶ This would make more sense if we assumed that *apponendum* was a misreading of *opponendum*, "oppose."

⁷ Compare the forms of oaths given for assizes and attainr juries in *Bracton*, fols. 185, 287, 292.

⁸ For this meaning of *debere*, see Latham,

Dictionary, s.v. (meaning 7).

⁹ See above, note 8.

¹⁰ Reading *predicta* for *presens*. The Latin, which reads "that Bernard Adam, [who was] present in the town, is alleged," etc., is too clumsy to be believed.

¹¹ Perhaps a reference to the reluctance of Romano-canonical procedure to accept statements of witnesses *de credulitate*. PB also points out that the juryman of an ordinary common-law jury swore to give a verdict *a son escient*, usually translated as "to the best of his knowledge and belief."

¹² *de veritate dicenda*—another Romano-canonical term.

dicenda sub periculo suo.

Et tunc examinetur per senescallum curie in aperta audientia parcium et totius curie, et irrotuletur ipsius probacio secundum quod effectu dicit et ita postmodum successive examinentur et iurentur omnes adducti quilibet per se separatim.

Et si senescallus et curia suspicionem habeat quod huiusmodi adducti sint locati vel subornati ad dicendum falsum tunc nullus eorum audiat alterius examen, set teneantur omnes alii extra curiam dummodo¹⁷ [fol. 24v] eorum aliquis sit examinandus. Sed si sint viri fidedigni et ita apparentes quod nulla sit suspicio¹⁸ tunc bene poterit eorum quilibet audire alterius examen.

Et si nominet aliquos testes qui se retrahant¹⁹ et gratis venire noluerint et sint distringibiles infra potestatem senescalli ferie seu mercati tunc precipitatur²⁰ ballivo quod venire faciat eum seu eos si plures fuerint et distringantur et perdant²¹ exitus suos quousque veniant sicut est observandum de mercatoribus ad communem legem.

Et si querens testes tales nominare non valeat qui sunt infra bundas mercati distringibiles tunc adducat secum testes suos citra terciam vel ad terciam curiam proxime sequentem, ita quod terciam curiam habeat ad probandum demonstracionem suam, et nisi eam plenarie probaverit citra terciam vel ad terciam curiam recedat defendens ab eo illa vice quietus et adiudicentur dampna defendenti per discrecionem mercatorum eiusdem curie, habito respectu ad moras, dilaciones, expensas, et alia dispendia, et incommoda que idem defendens habuit occasione huiusmodi attachiamenti super eo facti.

¹⁷ Item odium ad querentem—?, written in a sloppy and much later hand in the right margin.

¹⁸ x—in right margin.

¹⁹ x—in left margin; si nominet may be under-

lined. ²⁰ See opposite, note 14.

²¹ perdaunt.

peril.

And then he should be examined by the seneschal of the court in open audience of the parties and of the whole court, and his proof should be enrolled according to the effect of what he says, and likewise afterward all those produced should be examined and sworn in succession, each one separately by himself.¹³

And if the seneschal and court suspect that such [witnesses] produced have been hired or suborned to speak falsely, then none of them should hear another's examination, but all the others should be held outside the court for as long as any of them is to be examined. But if they are trustworthy men and appear to be above suspicion, then each one of them can certainly hear the examination of the others.

And if [the plaintiff] names some witnesses who withdraw themselves and will not come voluntarily and are distrainable within the area of authority of the seneschal of the fair or market, then the bailiff should be ordered¹⁴ to make him come—or them if there are several—and they should be distrained and should forfeit their issues¹⁵ until such time as they come, just as should be observed with respect to merchants at common law.

And if the plaintiff is unable to name such witnesses who are distrainable within the bounds of the market, then he should produce his witnesses with him before the third or at the third court¹⁶ next following, because he has to prove his statement of claim [at] the third court, and unless he proves it fully before the third or at the third court, the defendant should depart from him on that occasion quit,¹⁷ and damages should be adjudged to the defendant by the discretion of the merchants of the same court, with respect had for the delays, deferments, costs and other expenses and inconveniences that the same defendant had as a result of such an attachment made upon him.

¹³ The author here states a general rule, one basic to Romano-canonical witness procedure, but then he describes norms of practice that effectively undermined it in many cases.

¹⁴ *precipitatur*—if this is not an error for *precipitur*, it is a back formation from *preceptum*, meaning as above.

¹⁵ On the issues of distrains, see the introduction, sec. 2(6).

¹⁶ This may correspond to the three terms normally given for the production of witnesses in Romano-canonical procedure.

¹⁷ Compare the common law's "let him go thence without a day" and "let him be quit thereof."

Et quod extunc in nulla curia mercatoria teneatur idem defensor eidem querenti respondere de eadem querela ex quacunque causa pervenerit priusquam de huiusmodi dampnis plenarie sibi satisfecerit, et nichilominus dampna illa postquam adiudicata fuerint defendenti incontinenti leventur, et ei in plena curia solvantur.

Et postquam huiusmodi²² placitum et eiusdem executio terminata fuerint habeant partes si voluerint transcriptum recordi sive recordum rotulorum ferie seu mercati sub communi sigillo eiusdem seu²³ mercati versus eos, ita quod possint idem recordum allegare et advocare si postmodum de eodem occasionati fuerint, vel inde indigeant postea ex certis causis in aliis feriis et mercatis.

Et semper per medium²⁴ solvitur clerico mercati pro decem lineis, unus denarius, et pro sigillo, quattuor denarii.

Et si demonstracionem²⁵ suam probare poterit cum tribus testibus notis et fidedignis et sufficientibus, tunc recuperet secundum quod probaverit, nisi forte defendens offerat, et novam securitatem inveniatur, ad convincendum querentem sive agentem et sectam suam in forma que subsequitur, capitulo vicesimo "de attinctis"; et dampna et expense in isto placito²⁶ de debito et in omni alio ubi querens recuperat per probationes debent adiudicari per mercatores curie et non per testes.

Set in casu de quo feria vel mercatum habet vel habere potest plenam cognicionem veritatis, ita quod oporteat partes inde descendere in inquisicionem in huiusmodi casibus adiudicentur per inquisicionem et non per mercatores curie. Sed si forte defendens non dedicat simpliciter dictum querentis, sed cognoscat quod ipse sibi aliquando in tali debito tenebatur, et quod de eodem debito sibi iam diu est fuerit satisfactum; et eodem modo de convencione, detencione et aliis querelis, ut de transgressione, imprisonment et aliis placitis ad curiam mercatoriam

²² postquam, huiusmodi—*probably an abbreviation punctus*. ²³ eiusdem, seu. ²⁴ See opposite, note 21. ²⁵ x—in left margin, with a corresponding x over denarius. ²⁶ placito—*repeated*.

