

NOTE

Baker and Milsom, *Sources*, 395, note varying results in similar cases in the second half of the 15th century. They also report (*id.*, 395–400, a number of cases in the same period in which the court and the serjeants agonize over whether the action on the case may be brought for nonfeasance. In the meantime, Professor Baker notes (*Introduction*, pp 380–1): “The plea rolls ... contain many undetermined actions based on nonfeasance dating back to the fourteenth century. It is unlikely that many of these cases came before the court judicially, but obviously the clerks of the court were happy to issue mesne process upon writs alleging nonfeasance, and presumably most of the cases were settled without recourse to legal argument. That it was so often ignored in practice may have been one reason why the distinction between misfeasance and nonfeasance broke down.”

⁹*Supra*, p. [8].

A DICTUM IN GRAY’S INN (1499)

Trin. 14 Hen. VII, Fitz. Abr. *Action sur le case*, pl. 45¹
 in J.H. Baker and S.F.C. Milsom, *Sources of English Legal History* (London, 1986), 401

In Gray’s Inn.² Note, if a man makes a covenant to build me a house by a certain date, and does nothing about it, I shall have an action on my case for this nonfeasance as well as if he had built badly, because I am damaged by it: per FYNEUX.³ And he said that it had been so adjudged, and he held it to be law. It is likewise if a man bargains with me that I shall have his land unto me and my heirs for £20, and that he will make an estate to me if I pay him the £20, and he does not make an estate to me according to the covenant, I shall have an action on my case and need not sue out a *subpoena*.

¹ Also inserted in Y.B. Mich. 21 Hen. VII, fol. 41, pl. 66, from Fitzherbert.

² In margin of 1514 ed., but omitted from later editions.

³ Sir John Fyneux (CJKB 1495–1525) was a former bencher of Gray’s Inn and regularly attended the readings there. This dictum may have been given at the summer reading of 1499.

D. PERSONAL ACTIONS IN LOCAL COURTS¹

Fair Court of St. Ives

Ed. C. Gross, *Select Cases Concerning the Law Merchant*, vol. 1: *Local Courts*, Selden Society, 23 (London, 1908), 15, 22, 36, 39, 77

RIBAUD v. RUSSELL (1287)

Gilbert Ribaud complains of William Russell and Walter Clerk of Haddenham. Pledge to prosecute, his faith²; pledge of the defendants, feathers.³

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 in the house of Alice Coterun, on the Monday before the feast of St. Nicholas last past, a year ago, 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. 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.

¹ From C.H.S. Fifoot, *History and Sources of the Common Law* (London, 1949) 308–21. Other references given as they occur.

² I.e. on his own recognizances.

³ I.e. a pledge of those goods in which the defendants traded, as appears from the case itself.

The said Walter and William are present and deny all which should be denied word for word, and they are at their law. And because they cannot find pledges to make their law, 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.

COLNE V. MARSHALL (1287)

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.

The said Robert and Adam are present and crave leave to make concord with John, and they make concord. And Robert and Adam put themselves in mercy, 6d. Pledges, Martin Jamot and Robert Baldwin.

ELTISLEY V. BARBER (1288)

John, son of John of Eltisley, 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 on the Monday after Epiphany last past, a year ago, 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 next day, Tuesday, the said Roger put him in plaster and did likewise on Wednesday, and afterwards withdrew from the vill, so that, from that day to this, he would in no way interpose, to his, John's, damage a half-mark. And he produces suit.

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.

LONG'S CASE (1291)

Peter Long of London complains of Geoffrey of Cam¹ and says that he unjustly detains from him 600 ells of canvas, which he, Peter, through his broker Hamon of Bury St. Edmunds, bespoke 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, 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,² 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).

¹ Or possibly Caen.

² I.e., earnest. 'All over western Europe the earnest becomes known as the God's penny or Holy Ghost's penny (*denarius Dei*): P. & M., II, 208-9.

