

This is a reprint of a book first published in 1890 which still remains a very useful survey of the rise and development of the medieval Gild system, both in Britain and on the Continent. The organization, privileges and duties of the Gild men and their relationship with the Municipal Government of the time are carefully traced, whilst later medieval developments such as the emergence of the craftsmen and the mercantile companies are given due prominence. To supplement the detailed discussion in volume one, the second volume contains proofs and illustrations, evidence from original sources, about the history of the Gilds in a large number of municipalities in Britain.

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# THE GILD MERCHANT

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THE  
GILD MERCHANT

A CONTRIBUTION TO

**British Municipal History**

BY

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**INSTRUCTOR IN HISTORY, HARVARD UNIVERSITY**

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## PREFACE.

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THIS book arose to some extent from the author's German doctoral dissertation, entitled 'Gilda Mercatoria' (Göttingen, 1883). The latter was based mainly on printed sources, and did not aim at exhausting the subject. The present work is based mainly on manuscript materials, and in it the author aspires to throw light on the development not merely of gilds but also of the municipal constitution. Much fresh and classified material illustrating general municipal history will be found in the text and footnotes.

The shortcomings of many of the ordinary authorities on the history of gilds and boroughs are touched on in Vol. I. p. 1, and in Appendix A. Appendix B (Anglo-Saxon Gilds) could not be dispensed with, inasmuch as many writers confuse Anglo-Saxon gilds with the Gild Merchant. The Scotch Gild Merchant and the Continental Gild Merchant (App. D and F) require separate treatment, because their development was different from that of the corresponding English institution, although most writers fail to notice this distinction. Appendix C (The English Hanse) and Appendix E (Affiliation of Boroughs) will, it is hoped, be as welcome to Continental as to English historians. The list of authorities at the end of Vol. I. may be helpful to future investigators. I have almost ready for the press a comprehensive bibliography of British municipal history, comprising about 4000 titles, with a critical survey of the whole literature. Whether it will ever be printed, must probably depend upon the success of the present work. The student of municipal

history now labours under great disadvantages; months of arduous labour are necessary before one can obtain a comprehensive knowledge of the local authorities. A good guide to the literature of the subject would tend to stimulate research in a much-neglected field of study.

Vol. II. is made up mainly of documents never before printed, some of them of considerable value for the study of general municipal history (for example, pp. 115-123). They are taken from the collections of manuscripts in the British Museum, the Public Record Office, the Inner Temple Library, the Library of the Society of Antiquaries of London, the Bodleian Library, and the municipal archives of the City of London, Andover, Bristol, Chichester, Exeter, Guildford, Ipswich, King's Lynn, Leicester, Southampton, and Totnes. The author has made no attempt to exhaust the materials contained in these local archives. Those of Leicester, King's Lynn, Andover, and Totnes are particularly rich in Gild Rolls. It is not necessary to explain in detail the difficulties attending the use of manuscripts scattered about in so many different repositories. Stress of circumstances obliged the author to limit his researches in some of these archives to a very few days.

In reproducing documents I have adhered closely to the orthography of the originals; I have corrected these (in footnotes or by insertions in brackets) only in cases where it is necessary to prevent obscurity; obvious mistakes are generally left uncorrected.

The charters of confirmation referred to under the separate towns in Vol. II. are only such as I have happened to meet with; in most cases there were probably more such confirmations of the Gild Merchant. Vol. I. furnishes much material relating to particular boroughs not contained in Vol. II. Hence the reader who is particularly interested in the history of a single borough, should make use of the Index.

## Preface.

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My thanks are due to the custodians of the various archives mentioned above. The town clerks in charge of the local records were, with a single exception, exceedingly courteous. My thanks are especially due to Rev. R. H. Clutterbuck of Andover and Dr. R. R. Sharpe, Records Clerk of the City of London. Mr. F. T. Barrett of the Mitchell Library, Glasgow, and Mr. George Stronach of the Advocates' Library, Edinburgh, facilitated my work while I was in Scotland searching for books relating to burghal history. Mr. Stronach has frequently furnished me with extracts from works inaccessible in the British Museum. My friend, Mr. F. York Powell, has helped me with suggestions; and his encouragement has stimulated me to greater effort throughout the progress of this work.

The author has attempted to furnish certain *new facts* relating to the history of municipalities. The great need in this branch of study at present is the production of facts or fundamental data. Such data are scattered in profusion throughout the heaps of dusty records in the local archives. Investigators ought to make more use of these rich veins of precious ore.

CAMBRIDGE, MASS.,  
Jan. 1, 1890.



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## ADDITIONS AND CORRECTIONS.

- ♦—
- P. 2, n. 2, l. 4, add 'Pigeonneau, Commerce, i. 122, 123; Kitchin, St. Giles' Fair, 8.'
- P. 3, n. 2, l. 13, add 'Heinsch, Reiche der Angelsachsen, 58.'
- P. 5. For the development of commerce under Henry II, see Norgate, Angevin Kings, i. 434.
- P. 6, n. 1. Romney is another example of a town without 'firma burgi.' (Burrows, Cinque Ports, 211.)
- P. 9, l. 5 from bottom. For Edward I's grant of a Gild Merchant and hanse to Berwick in 1302, see Cal. Doc. Scotl., ii. 334; Munic. Corp. Com., 1835, p. 1435; Scott, Berwick, 246.
- P. 12, n. 1, l. 1. To understand the reference to Dublin, see vol. ii. p. 41.
- P. 16, l. 1, insert 'vol. i.' before '41.'
- P. 27, n. 2. At a meeting of the Gild of Berwick in 1506, the officers present were the mayor, dean, alderman, and the twelve 'feryngmen.' (Scott, Berwick, 259.)
- P. 80, n. 3. For the continental villeins, see also Gengler, Stadtrechtsalt., 407-431. The following law regarding Scotch villeins is enunciated in the 'Leges Burgorum':—'Si homo alicuius baronis vel militis vel cuiuscunque servus venerit in burgo et emerit ibi burgagium et manserit in burgagio super unum annum et diem unum sine calumpnia domini sui vel eius ballivi, semper erit liber sicut burgensis et libertate burgi gaudebit.' (Innes, Anc. Laws, 9.) See also Hasse, Schles. Stadtrecht, 80; Hoveden, Chronica, ii. pp. xxxviii-xl.; Gilbert, Cal. of Dublin Records, 224; Bracton's Notebook, i. 201.
- P. 81, n. 3, for 'twenty-three' read 'thirty-three.'
- P. 81, n. 4, l. 3, for 'coustumarii' read 'customarii.'
- P. 86, n. 1, l. 6 from the end, 'upon their oathe' means in conformity to their burress oath, in which they swore to obey the officers of the town.
- P. 45, n. 1, l. 7, before '382' insert 'iii.'
- P. 56, n. 6 (pp. 55-56). See also Statutes of the Realm, i. 221. Here is a good example of the continental use of 'lot' in 1206: 'quod sint liberi per totam terram nostram ab exactione theolonii et quodam jure quod loth noncupatur.' (Wauters, Preuves, 64.)



- P. 57, n. 5, end, add 'Creighton, Carlisle, 40.'
- P. 89. At Winchester there were some citizens who were not in the Gild, as may be inferred from the following words of a charter of Edward III granted in 1349 to the Bishop of Winchester:—'Et quod nullus Civis Civitatis illius nec alius qui in Gilda Mercatoria ejusdem Civitatis non fuerit, feriam illam [St. Giles Fair] cum mercandis seu mercimoniis suis post diem Nativitatis beate Marie absque fine cum eodem Episcopo pro voluntate ipsorum Justiciariorum faciendo ingredi debet.' (Kitchin, *St. Giles Fair*, 38.) 'Alius' also indicates that there were other persons besides citizens in the Gild.
- P. 70, l. 11. For the Jew's position in the borough community see *Statutes of the Realm*, i. 221: 'And the King willeth that they shall not, by reason of their merchandise, be put to lot or scot or in taxes with the men of the cities or boroughs where they abide; for that they are taxable to the King as his bondsmen, and to none other but the King' (*Edward I's Statutes of the Jewry*). In 1268 the mayor and citizens of Winchester received 'Benedict the Jew, the son of Abraham, into the full membership of our liberty as a co-citizen and our co-gildsman of the Merchant Gild, and to all the privileges which belong to the said liberty.' (*Jewish Chronicle*, Aug. 9, 1889.) The admission of Jews to the Gild was certainly a rare occurrence; it is possible that, in the case before us, Benedict was a converted Jew.
- P. 71, n. 3, l. 6, for 'Oblatibus' read 'Oblatis.'
- P. 73, n. 4. For the population of medieval boroughs, see also Burrows, *Cinque Ports*, 154, 235; *Rep. MSS. Com.*, 1888, App. vii., 171; *Archæologia Camb.*, 1873, iv. 168.
- P. 79, n. 1, l. 4, add 'Schmid, *Gesetze*, 561'; n. 1, l. 3 from end, for 'Cal.' read 'Abbrev.'
- P. 81, n. 1, end. The term 'gild-hall' was also a modern innovation in the Cinque Ports. (Burrows, *Cinque Ports*, 43, 44.)
- P. 81, n. 2. There was a moot-hall also at Maldon and Daventry. (*Munic. Corp. Com.*, 1835, pp. 1844-5, 2431.)
- P. 82, n. 2. In 22 Edw. I the 'aula communis' of Oxford is mentioned. (*Madox, Firma Burgi*, 94.)
- P. 82, n. 3, l. 3 from bottom, after moot-hall insert 'or moot-place.'
- PP. 82, 83. I wish to add a few more words of explanation concerning the use of gild-hall for town-hall. The borough court was originally held in the open air, the moot-place being generally near the old or chief church of the town, or near the market-place; for example, at Oxford the court was held near St. Martin's (Carfax) Church, in London in the church-yard of St. Paul's. (*Gomme, Prim. Folk-Moots*, 151-159; *Liber de antiq. Leg.*, 37, *of Pass.*; *Liber Cust.*, 726; *Boase, Oxford*, 8; vol. ii. pp. 116-120.) The gilds, on the other hand, had their meetings and banquets under cover, i. e. in their

gild-halls. (Below, p. 183, n. 1.) In bad weather the civic authorities held pleas in some gild-hall or church. (Statuta Gilde, cc. 43, 49, below, pp. 237-9; vol. ii. p. 121.) In course of time a separate building would be erected, called the moot-hall or common hall, etc.; or some old gild-hall would be purchased to serve as a town-hall, as described on p. 83.