And from that time in no mercantile court should the same defender¹⁸ be held to answer the same plaintiff for the same plaint, from whatever cause it arises, before [the plaintiff] has fully satisfied him concerning such damages. And also,¹⁹ after the damages have been adjudged to the defendant they should immediately be levied, and they should be paid to him in open court.

And after such a plea and its execution have been ended, the parties, if they wish, should have a transcript of the record or a record of the rolls of the fair or market under the common seal of the same [fair] or market for themselves,²⁰ so that they can allege and vouch the same record if afterwards they are harassed concerning the same thing or [if] they need it later on account of certain causes in other fairs and markets.

And as a means,²¹ one penny for ten lines and four pennies for a seal are always paid to the clerk of the market.

And if [the plaintiff] is able to prove his statement of claim with three witnesses²² known and worthy of faith and sufficient, then he should recover according to what he has proved, unless the defendant happens to offer and find new security to convict the plaintiff or the one bringing the action and his suit in the form that follows under chapter twenty, "On Attaints." And the damages and costs in this plea of debt and in every other where the plaintiff recovers by proofs ought to be adjudged by merchants of the court and not by witnesses.

But in a case in which the fair or market has or is able to have full knowledge of the truth, so that it behooves the parties to arrive at an inquest about it, in such cases they should be adjudged by inquest and not by merchants of the court. But if the defendant happens not simply to deny what the plaintiff said, but acknowledges that he was once held to him in such a debt and that [the plaintiff] was satisfied a long time ago concerning the same debt [owed] to him; and in the same manner concerning covenant, detinue, and other pleas such as trespass, imprisonment, and other pleas pertaining to the mercantile court, his proof should be admitted. [This

¹⁸ *defensor*—rather than *defendens*.

²¹ Or "on average"? Neither seems right,

¹⁹ For this meaning of *nihilominus*, see Niermeyer, *Lexicon*, s.v.

but no easy emendation is apparent.

²⁰ See ch. 16. For this meaning of *versus*, compare French *vers eux*; see also Latham, *Word-List*, s.v. (meaning 3).

²² One more than the Romano-canonical minimum of two. See the introduction, secs. 11, 4.

pertinentibus admittatur eius²⁷ probacio, quia licet prius fuerat defensor nunc per huiusmodi responsionem deveniet actor.

Et sciendum quod quicumque cadat sive querens sive defensor semper cadit in dampnis et expensis illius pro quo iudicium redditur. [fol. 25r.]

²⁷ eis.

[vij.] Quod mercatores respondeant de bonis mutuatis apprenticiis et submercatoribus suis.

Quia multociens et communiter contigit quod apprenticii et submercatores qui sub dominis suis publice et manifeste mercandisant, pecuniam, bona, et mercandisas, ad opus dominorum suorum eis¹ mutuari et accomodari procurant, quibus apprenticiis et mercatoribus, si cum se ipsis essent et non cum huiusmodi dominis ipsi mutuantes[,] nulla bona omnino eis traderent; in quo casu est ordinatum, quod domini huiusmodi apprenticiorum² et submercatorum³ respondeant eodem modo de huiusmodi bonis et mercandisis eis per manus huiusmodi apprenticiorum et submercatorum⁴ suorum quocumque modo traditis, ac si ipsimet eadem bona et mercandisas per⁵ suas manus proprias recepissent, ita tamen quod ipsi apprenticii et submercatores⁶ cognoscantur sub huiusmodi dominis suis et cum bonis eorundem dominorum ante et post huiusmodi mutuacionem⁷ seu tradicionem vel saltim tempore huiusmodi mutacionis et tradicionis manifeste ministrare et mercandisare.

Habeant eciam mercatores eandem accionem versus quoscumque, ad petendum bona et mercandisas suas si huiusmodi bona et mercandise apprestata[,] tradita, seu⁸ quovismodo liberata fuerint, per submercatores suos vel alios homines suos, ac si ipsimet bona illa seu mercandisas illas

¹ eis—we would expect sibi. ² Slash mark in right margin. ³ suorum quocumque modo trad—expunctuated and partially struck through, correcting the haplography on the next submercatorum. ⁴ apprenticiorum&submercatorum—run together and separated with vertical lines. ⁵ mercandisas, per. ⁶ Nota bene—in right margin in later hand. ⁷ See opposite, note 2. ⁸ sed.

is] because although before he had been the defender, now for such an answer he will become the one who brings the action.

And it should be known that whoever fails, whether he is plaintiff or defender, is always liable²³ for the damages and costs of him for whom the judgment is rendered.

²³ *cadit*—above *cadat*, i.e. two different senses of the same word. See Latham, *Dic-*

tionary, s.v. *cadere* (meanings 6 and 5).

7. That Merchants Should Answer Concerning Goods Lent to Their Apprentices and Under-merchants.

It often and commonly happens that apprentices and under-merchants, [those] who publicly and openly trade under the control of their masters, cause money, goods, and merchandise to be lent for consumption, or sold on credit,¹ to them to the use of their masters. The lenders would deliver no goods at all to such apprentices and [under-]merchants if they were on their own and not with such masters. In this case it is ordained that the masters of such apprentices and under-merchants should answer in the same way concerning goods and merchandise of this sort delivered to them in any way whatsoever by the hands of such apprentices and under-merchants, as if they themselves had received the same goods and merchandise by their own hands. But this applies on condition that these apprentices and under-merchants are known to serve and trade openly under the control of their masters and with the same masters' goods before and after such a loan² or delivery or, at least, at the time of such a loan and delivery.

The merchants should also have the same action against any persons whatsoever in order to claim their goods and merchandise, if such goods and merchandise were sold on credit, delivered, or in any way released by their under-merchants or other men of theirs, as if they themselves had so

¹ *accomodari*. Although the language suggests the distinction between the *mutuum* and *commodatum* of Roman law, *accomodari* probably refers to some form of credit sale, like *prestare* in ch. 6 at note 3. It is also possible that this is a misreading of *accomendari* and that the reference is to the well known medieval contract of *comenda*. See

Lopez, *Medieval Trade*, ch. 9. *Accomendare*, however, is not otherwise recorded in English sources. See Latham, *Dictionary*.