SPICER v. CHAPMAN (1300)

John Spicer of Godmanchester appears against Peter Chapman of St. Ives and complains that the said Peter has unjustly broken a covenant with him; and unjustly because, whereas they, John and Peter, were together in the town of Huntingdon on the Saturday before Candlemas in the twenty-fourth year of the reign of King Edward, it was covenanted there between them that they should be partners to win or to lose in doing business in various parts of Scotland, and that the said John should make a journey to that country with horses laden with porret seed,¹ which he should sell and traffic there for the profit of both parties, as should seem to him expedient, and that a third of both gain and loss should be assigned to the said Peter. And the said Peter accepted this covenant as binding, and in confirmation thereof each gave the other a penny as a God's penny. And the said Peter gave to the said John 60s. for this business, and with the money thus received from Peter together with other money of his own he, John, bought porret seed and conveyed it to Scotland; and after he had transacted the said business there, he returned to Huntingdon on the Saturday after Mid-Lent in the same year, where he met the said Peter and delivered to him a horse worth 30s. as his share of the clear profit for the time being. And after the said Peter had received his share of the profit, he then offered to deliver to the said John a larger sum of money to continue their business, and the said John answered that he did not care to receive it until he should return from Scotland again. But, having returned from Scotland a second time on the Monday after the quindene of Easter in the said year, he met the said Peter in the town of Huntingdon and gave him at that time a horse with a good merchant's saddle worth 25s. as his share of the clear profit. And on the third journey of the said John to Scotland, which he undertook by the counsel and consent of the said Peter on the Monday after Septuagesima Sunday in the twenty-fifth year of the reign of King Edward, with three horses laden with porret seed with which and also with other merchandise he thought to do business there for his own profit and that of his said partner, he lost 33 marks. And on his return on the morrow of Easter Day in the said year he demanded that the said Peter should make satisfaction to him for a third part of this loss according to the covenant made between them. Yet the said Peter in no way cared to do this, but forthwith demanded payment of the 60s. which he had delivered to the said John at the beginning of their partnership. Wherefore the said John, by reason of the injuries and grievances inflicted upon him by the said Peter, sold to the said Peter a messuage of his in Godmanchester for 50s., and paid him 10s. in money; and moreover he delivered to the said Peter 10½d., which remained in the hands of the said John as clear profit from the two preceding journeys, to his great damage 100s., etc.

The said Peter is present and denies tort and force and all which should be denied, and he says expressly that he never made such a covenant with the said John; and that this is true he craves may be verified by a good inquest; and the adverse party does likewise. Therefore order is given to summon an inquest.

The inquest comes and says that the said Peter was never a partner of the said John as regards the transaction of the said business nor did he deliver to him any money save only 60s. by way of loan, in return for which the said John conveyed to him in perpetuity a certain messuage at Godmanchester for 40s. and two horses worth 20s. Therefore it is awarded that the said John recover nothing against the said Peter, but be in mercy for his false plaint.

Plea Rolls of the City of London

Ed. A. H. Thomas, *Calendar of Plea and Memoranda Rolls*, A.D. 1413–1437, (1943), pp. 91–3

WHITTINGTON v. TURNEBONIS (1421)

Richard Whittington, mercer, brought an action for debt against Stephen Turnebonis, merchant, for £296. In his bill he alleged that he had bought and had in his custody a certain Hugh Coniers, a prisoner of war taken in the battle of Agincourt and put to ransom at 1600 crowns, each crown being valued at 42d. in English money, and 16 marks of silver troy weight, each mark being valued at 20s., the whole amounting to £296; and that on 10 July 1420 in the parish of St. Michael de la Ryole the defendant agreed to pay that sum for the prisoner as soon as the plaintiff released to the prisoner all his right and claim in him for the ransom

¹ Porret = onion or leek.

and should be prepared to hand him over to the defendant and obtain for the latter authentic letters under his seal witnessing the release; and that thereupon the plaintiff released his right to the prisoner and was ready to hand him over and obtain the aforesaid letters, but the defendant had not paid the money, though often requested to do so; to the plaintiff's damage £40.