- P. 85, n. 1. For some arguments against the theory of the Roman origin of the Anglo-Saxon borough, see Green, *Making of England*, ch. iv; Scrutton, *Influence of Roman Law*, 53-57. My views concerning the origin of the borough are, perhaps, not expressed specifically enough on p. 85. I regard the borough merely as an expansion of a township or the union of two or more townships. This larger community obtained a jurisdiction of its own separate from the courts of the hundred and shire. The simple township had no tribunal of its own; its pleas were generally tried in the court of the hundred. Thus the possession of a special court distinguished a borough from a township. For the Anglo-Saxon 'burh-gemot,' see Schmid, *Gesetze*, 596; and Stubbs, *Sel. Charters*, 71, 73. The Danish invasions tended to draw the people together into larger communities or fortified places, and hence was an important element in the early growth of boroughs.
- P. 95, n. 1. For some examples of the use of 'successores' in the twelfth century, see *Munic. Corp. Com.*, 1835, p. 1289 (Ilchester); and *Rep. MSS. Com.*, 1881, p. 269 (Pontefract). See also vol. ii. p. 150.
- P. 106, n. 2. For the 'Five Burghs,' see also Schmid, *Gesetze*, pp. li, 574; Green, *Conquest of Eng.*, 122, 609; Worsaae, *Danes and Norw. in Eng.*, 31, 32; Lappenberg, *England*, i. 314, 612; Freeman, *Norm. Conq.*, iv. 208, vi. 91. It is doubtful whether these five boroughs (Derby, Nottingham, Stamford, Lincoln, Leicester) really formed a municipal federation. For the Cinque Ports, see Burrows, *Cinque Ports*.
- P. 107, n. 3, l. 5, for 'Placita' read 'Placit.' or 'Placitorum.'
- P. 108, n. 3. The following throws some light on the relations of the weavers of Oxford to the civic authorities:—'*Textores Oxonie reddunt compotum de i. dolio vini pro habendo brevi quod Major et Prepositi Oxonie permittant ipsos habere libertates in villa Oxonie, tam in pannis faciendis quam aliis, quales habuerunt tempore Henrici Regis, Ricardi Regis et Johannis Regis*,' etc. (9 Henry III. Madox, *Exch.*, i. 414.) Cf. *ibid.*, i. 338-339. On the Continent the merchants seem to have oppressed the weavers and fullers because these artisans competed with the former in the cloth trade. See Levasseur, *Classes Ouv.*, i. 266, *et seq.*; Schles. *Urk.*, *Introd.*; Höhlbaum, *Urk.*, i. 449; below, p. 298. This may help to explain similar oppressions in English towns.
- P. 108, n. 4. For Flemish artisans in England during the reign of Henry

- I, see also Varenberg, *Relations Dip.*, 70; Chalmers, *Caledonia*, ii. 600; William of Malmesbury, *Gesta Regum* (Rolls Series), ii. 365, 477; Hoveden, *Chronica*, i. 168; Symeon of Durham, *Opera* (Rolls Series), ii. 245; Florence of Worcester, *Chronicon* (Engl. Hist. Soc.), ii. 64.
- P. 109, n. 2. See also *Rot. Scacc.*, i. p. lxxxii; Robertson, *Scotl.*, i. 309. The whole history of the Flemings in Berwick is very interesting. See Walter de Hemingburgh, *Chronicon*, ii. 98, A. D. 1296: 'Triginta vero Flandrenses, qui Aulam Rubeam sic nominatam tali condicione receperant ut eam contra regem Anglorum omni tempore tuerentur, domum eandem usque ad vesperum viriliter defenderunt.' Rishanger, *Chronica*, 157, calls them 'mercatores vero Flandrenses, qui in villa eadem domum, ad modum turris, habebant fortissimam'; Trivet, *Annales*, 344, uses similar language in speaking of them.
- P. 110. An essay by C. W. Colby on the early history of the 'select body' will soon appear in the *English Historical Review*.
- P. 114, n. 3. For the privileges of the weavers of Oxford *temp.* Hen. II, see Madox, *Exch.*, i. 339.
- P. 115, n., l. 5 from end, for 'Cal.' read 'Abbrev.'
- P. 116, n. 3. See also Jusserand, *Wayfaring Life*, 238.
- P. 118, n. 6. For a note concerning the Corpus Christi Play at Pontefract, see Walford, *Gilds*, 253. See also vol. ii. p. 127; Gilbert, *Cal. of Dublin Records*, 239.
- P. 124, n. 1. See also vol. ii. p. 80.
- P. 126, n. 2. See also vol. ii. p. 384.
- P. 127, n. 1, add 'Madox, *Exch.*, i. 337.'
- P. 129, n. 1. There was also a Mercers' or Merchant Grocers' Company at Pontefract in 1700. (*Walford, Gilds*, 253.) There was formerly a company at Richmond made up of the mercers, grocers, and haberdashers. (*Smith, Old Yorksh., New Ser.*, i. 133.)
- P. 136, n. 1. For 'town ventures' of Rye, see Burrows, *Cinque Ports*, 219.
- P. 161, l. 1, *et seq.* The gild and borough were different aspects of the same thing, just as were parish and township. See Stubbs, *Const. Hist.*, i. 227.
- P. 164, n. 3. The Company of Dredgers of Faversham and that of the Drapers of Nottingham are still in existence. (*Burrows, Cinque Ports*, 236.)
- P. 176, n. 2. Von Maurer, *Städteverf.*, ii. 322, also regards these 'collegia' as hereditary castes, organized for the service of the state. For the whole subject, see Levasseur, *Classes Ouv.*, Bk. i.
- P. 176, n. 4. For these 'sworn-brotherhoods,' see also Vigfusson and Powell, *Corpus Poet.*, i. 102, 308, 393, 423, 424, 486; Kennett, *Paroch. Antiq.*, i. 78.

- P. 178, l. 7. Cf. 'gafol-gelda,' Ine, c. 6 § 3, c. 23 § 3. (Schmid, Gesetze, 22, 30.)
- P. 179, l. 15, for 'fritð' read 'frið.'
- P. 179, n. 3. Another collection of public laws was made in a similar way, i.e. by the people of Kent at the instance of officers sent by King Athelstan ('auxilio sapientum eorum quos ad nos misisti'). See Schmid, Gesetze, 148.
- P. 180, l. 2. It is also worthy of remark that injunctions concerning psalm-singing are to be found in the midst of other public laws of Athelstan dealing with theft. 'Et decantetur omni die Veneris in singulis ecclesiis unum quinquagenarium psalmodorum pro regi et omni populo.' (Schmid, Gesetze, 155.)
- P. 180, n. 2. See also Earle, Land-Charters, p. 1; and Hermann, Ständegliederung, 34. Hermann does not agree with me in my explanation of 'hynden,' but he substitutes nothing better.
- P. 181, l. 1. It should be noticed that in several passages of the 'Judicia' the verb 'gildan' (=to pay) is used. 'Gelda' is also applied to persons in Ine's laws (Schmid, Gesetze, 22, 30. 'Gafol-gelda'). 'Gegilda' in the 'Judicia' seems to me to be used in a similar way, not meaning brethren of a fraternity, but persons bound to make certain payments.
- P. 183, n. 3. See also below, pp. 290-291.
- P. 185, last line. In 1383 four men of Kilkenny were to be elected 'barons' to hold pleas of fairs. (Chartae Hib., 81.) The same enactment occurs in a charter of New Ross in 1389. (Ibid., 85.) In 1584 Kilmallock received a charter which ordered that the chief town officer and twelve burgesses were to choose 'four men to be barons in the court of pie poudre who should have power to hold pleas.' (Cal. of Close and Pat. Rolls, ii. 87.)
- P. 188, l. 3 from bottom, for 'cnichta' read 'cnihta.'
- P. 189, n. 8. These laws of Henry I also repeat Alfred's enactments (cc. 27, 28) concerning 'gegildan.' (Schmid, Gesetze, 475; c. 75, § 10.) In Henry I's reign the Abbot of Ramsey granted certain privileges to a gild at Ferefeld. (Chronicon Abb. Rames., 237.) See also Josc. de Brakelonda, 2.
- P. 190, n. 4. For federations of monasteries in England, see also Annales Monast., iv. 411; Hale, Reg. Prior. Wigorn., pp. xciv, cxxvi.
- P. 199, n. 3. In 1475 Bruges was regarded as an exemplar by certain crafts of Edinburgh. (Extracts from Ed. Records, 1403-1528, p. 32.)—For the Flemings in Scotland, see also Chalmers, Caledonia, ii. 600-610.
- P. 199, n. 3, l. 12, dele 'and.'
- P. 210, n. 6, end, add 'Salvioni, Gilde, 71.'
- P. 225, n., l. 7, for 'Chalmers' read 'Chambers.'

- I, see also Varenberg, *Relations Dip.*, 70; Chalmers, *Caledonia*, ii. 600; William of Malmesbury, *Gesta Regum* (Rolls Series), ii. 365, 477; Hoveden, *Chronica*, i. 168; Symeon of Durham, *Opera* (Rolls Series), ii. 245; Florence of Worcester, *Chronicon* (Engl. Hist. Soc.), ii. 64.
- P. 109, n. 2. See also *Rot. Scacc.*, i. p. lxxxii; Robertson, *Scotl.*, i. 309. The whole history of the Flemings in Berwick is very interesting. See Walter de Hemingburgh, *Chronicon*, ii. 98, A.D. 1296: 'Triginta vero Flandrenses, qui Aulam Rubeam sic nominatam tali condicione receperant ut eam contra regem Anglorum omni tempore tuerentur, domum eandem usque ad vesperum viriliter defenderunt.' Rishanger, *Chronica*, 157, calls them 'mercatores vero Flandrenses, qui in villa eadem domum, ad modum turris, habebant fortissimam'; Trivet, *Annales*, 344, uses similar language in speaking of them.
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- P. 124, n. 1. See also vol. ii. p. 80.
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- P. 178, l. 7. Cf. 'gafol-gelda,' Ine, c. 6 § 3, c. 23 § 3. (Schmid, Gesetze, 22, 30.)
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- P. 180, l. 2. It is also worthy of remark that injunctions concerning psalm-singing are to be found in the midst of other public laws of Athelstan dealing with theft. 'Et decantetur omni die Veneris in singulis ecclesiis unum quinquagenarium psalmorum pro regi et omni populo.' (Schmid, Gesetze, 155.)
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- P. 183, n. 3. See also below, pp. 290-291.
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- P. 210, n. 6, end, add 'Salvioni, Gilde, 71.'
- P. 225, n., l. 7, for 'Chalmers' read 'Chambers.'

- P. 270. For some interesting documents illustrating burghal affiliation and the appellate jurisdiction of mother towns in Flanders, see *Coutume de Bruges*, 260, 422, 486-494.
- P. 284. In 1279 Peter King of Aragon granted to the merchants of Barcelona the right to elect two merchants to supervise mercantile affairs. (Capmany, *Memorias Hist. sobre Barcelona*, ii. 367.) For the craft fraternities of Barcelona, see Ebert, *Quellenforschungen zur Gesch. Spaniens*, (Cassel, 1849), 26-42.
- P. 287, n. 5, Hasse (*Schleswiger Stadtrecht*, ch. v) also makes the *Gild* the starting-point of the civic community, but he advances little evidence to support his hypothesis.

## APPENDIX A.

### THE LITERATURE OF ENGLISH GILDS<sup>1</sup>.

DR. BRENTANO is commonly regarded as the chief authority on the general history of English gilds<sup>2</sup>. Wilda, from whom Brentano derived some of his leading ideas, touched upon the subject only incidentally, basing his conclusions wholly upon Madox's works<sup>3</sup>, the Gild Statutes of Berwick<sup>4</sup>, and Danish analogies. Fortuyn, in his book on the gilds of Europe, also devoted a chapter to England, but he took his data mainly from Wilda's 'Gildenwesen' and Hüllmann's 'Städtewesen'. Brentano was the first writer who attempted to give a full account of the general development of English gilds. To him, as the author who has exerted the greatest influence in moulding prevalent views on this subject, we must devote most of our attention in reviewing the literature of gilds.

The following are the salient points of Brentano's theory. The essence of the gild, the germ from which in later times it developed, already exists in the heathen sacrificial feasts, especially the family banquets, of the North (pp. lxxviii.-lxxix., lxxiv.). 'The family appears as the original and pattern type, after which all the later gilds were formed;' the latter are, in fact, derived from the former (pp. lxx., lxxx.). 'After the German tribes had settled in fixed abodes, the families dwelling in a certain district united themselves into common sacrificial assemblies. . . . When Christianity, together with its religious fraternities, came to the North, the latter amalgamated with

<sup>1</sup> The substance of this Appendix appeared in the English Historical Review, i. 780-784.

<sup>2</sup> Brentano's essay is prefixed to Toulmin Smith's English Gilds, 1870; it also appeared separately (London, 1870); and in German, 'Die Arbeitergilden der Gegenwart. Erster Band: Zur Geschichte der englischen Gewerk-

vereine.' Leipzig, 1871.

<sup>3</sup> For Madox's account of the gild merchant, see above, p. 1, n. 2.

<sup>4</sup> For the Berwick Statutes, see Appendix D.