² *mutuacio*—though rare, is classical. It appears to be roughly synonymous with the more common *mutuum*, though less technical. See OLD, s.v., *mutuatio*.

20. On Attaints.

When the parties arrive at an inquest of the market, an attaint should not be granted in mercantile law by a mercantile court without a writ of the lord king.¹ [This is] because the parties agree to such juries or inquests and have the same challenges against merchants as if they were at the common law of England.

But in a case in which an action or defense has been proved² by suit examined in open audience of the whole court—which examination ought to be done principally by the seneschal and two of the more discerning men of the same court chosen for this purpose by the court—before judgment is rendered, the defendant should be asked if he has anything [to produce] on his behalf or if he knows anything to say whereby judgment should not proceed in accordance with the proofs.

In the [affirmative] case it is ordained that if the defendant is then there in his own person and offers himself ready to condemn and convict the plaintiff or demandant and the suit of perjury, he should be allowed admittance under this form:

First he will swear that the plaint or demand that his opponent makes against him is unjust and untrue, and that those—and they should be named singly—whom [his opponent] produced with himself or whom he had come with him by the aid of the court to testify on his behalf swore a falsehood and that he himself intends and firmly believes that he can convict them of the same [falsehood] and that he will convict them to the best of his ability.³

And then, in addition,⁴ he should find good security by gage and pledges to prosecute both against his opponent and against his [opponent's] wit-

¹ For the reading *sine* rather than *sive* (opposite, note 1), see the introduction, sec. 1 H.

² Something is clearly wrong. The translation assumes that *vel* got repeated by mistake. Alternatively, supply something like *vel per testes* before *vel per sectam*. See *id.*

³ Reading *convinceret* for the second *convincere*. Alternatively, emend to *ipse intendit eos convincere pro posse suo et firmiter credit quod ipsos convincere potest de eodem* and translate “he himself intends

to convict them to the best of his ability and firmly believes that he can convict them of the same.” This emendation, far more elaborate but perhaps making better sense than the first, assumes that *quod eos convincere* and *pro posse suo* were repeated by dittography, and that a later scribe, trying to correct the errors, took out the wrong *ipsos convincere pro posse suo*.

⁴ See ch. 6, text and note 19.

versus testes suos et nominatim versus quemlibet de placito attincte ita quod securitas illa sufficiat pro novo amerciamento versus curiam et novis dampnis parti adiudicandis, si ipsam non convincat; qua securitate inventa et irrotulata, detur dies querenti ad adducendum et probandum cum¹¹ secta fidedigna et non suspecta[,] scilicet ad proximam, vel ad secundam proximam, curiam[,] et idem dies detur defendenti, qui prius fuit agens, ad audiendum attinctam illam et ulterius ius et partem suam in premissis defendenda,¹² si sibi viderint expedire.

Et sciendum quod tunc uterque potest adducere, scilicet querens ad convincendum et defendens ad efforciandum, primam sectam suam productam.

Et ille¹³ cuius probacio extunc melior et verior comperta sit habeat iudicium pro eo[,] habito respectu ad inchoacionem placiti, ita tamen quod convixio sive attincta pro nulla habeatur nisi ipse qui convicturus est excedat eum qui convincendus est in numero per duos testes ad minus, quia omnia iura et omnes leges semper supponunt bonum¹⁴ pro tenentibus et defendentibus donec eorum status infirmetur seu contrarium boni de eisdem probetur.

Et sciendum¹⁵ quod attincta in istis legibus mercatoriis non potest inchoari per attornatum set oportet quod ille qui vult attinctam prosegui sit in propria persona sua in curia quando vadiat attinctam illam propter iuramentum corporale quod ipse prestiturus¹⁶ est. Sed quoad alios dies bene potest prosegui per attornatum. Et si partes nominent testes aliquos qui nolint gratis cum eisdem venire et sint distringibiles infra bundas mercati, distringantur tunc ad veniendum ut predictum est superius de huiusmodi testibus capitulo sexto de debitis recuperandis sine scripto et tallia.

¹¹ probandum, cum—*probably an abbreviation* punctus. ¹² defendend'. ¹³ productam, Et ille. ¹⁴ bone—the *less radical emendation* bene being rejected because of the following boni. ¹⁵ probetur, Et sciendum. ¹⁶ prestiturus.

nesses and by name against all concerned on a plea of attaint. The security should be sufficient for a new amercement to⁵ the court and for new damages to be adjudged to the [opposing] party if [the one prosecuting the attaint] does not convict him. When this security has been found and enrolled, a day should be given to the plaintiff to produce [proof] and prove with a trustworthy suit that does not excite suspicion, specifically, at the next or second next court. And the same day should be given to the defendant, who was previously the one bringing the case, to hear the attaint and further to defend his right and his part in the aforementioned things, if these things seem expedient to him.⁶

And it should be known that each [party] can then produce [proof], specifically, the plaintiff in order to convict and the defendant in order to strengthen his first suit brought forth.

And the one whose proof at that time is found better and more true should have the judgment for him, with respect, however, had for the beginning of the plea, because the conviction or attaint should be held as void unless he who is doing the convicting surpasses him who is to be convicted by at least two witnesses in number.⁷ [This is] because all rights and all laws always favor tenants⁸ and defendants until their standing is weakened or a reason for withdrawing favor from them is proved.

And it should be known that attaint in these mercantile laws cannot be begun by attorney, but it is necessary that he who wants to prosecute the attaint be in court in his own person when he pledges the attaint, on account of the bodily oath that he is about to give. But as for other days, he can certainly proceed through an attorney. And if the parties name any witnesses who will not come with them voluntarily and who are distrainable within the bounds of the market, they should then be distrained to come, as has been said before concerning such witnesses in chapter six above "On Recovering Debts Without Writing or Tally."

⁵ *versus*—see ch. 6, note 20.

⁶ The formulae sound like those of Romano-canonical procedure, particularly in the use of *agens* for the plaintiff.

⁷ The reference to the beginning of the plea indicates that to get a conviction of attaint, the prior defendant, now turned *actor*,

must provide two more witnesses than the number of the original plaintiff's suit. For further discussion, see the introduction, sec. 1H.

⁸ The common-law term for a defendant in a real action.

Et si¹⁷ nominent aliquos testes qui non sint distringibiles per curiam illam et iurare velint quod testes illi sunt sibi necessarii tunc habeant diem ad adducendum illos ad sextam proximam curiam vel citra[,] que dilacio semper conceditur duplicata supra prima adduxione prime secte propter difficultatem attincte et eciam defensionem contra eandem.