The defendant ... appeared on 27 February and said in protestation that the plaintiff had not released all right and claim to the prisoner and was not prepared to obtain the aforesaid letters; and for his plea he pleaded that the plaintiff was not ready to hand over the prisoner, and therefore no debt was owed.

The plaintiff prayed that the matter be inquired of by the country. The defendant, on the ground that he was an alien, prayed that one half of the jurors should be aliens, according to the form of the statute, which was granted.

On 5 March the serjeant returned the names of the jurors of the venue of the parish, viz., William Reynold, John Bacon, John Clerc, Thomas Walsyngham, John Brikles, John Synpston, John Tetford, Thomas Sutton and Edmund Salle, denizens; and Gerard Danidze, Francis Balby, Bartholomew Valerys, Paul Milianny, John Markannovo, John Abati, Nicholas Orlandini, Philip Saty and David Galganeti, aliens. ...

Gerard Danidze and David Galganeti were challenged by the defendant, and Francis Balby, Bartholomew Valerys and John Markannovo by the plaintiff, as not having lands or rents to the annual value of 40s. according to the form of the statute,² and were removed from the jury. ...

The serjeant was ordered to summon the jurors for 4 April with eight others. of whom half should be aliens. ... [Six of the new jury were successfully challenged under the statute]. The plaintiff then prayed that ten other jurors be summoned, of whom half should be aliens. ... [The next day the serjeant returned the names of four more English jurors], but declared that he could not find any aliens having the requisite annual value. The jury, thus being chosen, tried and sworn, ... said on oath that the defendant owed the plaintiff £296 and assessed the damages at £10. On 10 April judgment was given that the plaintiff recover his debt and damages.

The Staple Courts

THE STATUTE OF STAPLES

27 Edw. III, Stat. 2 (1353)

Cap. 8

We have ordained and established, That the Mayors and Constables of the Staple shall have jurisdiction and cognisance within the Towns where the Staples shall be,¹ and that all merchants coming to the Staple, their servants and household in the Staple, shall be ruled by the Law Merchant of all things touching the Staple, and not by the Common Law of the land nor by the usage of cities, boroughs or other towns; and that they shall not implead nor be impleaded before the Justices of the said places in pleas of Debt, Covenant and Trespass touching the Staple, but shall implead all persons of whom they will complain as well such as be not of the Staple as those that be of the Staple which shall be there found, and in the same manner they shall be impleaded, only before the Mayor and Justices of the Staple, which shall be thereto deputed, of all manner of pleas and of actions whereof the cognizance pertaineth to the Ministers of the Staple: so always that of all manner of contracts and covenants made betwixt merchant and merchant, or whereof the one party

² 2 Hen. V, Stat. 2, c. 3 ... 'No person shall be admitted to pass ... on any inquest betwixt party and party in plea real or plea personal whereof the debt or the damages declared amount to 40 marks, if the same persons have not lands or tenements of the yearly value of 40 shillings.' As the above case shows, the effect of this statute was to limit the supply of qualified alien jurors with some severity.

¹ 'The Staple of wools, leather, wool-fells and lead, growing or coming forth within our said realm and lands, shall be perpetually holden at the places underwritten; that is to say, for England at Newcastle upon Tyne, York, Lincoln, Norwich, Westminster, Canterbury, Chichester, Winchester, Exeter and Bristol; for Wales at Caermarthen; and for Ireland at Dublin, Waterford, Cork and Drogheda; and not elsewhere.'—*Cap. 1*.

is a merchant or Minister of the Staple, whether the contract or covenant be made within the Staple or without, and also of trespasses done within the Staple to merchants or to Ministers of the Staple by others, or by any of them to others, the party plaintiff shall choose whether he will sue his action or complaint (*sa accion ou sa querele*) before the Justices of the Staple by the law of the Staple or in other place by the Common Law. ...