<sup>5</sup> Hüllmann's account of the gilds in England is based mainly upon the few notices in Brady and Madox.



the heathen sacrificial societies which they found there, and from this union arose the religious guilds of the middle ages' (p. lxxx.). England is their birthplace (pp. lvii., xcvi., cxviii.). When the family could no longer afford legal protection against the encroachments of the magnates, 'unions of artificial-family members were formed for that purpose, as the state was not able to afford the needful help.' Thus originated frith guilds, 'in direct imitation of the family' (pp. lxx., lxxiv.-lxxix.). 'The whole body of full citizens, that is, of the possessors of portions of the town-lands of a certain value, the *civitas*, united itself everywhere into one gild, *convivium conjuratum*; the citizens and the gild became identical; and what was gild-law became the law of the town' (p. xciii.). From this frith gild or town gild emanated the municipal constitution (pp. lxxi., lxxvi.). 'As the towns flourished and increased in well-being, material differences in property must have arisen among the full citizens. . . . This led to the closing of the old gild which hitherto had existed alone in a town, by the side of which others then formed themselves with the same or similar ends' (pp. xcvi.-xcvii.). Collisions between these new bodies and the old fraternity finally led to their fusion into one gild, which thenceforth governed the town and was the base of the later burghal constitution (pp. xcix., cv.). 'The sooner a town became chiefly a commercial place, the sooner did the gild there take the character of a merchant-gild,' for example, London in Anglo-Saxon times (pp. xciii., cvi.). Craftsmen were originally admitted to the gild merchant, but as the members of the latter grew richer, they excluded the former from their fraternity and oppressed them (pp. cvii.-cviii.). These aggressions gave rise to the formation of craft guilds (p. cxv.), between which and the gild merchant a long struggle took place in the thirteenth and fourteenth centuries. 'In the time of King Henry VI the victory of the crafts was general in England' (p. cxii.). The overthrow of the craft guilds was due to the rise of large capital and its investment in manufacture (p. clxiii.). The new factory system caused the old regulations of trade by the craft guilds and by the Statute of 5 Elizabeth, c. 4, to fall into disuse, much to the detriment of small masters and workmen. 'As soon as the disorganization spread and the gravest abuses became general, whilst a prospect of the maintenance of order by the state disappeared, the workmen formed their trade unions against the aggressions of the then rising manufacturing lords, as in earlier times the old freemen formed their frith guilds against the tyranny of medieval magnates,

and the free handicraftsmen their craft gilds against the aggressions of the old-burghers' (p. cxcv.).

Brentano does not refute the arguments of Wilda and Hartwig against the derivation of the earliest gilds from the sacrificial assemblies of the North. Their view that Christianity was the most important element entering into the origin of gilds, is more plausible. Nor can we adopt without reservation Brentano's theory that gilds emanated from the family. The truth is that when the old kin-bond (the 'maegth') dissolved, various new institutions arose, in the course of time, to take its place and to supply new wants—the mark, the town, the lord with his dependents, the gild, monastic bodies, knighthood, etc., and above them all the state. The dissolution of the 'maegth' was the occasion, not the cause, of the new order of things. We find striking resemblances to the family, much fraternal solidarity, etc., not merely in the gild but also in the mark community, the lordship's household, monasticism<sup>1</sup>, and knighthood; and one may derive the latter from the family with as much reason as Brentano does the former.

More unfounded still is his assumption that England is the birth-place of gilds. It is difficult to reconcile this view with his derivation of gilds from the banquets of the North and from the family. As the bond between kinsmen was more enduring in England than on the Continent, one must infer that, according to Brentano's own theory, gilds would appear there earlier than in England. Their prevalence on this island in Anglo-Saxon times has been much exaggerated. It is doubtful whether the 'gegildan' of the laws of Ine and Alfred were real gild-brethren<sup>2</sup>. The presence of the root 'gild,' which has various significations<sup>3</sup>, does not necessarily imply the existence of such a fraternity. Indisputable mention of gilds appears on the continent sooner than in England<sup>4</sup>. True the oldest

<sup>1</sup> Even the word 'familia' was applied to the aggregate of a lord's dependents and to the monastic community. See Du Cange, *Gloss.*, under 'familia'; *Liber de Hyda*, 369. Writers have also noted the resemblance of the borough community, the ancient mark, etc., to the family (Gaupp, *Stadt-rechte*, ii. p. xv.; *Arch. Assoc.*, *Journal*, xxxviii, 368; *Gierke*, i. 90, 224; cf. *Ludlow*, *Gilda*, 354); but, while all these institutions superseded the ancient family, and became a necessity after

its dissolution, it is wrong to say that they owe their origin to it. The gild and the family were radically different in their nature; the one was a voluntary and artificial, the other a natural, bond of union. For Bodin's views on this subject, see Baudrillart, *Bodin et son Temps*, 325.

<sup>2</sup> See below, p. 177.

<sup>3</sup> The Latin equivalents are 'sacrificium,' 'tributum,' 'societas,' etc. (*Schmid*, *Gesetz*, 589; below, p. 177.)

<sup>4</sup> See below, p. 175.

detailed statutes of these societies happen to come from England, where more toleration was accorded them, but this does not prove that they originated here.

As to the fine-spun theory as to the origin of the frith-gild in the encroachments of great proprietors and its union with new rival fraternities, we are asked to accept it wholly on faith. Brentano cannot give a single instance of an Anglo-Saxon frith-gild oppressed by rich magnates. Indeed, the term occurs only in one instance, that of London, and then we may translate it frith-gildsmen instead of frith-gilds. Whatever these 'frith-gegyldum' of the 'Judicia Civitatis Lundoniæ' may have been<sup>1</sup>, there is no indication of a struggle among them, nothing is said of the amalgamation of various frith-gilds into one, and no trace of them ever appears again in the history of London. The other example given by Brentano is that of Berwick in the years 1249-1294. But the Berwick statutes belong to the history of Scotland, where the general development of guilds was not the same as in England. Moreover, the union of fraternities at Berwick was probably an isolated, adventitious phenomenon. Then, too, a chasm of three and a half centuries separates the cases of London and Berwick. In the same connexion (e.g., p. xcix.) Brentano emphasises the identity of the Anglo-Saxon gild and town, gild-law and town-law, and the evolution of the latter from the former; but we look in vain for proofs. Positive assertions regarding such an important question cannot be accepted, and should not be made, without good documentary evidence to support them.

Concerning the influence of guilds in Anglo-Saxon times, there will probably always be great divergence of opinion on account of the meagreness of the sources. But data enough for their history in the Norman period can be found, if one will but assiduously search. That Brentano has not done this, is evident from his want of knowledge regarding the gild merchant and the crafts. The momentous struggle between the merchants and craftsmen, to which he ascribes the inception of craft guilds, either never took place in England, or was such an isolated, impotent phenomenon that it does not come to light in local records<sup>2</sup>. A contest of this sort could scarcely have occurred in a country where royalty ruled with so strong a hand. Moreover, though the crafts attained great influence, and constituted

<sup>1</sup> For some account of these 'Judicia,' see below, pp. 178-181.

<sup>2</sup> Above, pp. 109, 110.

an integral part of the common council, in some boroughs, especially in the larger towns of the North<sup>1</sup>, there was never a domination of this element in the English municipal constitution, such as, according to Brentano, resulted from a victory over the gild merchant. The crafts in England were always controlled by the general town authorities, they never secured the political power and independence of the German 'Zünfte' or Flemish 'corporations'.<sup>2</sup> Brentano has much to say about what occurred on the Continent, where the burghal development was very different from that of England; furthermore, he instances London, where the gild merchant is never mentioned, and where the development was decidedly aristocratic; and he adds the case of the tailors of Exeter, where likewise nothing is said in this connexion of the gild merchant, and where the victory remained with the civic authorities. Notwithstanding this paucity of evidence, and in face of the patent facts which disprove his theory, no earnest protest has ever been made in England against it<sup>3</sup>.

In Brentano's chapter on the gild merchant we seek in vain for information concerning the nature of that important institution. The only sources mentioned for England are Wilda, Madox, and Smith's 'English Gilds,' which contain very meagre data for the study of the subject. The truth is that we do not find any traces of this gild until soon after the Norman Conquest, and then it is an organism having distinct functions in the burghal polity, identical neither with the whole 'civitas' nor with the ruling body of the latter<sup>4</sup>. The crafts, too, had their distinct functions to perform, and though we meet with isolated disputes between them and the town authorities, such as that at Exeter, and quite frequently with attempts of the rich to over-tallage 'the lesser folk',<sup>5</sup> it is probable that not a single instance can be cited of a conflict between the gild merchant and the crafts as such. The development in England was, in fact, just the reverse of that portrayed by Brentano; it was from government by a democratic burghal community to the exclusive sway of a narrow, aristocratic 'select body'.<sup>6</sup> This is the great municipal revolution that took place in England, for the most part silently and gradually, from the fourteenth to the seventeenth centuries. We must, however, emphasise the fact that in the burghs of Scotland during the fifteenth and sixteenth centuries there really was a bitter struggle

<sup>1</sup> Above, pp. 111, 112.

<sup>2</sup> Above, p. 113.

<sup>3</sup> Above, p. 109, n. 3.

<sup>4</sup> Above, Chapter V.

<sup>5</sup> Above, pp. 110, 113.

<sup>6</sup> Above, p. 110.

between the guild merchant and the crafts, but, as has already been intimated, the municipal history of Scotland approaches more nearly that of the Continent than that of England<sup>1</sup>.

In his exposition of the internal organization of English craft guilds, Brentano, like most writers on this subject, draws too much upon the history of London, which differed in many respects from that of other English towns. In the chapter on trades-unions he stands on firmer ground. He has gone to the proper sources for his statement of facts, and what he says on the subject merits careful consideration.

Among those who have done much to promulgate Brentano's theories may be mentioned Cornelius Walford<sup>2</sup>. His work on English guilds is not one of original research; regarding their general development and influence he has added nothing to our stock of knowledge. Still his compilation is not devoid of utility as a repertory of the views of others, and as a condensation of the valuable ordinances in Smith's English Guilds.

Dr. Salvioni, in his 'Gilde Inglesi'<sup>3</sup>, has adopted most of Brentano's views, but presents them less incisively and less emphatically than the latter. Here and there he even ventures to differ from Brentano<sup>4</sup>, who, nevertheless, is evidently his main source. More than one-third of the book (pp. 34-69) is devoted to a careful analysis of the statutes contained in Smith's 'English Guilds,' and this is certainly the most valuable portion of the work. On p. 87 he states that in studying this interesting topic, so intimately connected with the civil, social, and economical history of England, his object was merely 'to render familiar to Italian students certain materials, researches, and results obtained elsewhere,' in the hope that interest in similar investigations might thereby be awakened in Italy. This object he has accomplished in a satisfactory manner. He concludes with a comparison between English and Venetian guilds (pp. 87-90). Though he has repeated many of Brentano's errors, it must be said to his credit that he has followed the latter less servilely than many writers to whom the sources were more accessible.

<sup>1</sup> See Appendix D.

<sup>2</sup> His paper on 'Guilds' was reprinted from the Insurance Cyclopaedia, vol. v. 341-393. It also appeared in an enlarged form in the Antiquarian Magazine and Bibliographer, vols. i-ix, 1881-1886. The enlarged work has

been published under the title 'Guilds: their Origin,' etc. London, 1838.

<sup>3</sup> 'Le Gilde Inglesi. Studio storica del Dott. G. B. Salvioni.' Firenze, 1883.

<sup>4</sup> On p. 16, for example, he rejects the assumption that England is the birthplace of guilds.

The history of English Gilds is yet to be written<sup>1</sup>. Such important questions as the relation of the crafts to the town authorities, and the influence of these and other gilds upon the growth of the burghal constitution, have never yet been the object of comprehensive study, though materials in abundance to elucidate the same are to be found in town archives and in printed local histories. In the patient and logical investigation of them lies our only prospect of complete knowledge of the subject.

<sup>1</sup> Two books have very recently appeared which must be briefly noticed in this review of the literature of gilds. Seligman's *Two Chapters on the Mediaeval Guilds of England* (November, 1887), is a good compilation; Chapter I. ('The Guilds-Merchant') being based mainly on my '*Gilda Mercatoria*' (Göttingen, 1883), and Chapter II. ('The Craft Guilds') owing much to Von Ochenkowski's *England's wirthsch. Entwicklung*. There is not a capital fact regarding the gild mer-

chant in Chapter I. of Seligman's book which cannot be found in my dissertation of 1883. See the *Nation*, Numbers 1185, 1187, 1190. W. J. Ashley has just printed a useful general survey of the history of 'Merchant and Craft Gilds' in Chapter II. of his *Introduction to English Economic History and Theory* (London, 1888). His views on the relations of the gild merchant to the craft fraternities seem to me radically wrong; otherwise his account of the gilds is excellent.

## APPENDIX B.

### ANGLO-SAXON GILDS.

THE Gild Merchant has been so frequently identified with various Anglo-Saxon gilds that it is necessary for us to give a concise but comprehensive account of all that is known concerning the latter.