Et nisi¹⁸ convinciones defendent¹⁹ in forma predicta, citra illam sextam curiam, vel ad illam sextam curiam convincerit, recedat defendens et sua prima secta ab illa convincione imperpetuum quieti, et adiudicentur²⁰ parti defendenti quia ab inicio pocius fuit actor quam defensor dampnum, et expense sue, habito respectu ad moras[,] dilaciones, impedimentum primi iudicii, et alia dispendia et incommoda que sustinuit occasione illorum placitorum ab inicio usque ad diem quo receperat vel sibi de ultimo satisfactum fuerat.

¹⁷ tallia, Et si.

¹⁸ eandem, Et nisi.

¹⁹ See *opposite*, note 9.

²⁰ adducentur.

[xxi.] De scribendo ad alias curias.

Cum inter partes moveatur placitum in curia mercatoria et una pars contra aliam replicando vel excipiendo dicat quod alias de eadem re fuit placitum motum inter ipsos easdem personas in civitate Wynton' vel in feria sancti Egidii, Wynton' vel in villa Suth' et sic de aliis, in qua civitate, feria, vel villa, idem querens in plena curia disracionavit [fol. 29v] versus eundem defendentem dampna per considerationem eiusdem curie, et quod iudicium fuit ibidem plenarie executum[,] vel quod alias traxit eum in¹ placitum de

¹ eum, in.

And if they name any witnesses who are not distrainable by the court and they are willing to swear that the witnesses are necessary to them, then they should have a day to produce them at the sixth court next [following] or before. This delay—twice [that for] the first production of the first suit [described] above⁹—is always granted on account of the difficulty of an attaint as well as of the defense against the same.

And unless [those prosecuting the attaint] sustain their convictions¹⁰ in the aforesaid form before the sixth court, or convict at the sixth court, the defendant¹¹ and his first suit should withdraw and be quit of that conviction forever, and to the defending party,¹² because from the beginning he was the one bringing the case rather than the defender, should be adjudged his damages and costs, with respect had for the delays, deferrals, hindrance of the first judgment, and other costs and inconveniences that he sustained on account of those pleas from the beginning up to the day when he recovered or satisfaction was finally given him.

⁹ See ch. 6.

¹⁰ The text may be corrupt. The shift from plural to singular in the next clause is awkward. The translation takes *defendere* in its later classical legal sense (see the introduction, sec. App.D) and cannot quite capture in English the fact that *convicciones* and

convincere in the next clause both refer to the process of attaint.

¹¹ I.e., the original plaintiff, now turned defendant.

¹² Once again, the original plaintiff, now turned defendant.

21. On Writing to Other Courts.

When a plea is moved between parties in a mercantile court, one party in replicating or excepting against another may say that a plea was moved at another time concerning the same thing between these same persons in the city of Winchester, or at the fair of Saint Giles in Winchester,¹ or in the town of Southampton,² and so of other places. [He may say that] in this city, fair, or town the same plaintiff in open court deraigned damages against the same defendant by decision of the same court, and that the judgment was fully executed in that same place, or that at another time [the plaintiff]

¹ One of the great international fairs of England, owned by the bishop of Winchester and located in his soke. See Keene, *Survey*, 2:1091.

² Southampton, Hants., a port town 7 m.

S of Winchester and an important factor in the prominence of the fair of St. Giles as a major collecting center of English wool export. See *id.*, 1:292.

eadem transgressione seu² debito ibidem[,] et quod ipsi ibidem de eodem concordati fuerunt, et quod ipse hoc cognovit ibidem in plena curia[,] et quod scriptum ipse per malam custodiam, vel negligenciam, perdidit vel sine scripto in³ tali curia omnimodas acciones etc., usque ad diem remissionis et⁴ remisit et de eo vocat rotulos eiusdem curie ad waranciam seu probacionem[,] per quod ipse intendit quod⁵ querens versus eum inde nunc actionem habere non possit, cum nullus pro una et eadem transgressione bis⁶ puniri debeat[,] et super hoc petit iudicium.

In quo casu est ordinatum quod mandetur et scribatur per unam curiam ad aliam, et quod secundum eorum certificacionem ulterius procedatur prout iustum fuerit nisi forte utraque pars ponat se in huiusmodi certificacione[,] quod si fecerint, extunc secundum certificacionem illam procedatur ad iudicium[;] cuius mandati tenor talis debet esse:

“Dilectis amicis et vicinis suis maiori et civibus London’ honestissimis et eiusdem civitatis communitati, sui amici et vicini, maior et cives Eboraci, et eiusdem civitatis⁷ communitas[,]⁸ salutem. Quia Adam Bernard mercator attachiatus⁹ est in gilda aula nostra ad respondendum Bernardo Ade¹⁰ secundum legem mercatoriam de placito quod idem Bernardus reddat ei quadraginta libras quas ei debet pro quodam equo badio quem idem Adam eidem B. apud London’ in Smythfeld die veneris quinto decimo die Marcii,

²transgressione, seu. ³scripto, in. ⁴*See opposite, note 4.* ⁵intendit, quod. ⁶transgressione bis. ⁷eiusdem, civitatis. ⁸communitas—*underlined with a streamer leading to an x in left margin.* ⁹mercator, attachiatus. ¹⁰Bernardo Ade—*both words bracketed with punctus.*

drew him into a plea concerning the same trespass or debt in the same place, and that they made a concord about the same matter in the same place, and that he acknowledged this in the same place in open court, and that he lost the writing through poor custody or negligence, or that in such a court without writing he [the plaintiff]³ remitted to him [the defendant]⁴ all types of actions, etc., up to the day of remission, and he [the defendant] calls the rolls of the same court about this [case] for warranty or proof. On account of this, he claims that the plaintiff cannot now have an action against him about this matter, since no one should be punished twice for one and the same offense,⁵ and he asks judgment about this.

In this case it is ordained that one court should send a mandate⁶ and write to another, and that according to their certification the proceedings should continue further according to justice, unless it happens that each party puts himself on such certification. If they do, the proceedings should then continue to judgment according to the certification. The tenor of the mandate ought to be as follows:

“To their beloved friends and neighbors the very honorable mayor and citizens of London and the community of the same city, their friends and neighbors the mayor and citizens of York and the community of the same city, greeting. Bernard Adam, merchant, is attached in our guildhall to answer Adam Bernard⁷ according to mercantile law concerning a plea that the same Bernard render to [Adam] forty pounds that he owes him for a certain bay horse that the same Adam sold the same Bernard at London in Smithfield⁸ on Friday, the fifteenth of March, in the tenth year of the reign

³If we are correct in our assumption that *remissio* and *remittere* are being used here in their civil-law (and common-law) meaning of ‘release’, the subject of this clause has shifted back to the creditor, the plaintiff.