Cap. 9

To the intent that the contracts made within the same Staple shall be the better holden and the payments readily made, We have ordained and established, That every Mayor of the said Staples shall have power to take Recognizances of Debts, which a man will make before him in the presence of the Constables of the Staple or one of them; and that in every of the said Staples be a seal ordained, remaining in the custody of the Mayor of the Staple, under the seals of the Constables, and that all obligations which shall be made upon such Recognizances be sealed with the said seal ...; and that the Mayor of the Staple, by virtue of the same letters so sealed, may take and hold in prison the bodies of the debtors after the term incurred, if they be found within the Staple, till they have made satisfaction to the creditor for the debt and damages; and may also arrest the goods of the said debtors found within the said Staple and may deliver the said goods to the said creditor by true estimation or may sell them at the best that a man may and deliver the money to the creditor up to the sum due. And in case that the debtors be not found within the Staple nor their goods to the value of the debt, the same shall be certified in the Chancery under the said seal, by which certification a writ shall be sent to take the bodies of the said debtors without letting them to mainprise, and to seize their lands and tenements, goods and chattels; and the writ shall be returned into the Chancery with the certificate of the value of the said lands and tenements, goods and chattels; and thereupon due execution shall be made from day to day in manner as it is contained in the Statute Merchant.² ...

² *Supra*, p. [8].

Cap. 20

Because we have taken all the merchant strangers coming into our said realm and lands into our special protection and moreover granted to do them speedy remedy of their grievances, if any be to them done; We have ordained and established, That if any outrage or grievance be done to them in the country out of the Staple, the Justices of the place where such outrages shall be done shall do speedy justice to them according to the Law Merchant from day to day and from hour to hour, without sparing any man or to drive them to sue at the Common Law. ...

Cap. 21

... We have ordained and established, That in every town where the Staple is ordained a Mayor, good, lawful and sufficient, shall be made and established, having knowledge of the Law Merchant, to govern the Staple and to do right to every man after the laws aforesaid. ... And in every place where the Staple is shall be two convenient Constables ... to do that which pertaineth to their office. ...

Cap. 24

We will and ordain, That the merchant strangers shall choose two merchant strangers. whereof the one towards the South and the other towards the North shall be assigned to sit with the Mayor and Constables of the Staples ... to hear the complaints touching merchant aliens that shall be moved before the said Mayor and Constables ... to see that plain right be done to the said merchant aliens ...; and in case that debate rise betwixt them upon the discussing of any plea or complaint, the tenour of the same plea or complaint shall be sent before the Chancellor and other of our Council, to be determined there without delay. And also six persons shall be chosen, that is to say, four aliens, whereof two shall be of Almain and two of Lombardy, and two of England ...; that, when any question or debate shall arise or come amongst merchants of any unreasonable wool or improper packing according to the covenants made betwixt the sellers and the buyers, the said persons or four of them may before the Mayor of the Staple and the Officers by their oath say and amend as reason will, and thereupon credence shall be given to them without any contradiction.

Mercantile Cases on Central Royal Court Rolls

Ed. H. Hall, *Select Cases Concerning the Law Merchant*, vol. 2: *Central Courts*, Selden Society, 46 (London, 1930), 28, 63, 79.

DUNSTABLE v. LE BAL¹
(Southampton Assises, 1278)

The lord King commanded his beloved and trusty Salomon of Rochester and Master Thomas de Sutherland² 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 Bal³ of Winchester 103 sacks of good merchantable wool sewn up in 86 sarplers,³ 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.

¹ Expanded by CD from the original ed.

² Justices itinerant, holding the Assises in the County of Southampton.

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

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.

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.

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.

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 [...],⁴ 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.