The gradual dissolution of the ancient family tie or kin-bond (the 'maegth') and the genesis of the institutions superseding it can be traced with less difficulty among the Anglo-Saxons than among any other people. When the social structure of the Anglo-Saxons is first discernible, in the dim light of the seventh and eighth centuries, its primitive constitution had already undergone profound modifications. The 'maegth' and the mark community had already merged in the township with individual ownership of land<sup>1</sup>, though vestiges of the primitive structure still remained<sup>2</sup>. High above all families and communities there now existed the state with its laws. While the activity of the 'maegth' gradually diminished, that of the state and the local communities increased. The simple township ('tun' or 'vicus') often developed into the borough ('burh'); and the royal ealdorman became more prominent in shire and hundred. Meanwhile two more new social factors appeared, the lordship and the gild. Many freemen became the vassals or dependents of the landed proprietor, and called him their 'lord.' People also banded together into gilds, to the development of which the dark days of the Danish invasion were very conducive. The wants of the age, especially the protection of life and property, called into being new institutions to replace the once all-predominant and all-pervading bond of kindred<sup>3</sup>.

<sup>1</sup> Stubbs, *Const. Hist.*, i. 83-85.

<sup>2</sup> *Ine*, c. 42 and 43, § 1 (Schmid, *Gesetze*, 40; Thorpe, *Laws*, 55, 56); cf. Marquardsen, *Haft und Bürgerschaft*, 10; Stubbs, *Const. Hist.*, i. 93.

<sup>3</sup> The gild was simply one of various institutions that were at first accessory

to the family and finally superseded the latter. Cf. above, p. 169. For various other arguments showing the untenability of Brentano's view that the gild emanated from the family or was simply an 'artificial family,' see Pappenheim, *Altdän. Schutzgilden*, 82-109. He

Almost all the factors alluded to above, the old as well as the new—family, town, lordship, and state—are found side by side in the 'Judicia Civitatis Lundoniae,' the statutes of the so-called London 'frith-gild' of Athelstan's reign. Before we discuss this interesting document, a few remarks must be made concerning the origin and nature of gilds in general.

Gilds may be briefly defined as voluntary associations for mutual support. The assertion, so often repeated, that England is their birthplace<sup>1</sup>, is untenable. The earliest mention of this institution is to be found in the Carolingian Capitulary of the year 779<sup>2</sup>. Then and in the following century gilds evidently constituted no rare phenomenon in the Empire of the Franks<sup>3</sup>; whereas in England they are not mentioned before the ninth century. The priority of their appearance in the records of a country may be merely a fortuitous circumstance. Even conceding that they occur in the laws of Ine and Alfred, it is not right to infer that gilds first came into existence on British soil. If they were more prevalent and more fully developed among the Anglo-Saxons of the eleventh century than they were on the Continent, this was probably due to the indulgence of Anglo-Saxon kings, and to the results of the incursions of the Danes; and does not prove the English origin of the institution<sup>4</sup>.

However erroneous Wilda's theory may be in its details, he is doubtless right in ascribing to Christianity a prominent part in the inception of gilds<sup>5</sup>. These did not originate in the heathen sacrificial or drinking feast of the ancient Teutons<sup>6</sup>. The latter lacks some of the most essential features of the medieval brotherhoods, especially their all-pervasive spirit of fraternal solidarity, their corporative organization, and the obligation of mutual assistance. Its meetings were either confined to a narrow circle of kinsmen or open to all comers. It was no permanent association, but, like the old English

points out, among other things, that in the family we have two fundamental ideas, subordination and co-ordination; in the gild, only one of these, namely, co-ordination or the idea of brotherhood.

<sup>1</sup> Brentano, *English Gilds*, pp. lvii., lxxiv., xcvi.; Wilda, *Gildenwesen*, 63, 64, 119, 244 (cf. Pappenheim, 213); Scrutton, *Roman Law*, 55, 56.

<sup>2</sup> Hartwig, *Untersuchungen*, 137. 'De sacramentis per gildonia invicem conjurantibus, ut nemo facere præsumat' (Pertz, *Monum., Leges*, i. 37).

<sup>3</sup> Hartwig, 138; Wilda, *Gildenwesen*, 39, 40; Waiters, *Lib. Com.*, 138-140; Giry, *St. Omer*, 277.

<sup>4</sup> Cf. above, 169, 170; Pappenheim, 14-17.

<sup>5</sup> Wilda, *Gildenwesen*, 25-34, 63.

<sup>6</sup> Both Hartwig (p. 154) and Pappenheim (pp. 1-3) reject the view that gilds emanated from the old banquets of the North. Wilda (pp. 3-34) ascribes their origin to these heathen banquets and to the Christian Church.



wake, only a casual gathering; it was no close and enduring bond of union with well-defined rights and duties. Nor are guilds merely vestiges of the Roman 'collegia' (or 'sodalitates')<sup>1</sup>. The differences between the two institutions are more striking than the resemblances<sup>2</sup>, the latter being common to every form of association in all ages. The medieval guilds are no more derived from the Romans or Scandinavian Teutons than are the Roman 'collegia' from the communal organization of the Hebraic Essenes<sup>3</sup>, or modern clubs and trades-unions from the guilds. Every age has forms of association peculiar to itself which have grown up spontaneously. It is not necessary to seek for the germ of guilds in any antecedent age or institution. They doubtless originated spontaneously among Christians for mutual support in things temporal and spiritual,—for the mutual promotion of well-being in this world and in the next<sup>4</sup>.

The religious element, a potent factor in the history of guilds from their birth to their final extinction, is an almost insurmountable obstacle to their logical classification; for, as Wilda rightly observes, every guild comprehended within itself a religious one<sup>5</sup>. They may be divided into the following groups:—the ecclesiastical or calendar

<sup>1</sup> Hartwig, *Untersuchungen*, 156. The view that guilds are derived from Roman times is maintained by Coote (*Ordinances, pass.*; *Romans in Brit.*, 383-412), Pearson (*Hist. of Engl.*, i. 44, 47, 274), and Wright (*Celt, Roman*, 425, 510). Cf. also Palgrave, *Commonw.*, i. 628. They do not even prove that these 'collegia' were numerous in England. In fact, Pearson (i. 47) admits that the inscriptions found there are chiefly confined to the smiths. Cf. above, p. 85, n. 1.

<sup>2</sup> Some of the essential features of the medieval guild are wanting in the Roman 'collegia opificum' of the fourth and fifth centuries. These 'collegia' were not voluntary unions, but organizations imposed by the Roman government upon laborers. Religion and charity were not prominent features of these bodies. For the 'collegia,' see Mommsen, *De Collegiis*, etc.; Boissier, *Collèges fun. Rom.*; Coote, *Romans in Brit.*, 383-396; Pancirollus, *De Corporibus Artificum*; *Codex Theod.*, xiii. xiv.; *Polit. Science Quart.*, ii. 494-513; Massmann,

*Libellus Aur.*, 75-86; Seligman, 50; and the references given in *London Liv. Comp. Com.* 1884, i. 8.

<sup>3</sup> For the communities of the Essenes, see Graetz, *Gesch. der Juden*, iii. 96.

<sup>4</sup> The most recent important contribution to the general history of guilds is Pappenheim's *Altdänische Schutzgilden*. He maintains that the Danish guilds originated in the old Northern 'sworn-brotherhood,' 'Blutsbrüderschaft,' 'fostbræðra-lag.' This was a compact entered into by two or more persons, each of whom solemnly swore to revenge any injury done to the other. They first walked beneath a strip of turf, the ends of which remained fastened to the ground; then they mingled some of their blood in a foot-print (*spór*) beneath the strip of turf; and the ceremony was completed by exchanging the oath of brotherhood. Pappenheim (pp. 18-54) believes that the early Danish guilds were derived from this institution because the name brother, the element of revenge, and the idea of mutual help, are common to both.

<sup>5</sup> Wilda, *Gildenw.*, 344.

gilds, made up entirely or in great part of the clergy; social-religious gilds, established for the performance of religious exercises and good works, often including also other objects, such as the protection of life and property; trade gilds, which may be separated into merchant gilds and craft or artisan gilds.

I have said that no Anglo-Saxon gilds are mentioned before the ninth century. But some continental and almost all English writers claim that the 'gegildan' of the laws of Ine and Alfred were brethren of such fraternities<sup>1</sup>. Waitz is the only one who attempts to prove this hypothesis; his arguments, however, are not convincing<sup>2</sup>. The others seem to think that the word by itself is all the proof needed. But 'gild' has various different meanings ('sacrificium' or 'adoratio,' 'tributum,' and 'societas'), and is of common occurrence in simple and compound words that do not refer to associations of any kind<sup>3</sup>. Many other cogent objections to their view have been advanced, above all, the following by Kemble:—'It is perfectly clear that a law expressed in such general terms as these, cannot be directed to a particular and exceptional condition; that it does not apply to the accidental existence of gegyldan, but on the contrary

<sup>1</sup> Ine, c. 16, 21; Alfred, c. 27, 28 (Schmid, Gesetze, 28, 30, 86; Thorpe, Laws, 35, 49, 50). For various explanations of these passages, see Waitz, *Verf.*, i. 461-466; Stubbs, *Const. Hist.*, i. 89, 414; Schmid, *Gesetze*, 588; Brentano, *Engl. Gilda*, lxxiv.; Lappenberg, *Engl.*, i. 589; Marquardsen, *Haft*, 26-34; Coote, *Ordin.*, 18; Schaumann, 561; Fortuyn, 87; Thorpe, *Dip. Angl.*, p. xvii.; Salvioni, *Gilde Inglesi*, 8, 9; Glerke, *Genossensch.*, i. 224-225; Smith, *Crown House*, 28; Sullivan, *Lectures*, p. ccxii.; Kemble, *Saxons*, i. 238-240; Maurer, *Rechtsverhältn.*, i. 91, 92; Hartwig, *Unters.*, 136; Wilda, *Strafrecht*, 389; Yeats, 179; Sachsse, *Grundlagen*, 538; Cox, *Electiona*, 135; Philippa, *Angels. Recht*, 98; Pike, *Crime*, i. 87, 438; Drioux, *Associations*, 111.

<sup>2</sup> He holds that they were gilds of strangers. The main objection to this theory is that Ine, c. 21, implies that the 'gegilda' had relatives ('his maegas') living in the neighbourhood.

<sup>3</sup> Leo, *Glossar*, 250; Bosworth, *Dict.*,

s. v. 'gild.' On the Continent and in Wales the word also signified a banquet. See Vigfusson, *Icel. Dict.*, 199; Pappenheim, *Schutzgilden*, 63, 64, 114, 120; Wedgwood, *Dict.*, 322; Möbius, *Glossar*, s. v. 'gildi'; Adelung, *Wörterb.*, s. v. 'gild.'

<sup>4</sup> For example, 'deofol-gild' (Alfred, *Introd.*, c. 49, § 5; Schmid, *Gesetze*, 66, 554; Thorpe, *Laws*, 26) means simply devil-worship, or heathen sacrifices. This is also referred to in a letter of Pope Gregory to Mellitus (Bede, *Eccles. Hist.*, i. c. 30). Cf. 'Gif ceori . . . deofum gelde,' where the verb 'gelde' has a similar meaning (Withard, c. 12; Schmid, 16; Thorpe, 18). See also Leo, *Glossar*, 250; Emerton, *Introd.*, 155; Pappenheim, 18. Cf. also the following passages in Charlemagne's *Capitulary of 785* relating to the Saxons:—'Si quis hominem diabulo sacrificaverit et in hostiam more paganorum demonibus obtulerit, morte moriatur'; 'Si quis . . . ad honorem demonum commederit,' etc. (Pertz, *Leges*, i. 49.)

assumes every man to have such: we cannot therefore construe it of voluntary association formed for religious, social, or funereal objects<sup>1</sup>. I shall not venture to expound any new theory as to what these 'gegildan' really were. Probably Schmid's view, vague and unsatisfactory though it be, is as near the truth as we shall ever get, namely, that they were 'geld-comrades' ('Zahlungsgenossen')<sup>2</sup>, those who mutually paid for one another<sup>3</sup>; the information in the sources being too meagre to permit us to define their functions with more exactness.