⁴Something is wrong here. The easiest emendation to make is to assume that the *et* (which is now an ampersand) before *remisit* was originally *ei* and got misread as *et*. The standard form of a release would read something like “all types of actions [perhaps specifying the actions] from the creation of the world up to the day” of remission.

⁵*transgressio*—here being taken in the broadest of senses; *nemo bis in eadem causa debet vexari* would have been a more appropriate maxim.

⁶On the use of *mandare* and *mandatum* in this chapter, see the introduction, sec. 11 at note 20.

⁷Omitting the *quia* (which is picked up on p. 38) and reversing the ciphers in order to preserve consistency with what follows.

⁸West Smithfield (largely) in St. Sepulchre (London and Midd), the site of a great horse and cattle market.

anno regni regis Edwardi filii regis Henrici decimo vendidit[,] et quas ei solvisse debuit in festo sancti Botulfi¹¹ extunc proxime sequenti in feria eiusdem loci, et eas ei nondum solvit ut dicit. Et super hoc idem Bernardus in sua propria persona venit ibidem in eadem curia et bene cognovit quod ipse¹² quendam equum¹³ badium dictis loco et tempore in forma predicta ei pro quadraginta libris vendidit, et quod in forma predicta predictas quadraginta libras apud sanctum Botulphum pro eodem eidem Ade solvit et scriptum acquietancie ab eo ibidem cepit et eandem acquietanciam in predicta curia proposuit in qua sunt sex testes nominati, qui omnes et singuli sunt feoffati et residentes infra libertatem sancti Botulphi ut dicit¹⁴ etc. Datum est apud sanctum Botulphum in crastino sancti Botulfi, anno regni regis Edwardi filii regis Henrici tercio decimo.

“Qua¹⁵ acquietancia, visa, lecta et intellecta et a predicto Adam plenarie inspecta, quesitum¹⁶ fuit ab eo, si acquietancia illa fuit factum suum. Et¹⁷ de hoc posuit se tam super testes in eadem acquietancia nominatos quam super patriam ubi acquietancia illa facta fuit. Et predictus Bernardus dicit quod ipse ad hoc admitti non debet[;] dicit enim quod ipse fuit alias attachiatus scilicet tercio decimo die Junii anno regni regis Edwardi filii regis Henrici undecimo in civitate London’, ad respondendum eidem Ade

¹¹ sancti, Botulfi—*probably an abbreviation punctus*. ¹² *See opposite, note 12.* ¹³ equ’. ¹⁴ ut, dicit. ¹⁵ xiiij, Qua. ¹⁶ consitum—*probably, as Bickley suggests, the result of misreading q as the contraction for con.* ¹⁷ suum | Et. *See also opposite, note 16.*

of King Edward, son of King Henry,⁹ and that he ought to have paid him on the feast of Saint Botolph¹⁰ then next following at the fair of the same place¹¹ and has not yet paid him, as [Adam] says. And with respect to this the same Bernard came in his own person to that place in the same court and duly recognized that he [Adam]¹² sold him a certain bay horse at the said place and time in the aforesaid form for forty pounds and [said] that he paid the same Adam the aforesaid forty pounds for the same in the aforesaid form at Boston,¹³ and he took a writing of acquittance from him in that same place. And he proposed¹⁴ the same acquittance in the aforesaid court, in which six witnesses are named who are each and all enfeoffed and resident within the liberty of Boston, as he says, etc. It is dated at Boston on the day after Saint Botolph[’s day], in the thirteenth year of the reign of King Edward, son of King Henry.¹⁵

“When the acquittance was seen, read, and understood and fully inspected by the aforesaid Adam, he was asked if the acquittance was his deed.¹⁶ And concerning this he put himself both upon the witnesses named in the same acquittance and upon the country where the acquittance was made.¹⁷ And the aforesaid Bernard says that he ought not to be admitted to this, for he says that he was attached at another time, specifically, on the thirteenth day of June in the eleventh year of the reign of King Edward, son of King Henry,¹⁸ in the city of London, to answer the same Adam concern-

⁹ 13 March 1282 (Friday) or 15 March 1282 (Passion Sunday).

¹⁰ 17 June 1282.

¹¹ I.e., at Boston, co. Lincs, 28 m. SE of Lincoln, the site of a international fair and the leading wool-exporting port in England in the 1280s. See Moore, *Fairs*, 15–17; Carus-Wilson and Coleman, *Export Trade*, 34–8. The name derives from ‘Botolph’.

¹² An odd use of *ipse*, since virtually everywhere else the author uses it as a term of self-reference for the speaker in reported discourse.

¹³ See above, note 11.

¹⁴ In common-law style, we would expect *protulit*, ‘proffered’; *proposuit* suggests

Romano-canonical style.

¹⁵ 18 June 1285.

¹⁶ Something is missing here, probably a denial. See the introduction, sec. 2(21).

¹⁷ *Posuit se super patriam* is the common-law formula for putting one’s self upon a jury. In this case the plaintiff puts himself both on witnesses and on the *patria*. At common law, PB reports, the witnesses to a denied deed were frequently added to the jury that gave its verdict on the deed. Here *patria* may mean the body of local suitors. See Latham, *Word-List*, s.v., *patria*.

¹⁸ 13 June 1283, an impossible date if the acquittance was dated in 1285. See the introduction, sec. 2(21).

de eodem debito secundum legem et consuetudinem mercatoriam coram vicecomite London' in gylde aula ibidem, et quod ipse ibidem venit et in plena curia eandem acquietanciam in placitando contra ipsum Adam proposuit; qua acquietancia ibidem tunc tam ex parte curie quam ex parte ipsius Ade, lecta et intellecta[,] idem Adam predictam acquietanciam dedixit omnino et [dixit] quod ipse nunquam illam acquietanciam fecit et de hoc tunc, sicut nunc[,] posuit se tam [fol. 30r] super testes in eadem nominatos quam super alios probos et legales homines de visneto sancti Botulphi.