PYLATE V. CAUSE
(Ex. 1299)

William Cause of Lincoln was attached to answer James Pylate, yeoman of Walter, Bishop of Coventry and Lichfield, Treasurer of the lord King,¹ of a plea that he do render to him (James) 20 marks which he (William) owes to him; and whereof he proffered a certain writing in which is contained that in the year of Grace 1287, namely in the 15th year of the reign of the now King Edward, on the day of the Assumption of the Blessed Mary the Virgin, in the fair of St. Botolph, a covenant was made between William Cause, citizen of Lincoln, of the one part, and Everard of St. Venant and James Pylate, merchants of Douai, ... of the other part, namely that the aforesaid William granted and sold to the aforesaid Everard and James all the wool of the house of Welbeck of the Premonstratensian Order, as well for the year of Our Lord 1290, namely for the 18th year of the now King Edward, as for the six years next and continuously following, namely every sack of good wool for 15 marks sterling and every sack of middling wool for 10 marks sterling and every sack of selected locks² for 8 marks sterling: whereupon [the agents of Everard and James] ... have paid to the aforesaid William 20 marks sterling as earnest money (*in arris*) at the time of the making of the aforesaid writing, to be allowed to the same merchants in payment for the said wools in the last year of this covenant. And he (James) says that he did not receive the aforesaid wools except for the first three years, wherefore he asks for the said 20 marks to be restored to him according to the form of the said covenant.

And the aforesaid William Cause comes by his attorney and says that he is not bound to answer for the aforesaid 20 marks, because he says that [the plaintiff's agents] had the aforesaid wools from him for four years, and as to the residue of the time he was prepared every year at the Feast of St. James at Lincoln, according to the said covenant made between them, to have made delivery to [the plaintiff's agents] or to their attorneys, if they had come. And as neither the said merchants nor anyone in their name came after the aforesaid fourth year to seek the aforesaid wools, and also as in every year for a long time after the term appointed between them he retained and kept his said wools in expectation of the coming of the said merchants or of their attorneys, until the said wools or a large part of the same through this detention were deteriorated and the price of the same cheapened, on account of which he incurred very great loss, and no default remained in him but that the aforesaid merchants or their attorneys might have had and received the aforesaid wools, he craves judgment whether he is bound to answer for the aforesaid 20 marks.

And the aforesaid James says that he did not have the aforesaid wools save for the first three years, because he says that in the fourth year he himself was out of the Kingdom because of the war, and that the sea was then closed so that none was able to enter that Kingdom nor to transport anything therefrom. And this clearly appears by the date of the covenant aforesaid.

And upon this they have a day, on the morrow of St. Michael. ... On which day the aforesaid parties came; and they have a day, from day to day, etc.

⁴ 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.

¹ Pylate, a merchant of Douai, is described as the Treasurer's yeoman in order to give the barons of the Exchequer power to hear the case.

² 'Locks' were inferior or short wools.

LE FEYTUR'S CASE¹
(Ex. 1309)

Richard le Feytur² of Chipping Norton was attached in London to answer Erneric [*sic*, *Emeric* is meant] de Friscobaldis and his fellows, merchants of the Society of Friscobaldi of Florence,³ of a plea that he do render to him £55 which he owes to them. And as to this the same merchants proffer a certain writing which they say is the deed of the said Richard; wherein is contained that the aforesaid Richard acknowledges himself bound 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. And for this he binds himself and all his goods, etc. Dated in the Fair of St. Botulph, Thursday next after the Feast of the Assumption of the Blessed Mary the Virgin in the year aforesaid. And they say that the aforesaid Richard has unjustly detained from them the aforesaid £55 to this day and still detains them; to the loss of the said merchants £40. And thereof they produce suit.

And the aforesaid Richard in his proper person comes and defends all injury, etc. And he craves a view of the aforesaid writing. And, when he has had this, he well acknowledges that it is his deed, but he says that in no respect ought this to harm him; for he says that on the day of the execution of that writing the same Richard was imprisoned at Boston in the King's prison at the prosecution of the said merchants; and while he was thus in prison he made the aforesaid writing and signed and sealed it, through the distraint of prison; wherefore he is not bound to answer for this debt. And he craves that this be inquired of.