The 'Judicia Civitatis Lundoniae,' made during Athelstan's reign<sup>4</sup>, are a collection of ordinances, 'which,' as the preamble asserts, 'the bishops and reeves belonging to London, have ordained and with pledges ("weddum," "vadia") confirmed, among our frith-gildsmen ("frið-gegyldum") both "eorlish" and "ceorlish," as an addition to the laws established at Greatanlea and Exeter and Thunresfeld. The various enactments that follow are directed against thieves. The penalties imposed upon the latter and the measures taken to bring them to justice are minutely detailed. Provision was made for a common purse, from which stolen property was to be replaced. All were bound to co-operate in pursuing persons guilty of theft.

These 'Judicia' are commonly regarded as the statutes of a London gild. Certain minor clauses have something of the flavour of such an association; but if we examine the document in its

<sup>1</sup> Kemble, Saxons, i. 238, 239; cf. Marquardsen, Haft, 33.

<sup>2</sup> 'Gildan' in the sense of 'pay' often occurs in the Anglo-Saxon records. See Schmid, Gesetze, 160, 162, 603; Thorpe, Dip. Angl., 606-614. Cf. above, p. 59.

<sup>3</sup> Schmid, Gesetze, 589. Kemble (Saxons, i. 240) says: 'I look upon gegyldan as representing those who mutually pay for one another; that is, under a system of pecuniary mulcts, those who are mutually responsible before the law,—the associates in the tithing and the hundred.' Cf. below, p. 190, n. 11.

<sup>4</sup> Schmid, Gesetze, 157-172; Thorpe, Laws, 97-103. For various brief com-

ments on these 'Judicia,' see Stubbs, Const. Hist., i. 414; Wilda, Gildenw., 245-247; Gierke, Genoss., i. 229, 230, 233; Waitz, Verf., i. 462; Schmid, Gesetze, pp. xlv.-xlvii., 588; Kemble, Saxons, i. 241; Marquardsen, 37, *et seq.*; Cox, Elections, 135; Norton, Commentaries, 19, 24, 25; Thorpe, Dip. Angl., p. xvii., and Laws, Glossary, s. v. 'frith-gild'; Maurer, Rechtsverb., i. 94; Coote, Ordin., 9-12, and Romans in Brit., 397-402; Maurer, Mark Courts, 57; Fortuyn, 88; Palgrave, Commonw., i. 195, 633; Salvioni, Gilde, 9, 10; Green, Conq. of Engl., 460, 461; Brentano, Engl. Gilda, p. lxxv.; Walford, Gilda, 55-57.

entirety, this view appears untenable. For a gild is pre-eminently a voluntary organization<sup>1</sup>, the result of private action, and not of public legislation. Now it is evident that the 'Judicia' do not belong to such a body, but are simply a supplement to the general laws of the kingdom regarding theft, as is distinctly asserted in the preamble already cited<sup>2</sup>. The ordinances provide for a peculiar public police establishment, rather than for a close private association. In further confirmation of this view we find them incorporated among the other laws of the kingdom; they emanate from the public authorities, the king's officers, not from persons privately banded together<sup>3</sup>; and all the inhabitants of the city and its suburbs are bound by the enactments<sup>4</sup>. That we are here dealing with no regulations of a private and voluntary nature, but with public law and public obligations, is even more plainly shown by the following clause of the 'Judicia':—'If we are negligent as regards the peace ("fritð") and the pledge ("wed") which we have given and *which the King has commanded* of us ("þe we seald habbað, and se cyng us beboden hafað"), then may we believe or well know that these thieves will prevail even more than they did before. But let us rather keep our pledges and the peace as is pleasing to our lord [the King]. It greatly behoves us to execute that which he wills, and if he bids and orders more, we shall be humbly ready<sup>5</sup>.'

Two of these ordinances are generally emphasised as being those of a gild. In c. 8, § 6 of the 'Judicia' it is ordered that if anyone who has given his pledge should die, each 'gegilda' should provide a loaf for the defunct's soul, and sing, or procure to be sung, fifty psalms. It must be admitted that this is an enactment similar to those made by later gilds. But prayers for the dead were not confined to such fraternities. It is a well-known fact that in those days men took advantage of every opportunity to provide for their salvation after death by vicarious orisons<sup>6</sup>. In the reign of Alfred

<sup>1</sup> Cf. Gierke, *Genoss.*, i. 226, 235; Vanderkindere, *Magistrata*, 6; Kemble, *Saxons*, i. 239.

<sup>2</sup> Chapters 9-12 of the 'Judicia' are taken almost verbatim from earlier public laws. Cf. Schmid, *Gesetze*, xlvii.

<sup>3</sup> The 'bishops and recves' who 'ordained' these 'Judicia' were royal officers. Cf. c. 11 (Schmid, 170; Thorpe, 102) and Anglo-Saxon Chronicle, anno 886. Note also the plural 'bishops'; evidently the king sent at least one

other bishop to sit with the bishop of London in this assembly. Stubbs rightly refers to the 'Judicia' as an 'attempt on the part of the public authorities to supplement the defective execution of the law' (*Const. Hist.*, i. 414).

<sup>4</sup> C. 8, § 4; cf. Wilda, *Gildezw.*, 246.

<sup>5</sup> C. 8, § 9 (Schmid, 168; Thorpe, 101-102).

<sup>6</sup> Rettberg, *Kirchengesch.*, ii. 788; Rock, *Church of our Fathers*, ii. 3; 8.

half the revenue of the town of Worcester was given away in exchange for a few 'de profundis'.<sup>1</sup> The other so-called gild-clause, c. 8, § 1, is not at all consistent with the true gild spirit. It prescribes that the eleven<sup>2</sup> officers of the hundred ('hynden') are to assemble once a month to superintend the execution of the ordinances. Then as now the Teutons seldom came together without eating and drinking<sup>3</sup>. Accordingly it is directed that at these monthly meetings there should be 'butt-filling' (i. e. ale-making) and a 'repast' ('met-scepe') for the eleven, the other townsmen being evidently excluded from the feast—a very unbrotherly and ungild-like regulation. Both the religious and the festive features of the 'Judicia' are thus of an incidental character, such as we might expect to find in the early middle ages among neighbours united in the performance of common duties imposed upon them by the laws of the land. Even if these statutes accentuated good works and feasting more strongly, we could not call them the enactments of a gild, because they bear too plainly the imprint of public law. The same reason would prevent us from classifying the Norman frank-pledge under the head of gilds, even if it had been replete with devotional exercises and festive observances.

Thus when we compare the 'Judicia Civitatis Lundoniae' with the statutes of Anglo-Saxon and other gilds, and perceive how the former bear the imprint of public legislation, how little of the true gild atmosphere pervades them, how few characteristic gild traits they contain, and how questionable these few are, we must maintain that they are not the ordinances of a real gild, even though we may admit the possibility that some already existing fraternity was used as a partial model or even directly utilised by the public authorities to attain their end. It is more probable that 'gegilda' in the 'Judicia' is used in the same sense as in the laws of Ine and Alfred, that is to say, as far as the paucity of the sources will enable us to surmise, in the sense of comrades mutually responsible for 'gelds'

<sup>1</sup> Thorpe, *Dipl. Angl.*, 136-138.

<sup>2</sup> The text of the document reads 'twelve,' but this is evidently an error. See Schmid, *Gesetze*, 615; Thorpe, *Laws, Glossary*, s. v. 'hynden.' The eleven officers were the ten heads ('yldestan') of ten tithings, and the 'hynden-man,' who had the general supervision over the hundred, i. e. ten

tithings. Cf. c. 3; Kemble, *Saxons*, i. 238, 244; Waitz, *Verf.*, i. 466; Marquardsen, *Haft*, 39. Schmid (*Gesetze*, 615) and Thorpe (*Laws, Gloss.*, s. v. 'hynden') think that 'hynden-man' here means the head of the tithing; but this construction makes the passage difficult to understand.

<sup>3</sup> See below, p. 190, n. 9.

or payments, including perhaps fines for breach of law<sup>1</sup>. The words employed by Wilda in another connection apply with equal propriety to these London ordinances:—‘The spirit of association which permeated the middle ages and bound together in closely organized societies all who had common aspirations and common interests,’ manifested itself likewise in the regulations adopted by the king and his witenagemot for the metropolis, ‘but they are destitute of very much that necessarily belongs to the essential nature of the gild, according to the historical development of that conception<sup>2</sup>.’

To bolster up an untenable theory regarding the general development of the English municipality, some writers have also discovered a resemblance between this London organization and a much later union of the Berwick gilds into one great town fraternity or gild merchant (1249-94<sup>3</sup>). But the ‘Judicia’ do not record any union of existing societies<sup>4</sup>; and it cannot be shown with any degree of probability that this was anything more than a very transient movement, much less that it exerted any influence upon the municipal constitution of London<sup>5</sup>. We hear of it for the first and last time in the reign of Athelstan. As far as can be learned, no trace of it is to be found in any later institution<sup>6</sup>. It certainly was no gild merchant, no allusion being made to trade.

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There are still extant the Anglo-Saxon statutes of four social-religious gilds that flourished at Cambridge, Abbotsbury, Exeter, and Woodbury<sup>7</sup>. These records probably date from the first half

<sup>1</sup> See above, p. 178, n. 3.

<sup>2</sup> Wilda, *Gildenw.*, 69.

<sup>3</sup> Brentano, *Engl. Gilds*, xcix., c.; Wilda, *Gildenw.*, 247, 248. Cf. above, p. 170. For the Berwick fraternity, see App. D.

<sup>4</sup> Cf. Marquardsen, *Haft*, 41; Norton, *Comment.*, 19, 25.

<sup>5</sup> ‘At least, there is documentary evidence,’ says Brentano (*Engl. Gilds*, xcix.), ‘that the constitution of the City was based upon a Gild.’ Brentano evidently refers to the ‘Judicia,’ and bases his conclusion upon second-hand authorities,—the erroneous inferences of Wilda and Hüllmann. Hartwig (*Untersuch.*, 162) makes the same mistake:—‘Wir

wissen ja dass in England die Statuten eines solchen Privatvereins [i. e. the ‘Judicia’] die Grundlage einer Stadtverfassung geworden sind.’ We know nothing of the sort. The authors cited do not even attempt to prove this assertion.

<sup>6</sup> Cf. Norton, *Comment.*, 25.

<sup>7</sup> All these statutes are printed, with a translation, in Thorpe, *Dip. Angl.*, 605-617; and all, excepting those of Orcey’s gild of Abbotsbury, in Hickeys, *Dissertation*, 18-22. The statutes of Orcey’s gild are also printed in Kemble, *Cod. Dip.*, iv. 277; those of the Woodbury gild, in Earle’s *Land Charters*, 264; those of the Cambridge and Exeter

of the eleventh century<sup>1</sup>, being the oldest gild statutes in existence. The thanes' gild of Cambridge shows plainly how the new bond of fellowship partially superseded the old tie of kindred. For the object of this fraternity is to provide for the payment of the old blood-compensation ('wer-geld'), in case a gildsman kills another 'without wantonness and without guile'; to exact the same in case a gildsman is slain; and to participate in all feuds resulting from a repudiation of the 'wer-geld.' This is probably all that is referred to in the general statement of the preamble, 'that the whole society should ever support him who has the most right.' Stubbs makes the scope of the association more comprehensive, including within its objects mutual assistance in case of theft<sup>2</sup>, and thus giving it more of the character of a public police establishment. Some such conclusion might be drawn from Kemble's translation of the document, not however from the original text. No mention of theft occurs in the latter<sup>3</sup>. Thorpe's emendation of fellow ('gefera'), in the sense of gild-brother, in the place of reeve ('gerefa'), is also worthy of acceptance<sup>4</sup>. Thus we must regard this association at Cambridge as a purely social-religious gild, destitute of all public functions.

In Orcy's gild at Abbotsbury and in the brotherhoods at Exeter and Woodbury the religious element is pre-eminent, the chief object of the brethren's solicitude being the salvation of their souls. The fraternity at Exeter also extended assistance in the case of conflagra-

gilds, in Coote's *Romans in Brit.*, 402-409, and in the 'Pièces Justificatives' of Thierry's *Récits*. A translation of the statutes of the gilds at Abbotsbury, Cambridge, and Exeter will also be found in Kemble, *Saxons*, i. 511-514. For various comments, see Stubbs, *Const. Hist.*, i. 412-414; Gneist, *Verf.*, 125; Gierke, *Genoss.*, i. 228-233; Wilda, *Gildenw.*, 38, 43, 65; *English Gilds*, xviii., lxx.; Turner, *Anglo-S.*, iii. 98-101; Coote, *Ordin.*, 12-18, and *Romans in Brit.*, 402-409; Maurer, *Rechtsverh.*, i. 93-96; Lappenberg, *Engl.*, i. 610, 612; Walford, *Gilds*, 57-63; Winzer, *Brüdersch.*, 79; Salvioni, *Gilde*, 11-14.