“Et¹⁸ quia¹⁹ nec predicti testes nec alii probi homines de visneto sancti Botulphi fuerunt infra potestatem seu libertatem civitatis London', predictus Bernardus illos adducere nec circa premissa examinari sine²⁰ auxilio predicte curie facere potuit[,] prout iuravit et ab aliis fidedignis fuit tunc ibidem testatum. Per²¹ eandem curiam extitit secundum legem et consuetudinem mercatoriam consideratum super hiis ballivis et probis hominibus sancti Botulphi²² et eiusdem loci communis sub sigillo dicte gildaule fore mittendum ob vicissitudinem²³ intermutuarum optentum²⁴ rogando quod ipsi convocata curia sua et aliis coram se vocandis in aperta eiusdem curie audientia et predicti Ade presencia si interesse voluerit predictos sex testes in forma consueta examinarent et ulterius [per] sex alios probos et legales homines de visneto sancti Botulphi²⁵ qui predictos Adam, nec Bernardum, ulla²⁶ affinitate attingerent diligenter inquirerent super sacramentum suum si predicta acquietancia esset factum illius Ade sicut predictus Bernardus dixit²⁷ an non sicut idem Adam dixit. Et ea que per easdem

¹⁸ Botulphi Et. ¹⁹ quod. ²⁰ x—in margin; premissa examinari *underlined*. ²¹ testatum per—*absence of punctuation suggesting that the quod clause in the preceding sentence was originally double: quod nec predicti ... [et quod] predictus Bernardus ...* ²² sancti, Botulfi—*probably an abbreviation punctus*. ²³ vicissitudinem. ²⁴ See opposite, note 20. ²⁵ Botulphi—*bracketed with punctus*. ²⁶ See opposite, note 21. ²⁷ factum, illius Ade sicut predictus Bernardus, dixit—*punctuation uncertain*.

ing the same debt according to mercantile law and custom¹⁹ before the sheriff of London, in the guildhall in that place. And [he says] that he came to the same place and proposed the same acquittance in pleading in open court against the same Adam. When this quittance was read and understood in that same place at that time, both on the part of the court and on the part of Adam himself, the same Adam wholly denied the aforesaid acquittance and [said] that he never made the acquittance and at that time, as now, he put himself about this both upon the witnesses named in the same and upon other upright and legal men of the neighborhood of Boston.

“And because neither the aforesaid witnesses nor other upright men of the neighborhood of Boston were within the power or liberty of the city of London, the aforesaid Bernard was unable to produce them or to have them examined about the aforementioned things without the aid of the aforesaid court, as he swore. And [this] was then attested by other trustworthy men at the same place. Concerning these things the same court [of London] took the decision according to mercantile law and custom to send under the seal of the said guildhall to the bailiffs and upright men of Boston and the community of the same place for the sake of obtaining an exchange of reciprocal [letters].²⁰ [They] asked that after [the bailiffs, etc.] called together their court and others to be called before them in open audience of the same court and in the presence of the same Adam, if he wished to attend, they examine the aforesaid six witnesses in the customary form and, further, [that] they carefully make inquiry through six other upright and legal men of the neighborhood of Boston, upon their oath, who were not related to the aforesaid Adam or Bernard by any affinity,²¹ if the aforesaid quittance was made by Adam, as the aforesaid Bernard said, or not, as the same Adam said. And [they asked that] that [the Boston court] clearly

¹⁹ See the introduction, sec. 1C, note 20.

²⁰ Compare the letter to the provost and citizens of Paris, below: *ad consimilia mandata intermutua obtinenda* and later in this letter *per intermutua mandata*. Hence, it would appear that the rare adjective *intermutuus* means ‘reciprocal’; that the missing word in this phrase is probably *litterarum* (though it is possible that it is *mandatorum*, in which case the scribe got the gender of

intermutuarum wrong); that the rare supine form of *obtinere* is probably a mistake for the much more common gerund or gerundive (*obtinendum* or *obtinendam*); and that in all three cases the writer of the letter is offering a motive for the receiving court to perform the mandate, i.e., we will do the same for you in a similar situation.

²¹ PB points out that the normal common-law formula here would say *nulla affinitate*.

examinaciones et inquisitiones inveniret eis inde distincte et aperte redderent²⁸ cerciora ut ipsi habita inde cognitione veritatis circa predicta ulterius fieri facerent quod de iure et secundum legem et consuetudinem mercatoriam fuerit faciendum.

“Pretextu²⁹ cuius mandati iidem ballivi[,] probi homines et communitas per suas litteras patentes clausas communi sigillo signatas remandarunt, scire facientes,³⁰ quod ipsi scire fecerunt³¹ tunc predicto Ade in plena curia quod ipse prosequeretur coram eis ad sanctum Botulphum³² in predictis examinacione et inquisicione faciendis, si sibi viderit expedire, [et] quod ipsi³³ convocatis plena curia sua et aliis coram eis vocandis predictos sex testes in forma consueta in aperta audiencia eiusdem curie iurari et examinari³⁴ [fecerunt], et, ulterius, per alios sex probos et legales de visneto sancti Botulphi, neutram dictarum parcium ulla affinitate attingentes[,]³⁵ iuratos diligenter super premissis inquisicionem fecerunt³⁶ qui dixerunt super sacramentum suum quod predicta acquietancia fuit factum ipsius Ade;³⁷ requisiti qualiter scrutati fuerunt illud[,] octo eorum dicunt[,] scilicet dicti sex testes et duo de aliis scilicet Clemens Dyonisius et Dyonisius Clement, quod ipsi fuerunt presentes in confeccione³⁸ eiusdem acquietancie in villa sancti Botulphi et quod viderunt ipsum Adam illam acquietanciam sigillare et cum manibus suis propriis ipsam eidem Bernardo tradere[:]; et alii quatuor dixerunt quod fuit factum ipsius Ade secundum suas intenciones³⁹ et credulitates.

“Per quod consideratum fuit quod predictus Adam nichil caperet per querelam suam. Et ipse et plegii sui de prosequendo in misericordia et predictus Bernardus iret inde sine die, et quod Bernardus recuperaret dampna et expensas suas versus predictum Adam et plegios suos que taxabuntur

²⁸ T—in right margin. ²⁹ faciendum, pretextu. ³⁰ scientes—for both words. ³¹ scire, fecerunt. ³² Botulphum—bracketed with punctus. ³³ ipse. ³⁴ Curie, iurare/ et examinare/. ³⁵ attingens. ³⁶ inquisicionem, fecerunt—probably an abbreviation punctus. ³⁷ Ade—bracketed with punctus. ³⁸ confesione—concessione is also a possible emendation. This may be an aural error. ³⁹ See opposite, note 28.

and openly inform them [the London court] about the things that it found by the same examinations and inquests,²² so that having had cognizance of the truth concerning the aforesaid things, they would further have done what by right and according to mercantile law and custom ought to be done.