And the aforesaid merchants say that the aforesaid Richard made the said writing and sealed and signed it of his free will and out of prison; and this they likewise crave that it be inquired of.

Therefore a day is given further, in 15 days of the day of St. Michael. And the Sheriff of Lincolnshire is commanded that he cause to come here at that day, unless before that day (*nisi prius*) J[ohn] de Sandale and T[homas] de Cambridge³ come to Boston, etc., twelve as well Lombard merchants as men of the parts of Boston to certify, etc. And it is said to the aforesaid Richard that he is to find security for being then there to hear the return of the said inquisition; who can find no security. Therefore he is committed to the prison of the Fleet.

Afterwards Giles de Lisle of the country of Oxford, John of Bix of the same county and Richard of Wellington of the county of Somerset mainprised the aforesaid Richard le Feytur to have his body there at the aforesaid Quindisme of S. Michael, or before the said John or the aforementioned Thomas, the Barons, when they should come to those parts, to hear the recognition of the said inquisition. So that, unless they should have his body then there, they grant that they are bound to the aforesaid merchants in the aforesaid £55, to be paid to them on behalf of the same Richard. And by that mainprise the said Richard is delivered from prison in the form aforesaid.

Afterwards, on Friday next before the Feast of St. Laurence in the third year of the reign of the now King Edward, the aforesaid merchants⁴ came before the aforesaid Thomas of Cambridge at Boston, and the aforesaid Richard came not, though he was premonished as well by the sheriffs of London, for that he then sojourned in London, as by the sheriff of Lincolnshire to be there on the same day, as appears from their return. Therefore, on his default, the taking of the inquisition is proceeded with. And the inquest comes, as well by Lombards as by men of this Kingdom, according to a charter of King Edward, father of the King

¹ Expanded by CD from the original ed.

² Can this be a nickname, 'the deceiver' (*faitour*) or is it simply *facteur*? [I have not been able to identify the man. CD.]

³ For this Society see Powicke, *The Thirteenth Century*, 2d ed., pp. 639–43; A. Saponi, *Studi di storia economica medievale*, 2d ed. (Firenze, 1947), 579–646. The Society went bankrupt in 1312, perhaps as a result of the hostility showed them by the Lords Ordainers. See McKisack, *The Fourteenth Century*.

³ Barons of the Exchequer.

⁴ I.e., the plaintiffs.

that now is, which the said merchants proffered and wherein it is willed that in every inquisition to be taken between Lombards and other men, whosoever they might be, the one half of that inquest is to consist of Lombards and the other half of men of England.

The jurors say by their oath that the aforesaid Richard made and executed the aforesaid writing by his good and free will and out of prison, and that the aforesaid merchants by reason of the unjust detention of the aforesaid debt had loss to the value of £20. Wherefore a day is given to the aforesaid merchants, at the aforesaid Quindene of St. Michael, at the Exchequer, to hear their judgment.

Afterwards, at that day, the aforesaid merchants ask leave to withdraw from their writ, and they have leave. And the said writing is delivered to them again.⁵

The Ecclesiastical Courts

CHART c. FOSTER
Consistory Court of York (1511)
York, Borthwick Institute, CP.F. 321.

Extract from the libel (complaint).

... 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.

NOTES AND QUESTIONS

1. There are many cases like this in surviving ecclesiastical court records. The number runs into the 100's in the surviving records, in the 1000's in reality, granted how much has been lost, and the same story can be told of other ecclesiastical jurisdictions.

2. This case is typical. What are the elements in the complaint?

3. The quantity of such cases begins to be noticeable in the late 15th century. In the early decades of the 16th century the number declines precipitously.

4. We will see in class that competition from the king's courts may not be the answer.

⁵ Why did the Frescobaldi do this?