<sup>1</sup> Cf. Stubbs, i. 413; Hartwig, *Unters.*, 136; Cooper, *Cambr.*, i. 15. The Woodbury statutes belong to the

second half of the eleventh century. They mention Osbern, Bishop of Exeter, 1072-1103 (*Le Neve, Fasti*, i. 367; *Monast. Angl.*, ii. 515).

<sup>2</sup> Stubbs, *Const. Hist.*, i. 414.

<sup>3</sup> The corresponding words of the text are: 'and gyf hwa gyldan of-stlea' (Thorpe, *Dip. Angl.*, 611). The context also shows that the reference is to 'killing,' not 'stealing'; for in another part of the document the same sum (eight pounds) is given as the penalty for the killing of a gildsman.

<sup>4</sup> In the London '*Judicia*,' c. 1, § 1, 'geref-scipe' is also erroneously written for 'gefer-scipe,' the latter form of the word being given in the same passage. Schmid, *Gesetze*, 156, 588; Thorpe, *Laws*, 97. Cf. Philippa, *Angels. Recht*, 78, 79.

tion. The Woodbury gild had among its members the Bishop (Osbern) and the canons of Exeter. Feasting, psalm-singing, escorting the dead to the grave, the solemn entrance-oath, fines for neglect of duty and for unseemly behaviour, contributions to a common purse, mutual assistance in distress, the gild-hall, periodical meetings called the 'morgen-spæc'<sup>1</sup>—in short, all the characteristics of later gilds, appear in the statutes of these four fraternities.

One of the earliest and most prevalent of Anglo-Saxon fraternities was the cnihts' gild, which existed in some of the principal cities of England in the ninth, tenth, and eleventh centuries. Let us first try to determine what the term cniht signifies. In early Anglo-Saxon times it meant boy or servant ('puer,' 'servus'<sup>2</sup>); but in the ninth or tenth century it acquired a new signification.

In the statutes of the Exeter and Cambridge gilds, referred to above, the cniht appears as a kind of subordinate member. The 'gegilda' of the Exeter fraternity contributes to the common stock two measures ('sesters') of malt, but the cniht contributes only one measure of malt together with some honey. If any cniht belonging to the thanes' gild of Cambridge draws a weapon, his lord ('hlaforð') is to pay a fine of one pound, and get what he can [from his cniht]; 'and let the whole fraternity ("gild-scipe") aid him in recovering his money. And if a cniht wound another, let the lord avenge it and all the fraternity together; so that seek whatever he may seek, he have not life. If a cniht sits in anyone's way ("binnan stig")<sup>3</sup>, let him pay a measure of honey.'

Other sources of the tenth and eleventh centuries help us to form a clearer idea of the status of a cniht. Though he ranks above a 'ceorl,' he is always in the service of some lord; he belongs to the latter's household ('hired' or 'familia'<sup>4</sup>). But he is not a menial

<sup>1</sup> For the gild-hall ('gegylðhealle'), see Kemble, *Codex Dip.*, iv. 277, and Thorpe, *Dip. Angl.*, 605; the 'morgen-spæc' occurs in the statutes of the Cambridge gild.

<sup>2</sup> Leo, *Glossar*, 441; Bosworth, *Dict.*, s. v. 'cniht'; Skeat, *Dict.*, s. v. 'knight.'

<sup>3</sup> In later gilds we often find regulations requiring members to keep their seats. See above, p. 27, note 2.

<sup>4</sup> 'And Lofwine se ðelinges disoðen and Aelfget and Aelfwerd his cnihtas and calle ðe geoðre hired men' (Kemble, *Cod. Dip.*, vi. 155). 'And mianum hired cnihtum,' etc. (*Liber de Hyda*, 254). See also Kemble, *Cod. Dip.*, iii. 49, 51-54, 159-168, iv. 269, vi. 197; Thorpe, *Dip. Angl.*, 571; Robertson, *Scotl. under Early Kings*, ii. 311.



dependent; he is evidently often on very familiar terms with his superior. We find the *cniht* mentioned in his lord's will side by side with the latter's children and most trusty household functionaries<sup>1</sup>, sharing, with these, bequests of money, jewels, and lands. Athelstan Atheling, for example, bequeathed to his *cniht* Athelwine the sword 'that he erst gave me<sup>2</sup>.' Sometimes the *cniht* held lands of his lord by a temporary tenure, but there was a natural tendency for this to become permanent. Bishop Oswald invested his *cnihts* with land, which, he directed, should pass to certain of their heirs and then revert again to the church<sup>3</sup>. The *cniht* Almer was given land which he already held<sup>4</sup>; and the *cniht* Wulfgar 'all [the land] as his father had acquired it<sup>5</sup>.' The *cniht* 'of' ('*aet*') such and such a place is often mentioned<sup>6</sup>, as though he were permanently identified with the estate named. The *cniht's* lord is generally some person of high rank, often a bishop or atheling<sup>7</sup>. Finally we may remark that the *cniht* appears armed with a sword, like a nobleman<sup>8</sup>. He was not a mere 'page' or 'servant'<sup>9</sup>, but the armed attendant or military retainer of some great lord<sup>10</sup>.

It is a mistake to completely identify the *cniht* with the Anglo-Saxon 'thegn' or with the Norman 'miles.' In the Anglo-Saxon Chronicles, under the year 1087, we find a reference to archbishops, bishops, abbots, earls, 'thegenas and *cnihtas*<sup>11</sup>.' In the Cambridge

<sup>1</sup> Kemble, *Cod. Dip.*, iii. 295, iv. 269, 288; Thorpe, *Dip. Angl.*, 545, 559-561, 573, 574.

<sup>2</sup> Kemble, *Cod. Dip.*, iii. 363; Thorpe, *Dip. Angl.*, 561. For various other bequests made by lords to their *cnihts*, see Kemble, *Cod. Dip.*, iii. 272, 295, 362, 363, iv. 269, 288; Thorpe, *Dip. Angl.*, 521, 531, 559, 560, 568, 575; Earle, *Land Charters*, 219, 225, 227, 238, 241, 366; Turner, *Anglo-Saxons*, iii. 127. Athelmar '*dux*' left 'minum hired *cnihtum* v. pund to gedule' (*circa* A.D. 1000. *Liber de Hyda*, 254).

<sup>3</sup> Kemble, *Cod. Dip.*, iii. 49, 50, 159, *et seq.*, 259. Cf. Earle, *Land Charters*, 238.

<sup>4</sup> Thorpe, *Dip. Angl.*, 559, 560.

<sup>5</sup> *Ibid.*, 545. In 956 two *cnihts* of Canterbury sold their lands (Somner, *Cant.*, i. 178).

<sup>6</sup> Kemble, *Cod. Dip.*, vi. 184; Thorpe,

*Dip. Angl.*, 377, 378; Palgrave, *Commonw.*, ii. p. cccxxviii., n. 9.

<sup>7</sup> Kemble, *Cod. Dip.*, iii. 49, 50, 159, 295, 363, iv. 269, vi. 155, 197; Thorpe, *Dip. Angl.*, 531, 543-545, 559, 561, 568, 575; *Liber de Hyda*, 256; Earle, *Land Charters*, 238.

<sup>8</sup> Kemble, *Cod. Dip.*, iii. 363; Thorpe, *Dip. Angl.*, 561, 612; Coote, *Romans in Brit.*, 405.

<sup>9</sup> Thorpe calls the *cniht* a 'page' (*Dip. Angl.*, 530, 559, 575); Kemble gives the following equivalents: 'servants,' 'young men,' 'young freemen who were not full citizens,' and 'young nobles' (*Saxons*, i. 513, 514, ii. 335). Cf. also Stubbs, *Const. Hist.*, i. 366.

<sup>10</sup> Cf. Robertson, *Scotl. under Early Kings*, ii. 136.

<sup>11</sup> '*Cnihts*' are mentioned in other parts of the Chronicles; see Earle, *Saxon Chron.*, 391.

gild statutes the *cniht* as such is distinguished from the 'thegn.' But these very statutes show that no great gulf separated the two. Both are members of the same fraternity, and both apparently thegns, though the one was subordinate to the other. It is evident that this subordination could not have been very great, for the whole gild was to help the lord to secure the penalty from his offending *cniht*. That the latter ranked as a thegn, may also be inferred from other documents<sup>1</sup>. He was generally a thegn's thegn—probably identical with the 'lesser thegn' of Cnute's Laws<sup>2</sup> and the 'rad-cniht' of Domesday<sup>3</sup>. The 'rad-cniht' is defined by old glossarists as a free-man who served his lord on horse<sup>4</sup>. Both the thegn *κατ' ἐξοχήν* and the *cniht* were included under the generic terms 'minister' and 'miles'<sup>5</sup>; but 'miles' seems gradually to have been applied with preference to the *cniht*<sup>6</sup>.

It is probable that thegns often engaged in commerce and constituted a prominent element in the burghal community. The merchant who made three voyages across the ocean at his own cost became a thegn<sup>7</sup>. Domesday mentions twelve magistrates or lawmen ('lagemanni') at Lincoln and Stamford<sup>8</sup>, who probably reckoned as thegns; this was certainly the rank of the 'lagemanni' of Cambridge<sup>9</sup>. A similar body at Shrewsbury in the thirteenth century is called 'the [twelve] theynesmen'<sup>10</sup>; and another at Corfe Castle still later, 'the

<sup>1</sup> Two *cnihts* named Wulfric are mentioned in Thorpe's *Dip. Angl.*, 375-378, one of whom was probably the son of the 'thegn' Wulfstan, spoken of in the same document. See also Palgrave, *Commonw.*, i. 578, li. p. cccxxviii.

<sup>2</sup> 'Ex mediocribus hominibus quos Angli laes-pegnas nuncupant, Dani vero yoong-men vocant' (Schmid, *Gesetze*, 318; Thorpe, *Laws*, 183). Cf. Schmid, 388, 668; Ellis, *Introd.*, l. 45.

<sup>3</sup> Ellis, *Introd.*, l. 72-74; Morgan, *Norman Occup.*, 115, 116.

<sup>4</sup> Ellis, *Introd.*, l. 74; Morgan, *Norman Occupation*, 116. An ancient codex makes 'rad-cniht' equivalent to the 'six-hynden man' of Alfred's laws (Schmid, *Gesetze*, 93, 668). Cf. *raede-cempa* = equester; *raede-herc* = equitatus; *rad* = ride (Wright, *Vocab.*, l. 228; Leo, *Glossar*, 122, 325).

<sup>5</sup> Palgrave, *Commonw.*, i. 578; Robertson, *Scotl. under Early Kings*,

ii. 136, 456; Stubbs, *Const. Hist.* i. 155, 156; Turner, *Anglo-Sax.*, iii. 125. In the documents printed in Kemble, *Cod. Dip.*, iii. 49-54, 159-168, 'cniht,' 'minister,' and 'meus fidelis,' are evidently used as synonyms.

<sup>6</sup> Turner, *Anglo-Sax.*, iii. 124-129; Stubbs, i. 366; Schmid, 666; Coote, *Romans in Brit.*, 405. The *cnihts* are called 'militēs stipendiarii' in an ancient translation of an Anglo-Saxon charter about A. D. 1000 (*Liber de Hyda*, 256, 257). See also below, p. 187, n. 1, 5.

<sup>7</sup> 'pegen-ribtes weorbe' (Schmid, *Gesetze*, 390; Thorpe, *Laws*, 81).

<sup>8</sup> Domesday Book, i. 336 a, 336 b.

<sup>9</sup> 'De hæricta Lagemannorum habuit isdem Picot viii. lib. et unum palefridum et unius militis arma' (Domesday, l. 189 a).