“By reason of this mandate, the same bailiffs, upright men, and community by their patent letters close²³ sealed with the common seal, sent back informing [the London court] that they informed the aforesaid Adam at that time in open court that he should proceed with his suit in the aforesaid examination and inquest to be made before them at Boston, if it seemed expedient to him,²⁴ [and] that after their open court was called together and others to be called before them, they [had] the aforesaid six witnesses sworn and examined in the customary form in open audience of the same court. And further they²⁵ carefully held an inquest about the aforementioned things by six other sworn upright and legal [men] of the neighborhood of Boston, related to neither of the said parties by any affinity, who said on their oath that the aforesaid acquittance was the deed of Adam himself. Asked how they found this out, eight of them, specifically the said six witnesses and two of the others, specifically Clement Denis and Denis Clement, say that they were present at the making²⁶ of the same acquittance in the town of Boston and that they saw Adam himself seal the acquittance and deliver it with his own hands to the same Bernard. And the other four said²⁷ that it was the deed of Adam himself according to their understanding²⁸ and belief.

“On account of [this certification] it was decided that the aforesaid Adam should take nothing by his plaint. And that he and his pledges for prosecuting [should be] in mercy²⁹ and the aforesaid Bernard should go thence without a day,³⁰ and that Bernard should recover his damages and costs

²² The wording here recalls the common-law writ of *certiorari* both in its use of *certiora* and in the phrase *distincte et aperte*. The translation ignores the change of number in the Latin

²³ See the introduction, sec. 2(21), for a possible explanation of this phrase here and below at notes 33, 39, 42.

²⁴ The language here, including the ac-

tive form of *scire* when we would expect the passive, recalls the common-law writ of *scire facias*.

²⁵ Change of number in the Latin.

²⁶ See opposite, note 38.

²⁷ Change of tense in the Latin.

²⁸ *intentiones*—compare French *entent*.

²⁹ See ch. 12, note 10.

³⁰ See ch. 6, note 17.

per curiam, habito respectu ad moras, sectas, dilaciones[,] defensas et expensas quas ea occasione sustinuit[,] ad decem libras.

“Et⁴⁰ super hiis vocat rotulos vestre gyldaulle in subsidium pro bonis suis unde cum nec lex communis nec lex mercatoria permittat quod cum aliquis in huiusmodi placito per finale iudicium quietus recesserat quod alias trahatur in placitum de eodem.

“Hinc est quod vos per intermutua mandata, rogamus quod scrutatis rotulis et memorandis vestris ea que in eisdem circa premissa inveniri⁴¹ contigerit nobis per litteras vestras patentes clausas harum tenorem continentes sub vestro communi sigillo distincte et aperte mittatis indilate ut eisdem inspectis et [fol. 30v] intellectis in dicto placito facere possimus quod secundum legem et consuetudinem mercatoriam fuerit faciendum. Scriptum⁴² apud Eboracum tercio decimo die Augusti anno regni regis E[dwardi] filii regis H[enrici] quarto decimo.”

Vel potest⁴³ mandari sub breviori⁴⁴ verbo in huiusmodi casu sic.

Communitas London' communitati Parisiens'.⁴⁵

“Dilectis amicis suis preposito et civibus Paris' honestissimis et eiusdem civitatis communitati, sui amici ..⁴⁶ maior et cives London' et eiusdem civitatis communitas, salutem. Quia⁴⁷ quoddam placitum pendet in presenti in gildaula nostra de quodam debito quadraginta librarum inter Adam Bernardi mercatorem querentem ex parte una et Bernardum Ade defendentem⁴⁸ ex altera[,] et unde idem Bernardus dicit quod idem Adam ipsum alias, scilicet anno Domini millesimo ducentesimo nonagesimo sexto[,] regnique clare memorie domini Philippi illustris regis Francie quinto decimo, coram preposito et civibus Paris' in gilda aula⁴⁹ Paris' de eodem placito implacitavit. Et quod ipse per considerationem eiusdem curie a predicto debito et eiusdem⁵⁰ exactione seu demanda⁵¹ imperpetuum versus eundem

⁴⁰ ,li, &. ⁴¹ invenire—for the emendation see the first Paris letter below. ⁴² faciendum Scriptum. ⁴³ post. ⁴⁴ breviorum—? ⁴⁵ Communitas ... Parisiens'—in margin. ⁴⁶ Indicating that the name or initial of the mayor goes here. ⁴⁷ salutem | Quia—with x in left margin. ⁴⁸ deffendentem. ⁴⁹ Not capitalized in manuscript, whereas Gyldaula London' in the next letter is. ⁵⁰ examinacione—expunctuated. ⁵¹ demande.

against the aforesaid Adam and his pledges, which will be taxed by the court at ten pounds, with respect had for the delays, suits, deferrals, defenses and costs that [Bernard] sustained on this account.

“Whereupon concerning these things [Bernard] calls the rolls of your guildhall [i.e., of London] in aid of his goods, since neither the common law nor mercantile law allows that when anyone has withdrawn³¹ quit in such a plea by final judgment, he should be drawn into a plea at another time concerning the same [matter].

“On account of this we ask by reciprocal mandates³² that after searching your rolls and memoranda you send us those things that happen to be found in the same concerning the aforementioned things, clearly and openly without delay, by your patent letters close³³ containing the tenor of these things under your common seal, so that after looking at and understanding the same [things] in the said plea we can do what should be done according to mercantile law and custom. Written in York on the thirteenth day of August in the fourteenth year of the reign of King Edward, son of King Henry.”³⁴

Or in such cases mandates can be sent in shorter form like this.

*The community of London to the community of Paris:*³⁵

“To their beloved friends the very honorable provost and citizens of Paris and the community of the same city, their friends the mayor and citizens of London and the community of the same city, greeting. A certain plea between Adam Bernard, merchant [and] plaintiff, on one side, and Bernard Adam, defendant, on the other, concerning a certain debt of forty pounds is at present awaiting decision in our guildhall. The same Bernard says with respect to this matter that the same Adam impleaded him about the same plea before the provost and citizens of Paris in the guildhall of Paris³⁶ at another time, specifically in the year of the Lord 1296, and in the fifteenth [year] of the reign of the illustrious lord Philip of glorious memory, king of France.³⁷ And because, by the decision of the same court, he with-

³¹ Reading *recesserit* for *recesserat*.

sec. 2(21).