<sup>10</sup> Owen and Blakeway, *Shrewsb.*, i. 104.

eight barons<sup>1</sup>. The term 'burg-thegn' is by no means uncommon<sup>2</sup>; it is doubtless the equivalent of the later civic 'barones,' such as existed at Chester, Warwick, York, the Cinque Ports, and London<sup>3</sup>. The 'liths-men' (ship-owners) of London, who with others raised Harold to the throne<sup>4</sup>, were doubtless such 'burg-thegns.' Citizens serving the king on horse<sup>5</sup> and 'rad-cnihts'<sup>6</sup> are referred to in connection with the boroughs of Domesday. In the Anglo-Saxon charters cnihts are often witnesses side by side with the port-reeve, where in other similar documents we find the 'cives' at large or the 'burh-ware'<sup>7</sup>. There can be no doubt that many cnihts participated in commerce and in the management of burghal affairs.

The cnihts' guild of which we have the most detailed account is the 'Anglica cnihtene-gild' of London<sup>8</sup>. Our information regarding it is extracted from the Letter Books of the London City Corporation; the details given in the City archives were transcribed from the chartulary of the Holy Trinity Priory<sup>9</sup>. A strong flavour of the fabulous element pervades the story of the origin of this guild. In the days of Cnut, king of England, there were thirteen cnihts very dear to the king and to the realm, who besought Cnut to give them a certain portion of land in the eastern part of London—forsaken by reason of too much service—and, with it, the liberty of a guild for ever. The king willingly assented on condition that each of them should victoriously fight three combats, viz. above ground, below it, and in the water, and that afterwards on a certain day, in the field called

<sup>1</sup> Hutchins, Dorset, i. 472.

<sup>2</sup> Kemble, Cod. Dip., iv. 133, 212-214, 219, 221. For the thanes of the Five Danish Burghs, see Palgrave, Commonw., i. 644. The 'wic-gerefa' of Winchester is called a king's thegn in the Anglo-Saxon Chronicles under the year 897.

<sup>3</sup> Spelman, Gloss., s.v. 'baro'; Burrows, Cinque Ports, 77-79, 165.

<sup>4</sup> Anglo-Saxon Chronicles, anno 1036.

<sup>5</sup> Domesday, i. 56, 179, 252 (Wallingford, Hereford, Shrewsbury). 'Equites' of Nottingham are also mentioned (*ibid.*, 280).

<sup>6</sup> Above, p. 185, n. 3.

<sup>7</sup> Kemble, Cod. Dip., ii. 83, vi. 155, 184; Thorpe, Dip. Angl., 128, 377, 633; Turner, Anglo-Saxons, iii. 123; Hicke, Ling. Vett., i. p. xxi. Cf. Kemble,

Cod. Dip., iv. 117, 270, 285, vi. 180, 207; Thorpe, Dip. Angl., 303, 350, 372, 510, 641. The status of the cnihts in the boroughs of England calls to mind Nitzsch's theory regarding the 'ministeriales' in German towns (Nitzsch, Ministerialität und Bürgerthum im 11. und 12. Jahrhundert).

<sup>8</sup> See above, pp. 78-80; Cooté, English Guild of Knights; Loftie, Hist. of London, i. 98, 99; Stow, London, 115-117; Maitland, London, ii. 1011-1013; Stubbs, Const. Hist., i. 404-406; Wilda, Gildenwesen, 247, 248; Norton, Comment., 25; Madox, Firma Burgi, 23, 30.

<sup>9</sup> This chartulary was formerly in the possession of John Anstis or Thomas Astle (Monast. Angl., vi. 151, 155). As far as I can learn, it is no longer in existence.

East Smithfield, they should contend with lances against all comers. These conditions were gloriously fulfilled. And on the said day the king invested them with the name of *cnihten gild*<sup>1</sup>. Edward the Confessor gave them a charter, granting that they might have their manorial jurisdiction ('*socn*'), and be as worthy of good laws as they were in the days of Edgar, Ethelred, and Cnut; and that no man should wrong them, but that they should all be in peace<sup>2</sup>. William I, William II, and Henry I confirmed to the men of the '*cnihtene gilda*' their gild and land and customs, as they had them in the time of King Edward (the Confessor)<sup>3</sup>. We next hear of the fraternity in 1125, when certain burgesses of London, fifteen in number, 'from the ancient progeny of noble English *cnihts*,' assembled in the chapter-house of the Holy Trinity near Aldgate, and gave to that church and the canons thereof the land and *soke*<sup>4</sup> called '*Anglissih Cnihtegilda*,' outside that gate, extending to the Thames; in return for which donation they were admitted into the monastery. To strengthen the agreement they offered up on the altar of Holy Trinity Church the charter of Edward and their other charters, and sent Orgar the Proud ('*le Prude*'), one of their number, to King Henry, praying him to confirm their gift; which the King did<sup>5</sup>.

<sup>1</sup> '*Temporibus Knwiti Regis Anglorum fuerunt tresdecim milites, regi et regno multum amabiles, qui quandam terram in orientali parte London[ie], ab incolis pro nimia seruitute derelictam, a rege petierant, quatenus predictam terram et Gilde libertatem imperpetuum eis concederet. Quibus Rex libenter concessit condicione qua sequitur, videlicet, quod quilibet eorum tria duella, scilicet super terram, subtus, et in aqua, victoriose perageret. Et postea certo die in campo qui modo vocatur Estamithfeld contra quosque aduenientes ipaimet bastis decertarent; quodque gloriose factum est. Et ipso die Rex nominavit eam Knyttgildam.'* (City Archives. Liber Dunthorn, 78 b; Letter Book C, 134 b.)

<sup>2</sup> Liber Dunthorn, fol. 79; Letter Book C, fol. 134b. This charter is printed in Coote's English Gild, 481.

<sup>3</sup> Liber Dunthorn, fol. 79; Letter Book C, ff. 134b-135. Cf. Madox, *Firma Burgi*, 23, 24; *Monast. Anglic.*, vi. 156; Maitland, *Lead.*, ii. 1011.

<sup>4</sup> Afterwards Portsoken Ward. See Loftie, London, 30-34.

<sup>5</sup> '*... anno ab incarnatione domini millesimo centesimo vicesimo quinto quidam burgenses Londonie ex illa antiqua nobilitum militum anglorum progenie, scilicet, Radulfus filius Algody, Wulwardus le Douersshe, Ogarus le Prude, Edwardus Upcornhill, Blackstannus, et Alwynus cognatus eius, Ailwinus et Robertus frater eius filii Leostani, Leostanus Aurifaber, et Wyzo filius eius, Hugo filius Vulgari, Algarus Fecusenne (?), Orgarus filius Deremanni, Osbertus Drinchepeya, Adelarthus Hornepitesume, conuenientes in capitulo ecclesie Christi, que sita est infra maros eiusdem ciuitatis juxta portam que nuncupatur Algate, dederunt ipsi ecclesie et canonicis Deo seruientibus in ea totam terram et *socam* que dicebatur de Anglissih cnihtegildam (*vic*) vrbis, que maro adiacet foras eandem portam et protenditur vsque in fluiuium Thamesiam. Dederunt inquam suscipientes fraternitatem et participacionem beneficiorum*

Thus the gild was dissolved, no trace of it appearing after this date. The various sources at our disposal throw little light upon the original functions of this brotherhood. There is no evidence to show that the London cnihten gild as such formed a part of the town government, or had any official connection with the municipal authorities<sup>1</sup>. We can only assert that these cnihts were probably burghesses, and constituted an influential fraternity in London.

A cnihts' gild existed in other towns besides London. The Winchester Domesday speaks of 'the cnihts' hall, where the cnihts used to drink their gild' ('chenictehalla ubi chenictes potabunt gildam suam, et eam libere tenebunt de rege Edwardo'<sup>2</sup>); and of a second hall held by cnihts in the reign of Edward the Confessor ('Chenictes tenebant la chenictahalla libere de rege Edwardo'<sup>3</sup>). Again, in a Canterbury charter (860-866), we meet with a 'cnihta gealdan'<sup>4</sup>. Thus we find this fraternity in three of the most important cities of England.

loci illius per manum Normanni Prioris, qui eos et predecessores suos in societatem super textum euangelii recepit. Et vt firma et inconcussa (?) starec hec eorum donacio cartam sancti Edwardi cum aliis cartis prescriptis quas inde habebant super altare optulerunt,' etc. (Liber Dunthorn, fol. 79; Letter Book C, fol. 135.) This gift to the monks of Holy Trinity was confirmed by Henry I and Stephen. See Letter Book C, fol. 135; Rymer, Foedera, i. 11, 15; Madox, Firma Burgi, 23, 24; Placita de quo War., 460, 471, 472; Monast. Angl., vi. 156-158; Stevens, Abbeys, ii. 84-89. 'Item Gaufridus Comes Essex ac constabularius principalis Turris renunciauit totum clamium suum de predicta terra, vt patet per cartam sequentem.' He gives to Holy Trinity 'molendina sua iuxta turrim et totam terram extra turrim que pertinebat ad Englisce cnihtengildam cum Smethfelda et hominibus et omnibus aliis rebus eidem pertinentibus.' (Letter Book C, fol. 135 b.)

<sup>1</sup> Cf. above, pp. 78-80. Loftie advances no proof to maintain his assertion that 'the governing body of London

was the Knightenguild' (Loftie, London, 30).

<sup>2</sup> Domesday Book, iv. 531. 'Ailwardus chenicte tenuit i. domum tempore regis Edwardi,' etc. (ibid., iv. 532).

<sup>3</sup> Ibid., iv. 533.

<sup>4</sup> Kemble, Cod. Dip., ii. 83; Thorpe, Dip. Angl., 128. See also Kemble, Saxons, ii. 335. Cf. vol. ii. p. 37: 'cnihtan on Cantwareberig,' etc., circa 1100. Green (Conquest of England, 440) speaks of a 'cnihten-gild' at Nottingham, probably founding his statement upon Domesday (i. 280), which mentions 'equites' of Nottingham, but says nothing concerning a gild. At Wycombe there was, in the thirteenth century, a public building called 'Knaves-thorn,' which Parker thinks was identical with 'cnihten-thorn,' the court or gild-hall of the burghesses (Parker, Wycombe, 13). Knave (cf. German 'knabe,' 'knappe') and cniht originally had the same signification. In playing cards we still use knave for knight. See Skeat, Dict., s. v. 'knight' and 'knave'; Ettmüller, Lexicon, 395, 396; Wedgwood, Dict. 372.

To other Anglo-Saxon gilds, besides the seven already discussed, the sources give only a few scanty references. According to William of Worcester the Gild of the Calendars of Bristol was founded before the Norman Conquest<sup>1</sup>. This information is probably as untrustworthy as that given by Trussel regarding a Winchester gild, which, he affirms, was in existence in 856<sup>2</sup>. In 956 and again in 958 'the three *gefer-scipas*' of Canterbury occur among the witnesses of a charter<sup>3</sup>. This expression may refer to three gilds; and it is commonly so construed<sup>4</sup>. But a later copy of the charter of 958 states explicitly that these three '*gefer-scipas*' were three monastic bodies: '*pet is al se hird at Cristes-cheriche and Seynt Austynes and at Seynt Gregories*.' Domesday Book speaks of a gild-hall ('*gihalla*') at Dover<sup>5</sup>. King Edgar's Canons (959-975)<sup>6</sup> and the '*Leges Henrici Primi*'<sup>7</sup> refer in a general way to the '*gild-scipe*' and the '*gilde*.'

<sup>1</sup> Taylor, Book about Bristol, 227, 228; English Gilda, 287. Cf. above, p. 83, n. 11.

<sup>2</sup> Vol. ii. p. 252.

<sup>3</sup> Thorpe, Dip. Angl., 510; Somner, Cant., i. 178; Kemble, Cod. Dip., ii. 355.

<sup>4</sup> See Stubbs, Const. Hist., i. 415; Waitz, Verf., i. 465; Schmid, Gesetze, 603. Cf. Thorpe, Dip. Angl., 606-612; and above, p. 182, n. 4. After the Norman Conquest the term seems to have been used in this same sense. See Archaeol. Assoc., Journal, xl. 6. Cf. Nares, Gloss., s. v. '*ferre*'; English Gilda, 467 (*ferre* = companion, fellow, company).

<sup>5</sup> Thorpe, Dip. Angl., 511.