³² See above, note 20.

³⁷ Philip the Fair became king of France on 5 October 1285; hence the fifteenth year of his reign ran from 5 October 1299 to 4 October 1300. He did not die until 1314. See the introduction, sec. 2(21).

³³ See above, note 23.

³⁴ 13 August, 1286.

³⁵ In margin.

³⁶ An impossibility; see the introduction,

Adam recessit quietus vos ad consimilia mandata intermutua optinenda rogamus, quod scrutatis rotulis et aliis memorandis vestris, de placitis in predicta gildaula Paris' ea que inueniri in eisdem contigerit, nobis per litteras vestras patentes clausas harum tenorem continentes sub vestro communi sigillo distincte et aperte mittere velitis indilate, ut⁵² eisdem inspectis et intellectis ulterius in dicto placito facere possimus quod secundum legem mercatoriam in hac parte fuerit faciendum. Testibus⁵³ nobis ipsis. Factum⁵⁴ apud London' tercio decimo die Augusti anno ab incarnatione Domini millesimo ducentesimo nonagesimo sexto regnique domini nostri domini Edwardi illustris regis Anglie filii regis Henrici quarto decimo."

Communitas Paris' communitati London' de eodem:⁵⁵

"Dilectis amicis suis maiori et civibus London' honestissimis et eiusdem civitatis communitati prepositus et cives Paris', et eiusdem civitatis communitas[,] salutem. Litteras vestras patentes clausas apud Paris' vicesimo tercio die Augusti, anno domini millesimo ducentesimo nonagesimo sexto regnique domini nostri domini⁵⁶ Philippi illustris regis Francie duodevicesimo recepimus tenorem qui sequitur" de verbo ad verbum sicut in littera, et tunc sic: "Pretextu cuius mandati litteras et memoranda nostra⁵⁷ in placitis⁵⁸ in gildaula nostra diligenter scrutari fecimus. In quibus ita est compertum prout in quadam cedula infra presentes inclusa de verbo ad verbum continetur. 'Placita coram maiore, vicecomitibus et civibus civitatis London' et eiusdem civitatis communitate in Gylaula London' in termino sancti Michaelis[,] anno Domini millesimo ducentesimo nonagesimo sexto, regnique regis Edwardi filii regis Henrici decimo quinto,

⁵² vel—possibly corrected to ut. ⁵³ faciend', testibus. ⁵⁴ ipsis faciendum—the latter probably by dittography from the previous faciendum. ⁵⁵ Communitas ... eodem—in margin. ⁵⁶ Horizontal line in left margin. ⁵⁷ memoranda, nostra—probably an abbreviation punctus. ⁵⁸ placito.

drew quit of the aforesaid debt and the exaction or demand of the same in perpetuity against the same Adam, we ask, in order to obtain similar reciprocal mandates,³⁸ that after searching your rolls and other memoranda of pleas in the aforesaid guildhall of Paris, you send us without delay the things that happen to be found in the same by your patent letters close³⁹ containing the tenor of these things under your common seal clearly and openly, so that having inspected and understood the same we can do further what ought to be done in this regard in the same plea according to mercantile law. Witness ourselves. Done at London on the thirteenth day of August in the year of the incarnation of the Lord 1296 and in the fourteenth [year] of the reign of our lord, the lord Edward, illustrious king of England, son of King Henry.”⁴⁰

*The community of Paris to the community of London concerning the same:*⁴¹

“To their beloved friends the very honorable mayor and citizens of London and the community of the same city, the provost and citizens of Paris and the community of the same city, greeting. We received your patent letters close⁴² at Paris on the twenty-third day of August, in the year of the Lord 1296 and in the eighteenth [year] of the reign of our lord, the lord Philip, illustrious king of France,⁴³ the tenor of which follows” from word to word, as in the letter, and then as follows: “By reason of this mandate we had our letters and memoranda in pleas in our guildhall carefully searched. In them we found just as is contained in a certain schedule enclosed word for word within the present [letters]: ‘Pleas before the mayor, sheriffs and citizens of the city of London⁴⁴ and the community of the same city in the guildhall of London, in Michaelmas term, the year of the Lord 1296, and in the fifteenth year of the reign of King Edward, son of King Henry.’⁴⁵ Ber-

³⁸ See above, note 20.

³⁹ See above, note 23.

⁴⁰ 13 August of 14 Edw. 1 was in 1286. An omission of an x in the regnal year would account for this error.

⁴¹ In margin.

⁴² See above, note 23.

⁴³ The eighteenth year of the reign of Philip the Fair ran from 5 October 1302 to 4 October 1303.

⁴⁴ The fact that the form uses an example from London rolls to illustrate a return from a court in Paris suggests that the writer of the formulary did not have a real example of a return from Paris before him. See the introduction, sec. 2(21).

⁴⁵ 15 Edw. 1 ran from 20 November 1286 to 19 November 1287. 3 October, 1296 (see below) was in 24 Edw. 1.

Bernardus Ade⁵⁹ attachiatus fuit in civitate Paris' tercio die Octobris ad respondendum Ade⁶⁰ Bernardi de placito quod reddat ei quadraginta libras. Et unde queritur quod idem Bernardus⁶¹ ei quadraginta libras debet, et iniuste detinet, pro eo quod cum idem Adam eidem Bernardo quendam equum, ' ' ' ⁶² etc., et sic de verbo ad verbum sicut in rotulis illorum civium seu mercatorum compertum fuit, "et hoc vobis tenore presencium significamus. Data Paris' vicesimo nono die Augusti anno Domini millesimo ducentesimo nonagesimo sexto regnique domini nostri Philippi regis Francie illustris duodevicesimo."

⁵⁹ Ade—*perhaps bracketed with punctus.* ⁶⁰ res', Ade—*probably an abbreviation punctus.* ⁶¹ Bernardus—*perhaps bracketed in punctus.* ⁶² equ'.

nard Adam was attached in the city of Paris on the third day of October to answer Adam Bernard concerning a plea that he render to him [Adam] forty pounds. And about this he complains that the same Bernard owes him and unjustly withholds forty pounds, because when the same Adam [sold] the same Bernard a certain horse, etc.’” and so, from word to word, just as was found in the rolls of the citizens or merchants “and we make this known to you by the tenor of the present [letters]. Dated in Paris on the twenty-ninth day of August in the year of the Lord 1296 and in the eighteenth [year] of the reign of our lord Philip, illustrious king of France.”⁴⁶

⁴⁶ See above, note 43.