<sup>6</sup> '*Willielmus filius Gosfridi [habet] iii. [mansuras], in quibus erat gihalla burgensium*' (Domesday, i. 1 a). Cf. above, p. 80. In Domesday, i. 2, 3, are two passages which are commonly said to refer to a priests' gild and burger gild of Canterbury: '*xxxii. mansuras quas tenent clerici de villa in gildam suam*'; '*burgenses habebant de rege xxxiii. acras terre in gildam suam*.' See Stubbs, Const. Hist., i. 415. I think that the proper translation is '*in their geld*,' i. e. in their '*geldable*,' or lands subject to geld. Cf. '*quod*

*jacuit in gildam de Dovere*' (Domesday, i. 11 b); '*hae [hidae] geldebant cum civitate . . . Erant in ipsa civitate cccc. et xxxi. domus geldantes*' (ibid., i. 262 b. Chester). Cf. also above, p. 59, note; and p. 178.

<sup>7</sup> '*And we enjoin that no priest deprive another of any of those things which appertain to him, neither in his minster, nor in his shrift-district, nor in his gildship (ne on his mynstre, ne on his scrift-scipe, ne on his gild-scipe), nor in any of the things appertaining to him.*' (Thorpe, Laws, 396.) A.D. 979-1015, Athelmar '*dux*' bequeathed '*ii. pund in to maessepreosta gyld; and i. pund in to diacona gyld*,' at Winchester (Liber de Hyda, 254). Perhaps '*gild-scipe*' in Edgar's Canons and in the Woodbury gild (Thorpe, Dip. Angl., 610) may simply mean an ecclesiastical district, '*gild*' being used in the sense of worship, as in Withrad's laws. Cf. above, p. 177, n. 4.

<sup>8</sup> '*In omni potatione, dationi, vel emptio[n]i, vel gilde, vel ad quilibet in hunc modum praeparata, primo pax Dei et Domini inter eos qui convenerint*' (Schmid, Gesetze, 478; Thorpe, Laws, 256). Cf. the passage in Walker Map, De Nugis, 79: '*quales Anglici in singulis singulas habebant diocesibus*

It is evident that gilds were a well-known institution among the Anglo-Saxons. But there is a strong tendency to exaggerate their number. For example, the 'ingan burghware' of Canterbury, which Kemble calls 'a burghers' club or gild<sup>1</sup>, means simply the burgesses within the town, being identical with the 'innan burh-wara' who in some Canterbury documents are contrasted with the 'utan burh-wara' or 'out-burgesses'. The association which Thorpe in his 'Diplomatarium' (p. 615)<sup>2</sup> places under the rubric 'gilds,' was a union of seven monasteries existing in the reign of William the Conqueror. Each of them was enjoined to have masses sung weekly for the welfare of all, as though all seven bodies had one mind and one heart ('quasi cor unum et anima una'). Such federations were quite common on the Continent<sup>3</sup>. The 'gebeor-scipe' or 'gebur-scipe,' which Thorpe feels inclined to make 'a club resembling a gild<sup>4</sup>, is, in most cases, simply equivalent to 'compotatio' or 'convivium'; and was no more a real gild than the 'convivia' of Tacitus<sup>5</sup> or the wakes of later times<sup>6</sup>. It is well known that the Anglo-Saxons were very convivial: 'conviviis et potationibus non praeliis intendunt'<sup>7</sup>; but their convivial meetings were not confined to gilds. Again, the 'deofol-gild' (devil-worship) of Ine's laws was not, as some assert, a society or fraternity<sup>8</sup>. Many writers go so far as to include the 'frith-borh' and hundred in the category of gilds<sup>9</sup>. We are even in-

bibitorias, *ghild-hus* Anglice dictas.' Anselm wrote from Bec as follows concerning the doings of an officer of a monastery in England: 'in multis inordinate se agit et maxime in bibendo [ita] ut in Gildis cum ebriosis bibit;' 'ne... amplius in Gilda aut in conventu eorum qui ad inebriandum solum conveniunt bibere audeat.' (Anselmus Cant., Epist., lib. ii. Epist. 7.)

<sup>1</sup> Kemble, Saxons, ii. 335; Cod. Dip., ii. 83.

<sup>2</sup> Thorpe, Dip. Angl., 510, 511; Somner, Cant., i. 178; Kemble, Cod. Dip., ii. 355.

<sup>3</sup> Also printed in Hickee, Diss. Epist., 19, 20.

<sup>4</sup> Wilda, Gildenw., 31; Rettberg, Kirchengesch., ii. 788, 789. See also Rock, Church of our Fathers, ii. 379.

<sup>5</sup> Thorpe, Laws, Gloss, s. v.

<sup>6</sup> Schmid, Gesetze, 24. Cf. also Hloth. and Eadr., c. 12, 13, 14; Athelr.,

iii. c. 1; Hen. I, c. 87 (Schmid, 12, 212, 481, 482; Thorpe, Laws, 14, 124, 259).

<sup>7</sup> See Waitz, Verf., i. 90.

<sup>8</sup> For these wakes, see Thorpe, Laws, 257; Spelman, Gloss, s. v.; Eng. Gilds, p. xcii.

<sup>9</sup> Stubbs, Const. Hist., i. 216. See also Turner, Anglo-Saxons, iii. 58, 59; Wright, Domestic Manners, 77; Thorpe, Laws, Index to Monum. Eccles., s. v. 'drunkenness.'

<sup>10</sup> Lappenberg, Engl. i. 609; Marquardsen, Haft, 43, 44. See above, p. 177, n. 4.

<sup>11</sup> Pictou, Self-gov., 682; Pike, Crime, i. 58; Varenberg, Relations Dipl., 34-35; Wilkins, Leges, 395; Spelman, Gloss., s. v. 'geldum.' Kemble (Saxons, i. 238-245, ii. 309-313, 332) identifies the gilds with the 'frith-borh,' and yet in one place he speaks of the former as private, voluntary associations, and in

formed that the name of the historian Gildas was derived from a gild<sup>1</sup>. We must remember that a transient convivial gathering did not constitute a gild, that this word did not necessarily mean a fraternity, and that the gild was only one of various manifestations of the principle of association in the middle ages.

Not merely the number but also the influence of Anglo-Saxon gilds has been greatly exaggerated. There is no evidence to support the assertion that the gild was a primary factor in the origin and early development of the English municipality—that it was the basis or nucleus of the borough constitution<sup>2</sup>. The burden of proof lies with those who advance this theory, and not with those who reject it. Brentano cites only one example in support of his generalisation that 'a patrician aristocracy' in the form of a supreme gild ('sumum convivium') became the governing body, or constituted the town corporation, in Anglo-Saxon boroughs. This one example is the thanes' gild of Canterbury<sup>3</sup>, concerning which the sources give us no information whatsoever. Hence Brentano's evidence is purely conjectural. His commonly accepted story of a great network of frith gilds covering England, battling with lordly oppressors, founding town constitutions, etc., is merely a phantasm of the imagination—a dramatic version of the few prosaic facts presented in the sources of this period.

In conclusion, we may also remark that our survey of Anglo-Saxon gilds has revealed no trace of a Gild Merchant.

another place makes the 'frith-borh' a public, compulsory union (t. 239, ii. 309).

<sup>1</sup> Make, *Mœurs*, i. 190.

<sup>2</sup> Above, pp. 77-85, 170.

<sup>3</sup> Brentano, *Engl. Gilda*, p. xcviij.



## APPENDIX C.

### THE ENGLISH HANSE<sup>1</sup>.

ALTHOUGH the word 'hansa' is clearly un-English, the name of the Hanseatic League is often supposed to have been derived from England<sup>2</sup>; but we search in vain in the works of continental and British writers for a clear explanation of the term 'hanse,' as used in English towns during the middle ages<sup>3</sup>. Professor Pauli's essay on the 'Aufreten und Bedeutung des Wortes Hansa in England,' consists merely of a few vague conjectures concerning this institution<sup>4</sup>. English writers generally ignore its existence; those who incidentally touch upon the subject either dismiss it with a few vague phrases, or follow the example of Merewether and Stephens<sup>5</sup> in confounding the local hanses of Englishmen with the Teutonic Hanse ('hansa Alemanniae') of Germans trading in England. The elucidation of the subject is difficult, owing partly to the meagreness of the widely scattered sources, partly to a certain ambiguity with which the term was employed.

The word rarely occurs except in the town charters, and then almost invariably in connection with the gild merchant. Though the gild is often granted without any mention of the hanse, the latter commonly appears in town charters in close proximity to the former: 'quod [burgenses] habeant gildam mercatoriam cum hansa,' or 'gildam mercatoriam et hansam,' or 'gildam mercatoriam cum hansa et aliis consuetudinibus et libertatibus ad gildam illam pertinentibus.' It also frequently appears in the clause relating to

<sup>1</sup> The substance of this Appendix was printed in the *Revue Historique*, vol. 33, pp. 296-303.

<sup>2</sup> Sartorius, *Gesch. der Hanse*, i. 73; von Maurer, *Städteverf.*, ii. 254; Stubbs, *Const. Hist.*, i. 411, 422.

<sup>3</sup> The O-English word is *hós* found in *Béowulf*, 924, but apparently not used in prose.

<sup>4</sup> *Hans. Geschichtsblätter*, 1872, pp. 15-20. It is strange that such an eminent authority on English History could find only four instances of the use of the word 'hanse' in connection with English towns.

<sup>5</sup> *Hist. of Boroughs*, 1049. Cf. also Blount, *Dict.*, s. v. 'hanse.'

the enfranchisement of the villein: 'si natus . . . fuerit in gilda et hansa,' etc.<sup>1</sup>

The following is a list of most of the charters that refer to the hanse:—

Name.	Date.	Authorities.
Aberystwyth . . . .	1277 . . . .	Above, p. 16.
Athboy . . . . .	1407 . . . .	Above, p. 18.
Bala . . . . .	1324 . . . .	Above, p. 16.
Beumaris . . . . .	1296 . . . .	Vol. ii. p. 16.
Berwick . . . . .	1302 . . . .	Cal. Doc. Scotl., ii. 334 <sup>2</sup> .
Beverley . . . . .	1119-35 . . . .	Vol. ii. pp. 21-22 <sup>3</sup> .
Bridgnorth . . . . .	1227 . . . .	Eyton, Shrop., i. 303.
Builth . . . . .	1278 . . . .	Vol. ii. pp. 355, 356.
Caerwys . . . . .	1290 . . . .	Vol. ii. p. 357.
Cardigan . . . . .	1388 . . . .	Merew. and Stephens, 778.
Carnarvon . . . . .	1284 . . . .	Above, p. 16.
Conway . . . . .	1284 . . . .	Above, p. 16.
Criccieth . . . . .	1284 . . . .	Above, p. 17.
Denbigh . . . . .	1379 . . . .	Williams, Denbigh, 119.
Drogheda . . . . .	1229 . . . .	Vol. ii. p. 58.
Dundalk . . . . .	1379 . . . .	Munic. Corp. Com., Irel., 891.
Dunwich . . . . .	1200 . . . .	Rot. Chart., 51, 211.
Exeter . . . . .	Hen. VIII . . . .	Vol. ii. p. 86.
Flint . . . . .	1284 . . . .	Taylor, Flint, 31.
Gloucester . . . . .	1227 . . . .	Vol. ii. p. 374.
Grimsby . . . . .	1324 . . . .	Swinden, Yarm., 28.
Harlech . . . . .	1284 . . . .	Above, p. 17.
Hedon . . . . .	1348 . . . .	Vol. ii. p. 108.
Hereford . . . . .	1215 . . . .	Rot. Chart., 212; vol. ii. p. 110.
Hope . . . . .	1351 . . . .	Vol. ii. pp. 375, 376.
Ipswich . . . . .	1200 . . . .	Vol. ii. p. 115.
Lampeter . . . . .	1332 . . . .	Above, p. 17.
Liverpool . . . . .	1229 . . . .	Harland, Mamec., 198 <sup>4</sup> .
Ludlow . . . . .	1461 . . . .	Charters of Ludlow, 11, 12.
Montgomery . . . . .	1227 . . . .	Above, p. 17.
Newborough . . . . .	1303 . . . .	Above, p. 17.
Newcastle . . . . .	1201 . . . .	Rot. Chart., 86 <sup>5</sup> .
Newton . . . . .	1363 . . . .	Vol. ii. p. 386.
Oswestry . . . . .	1398 . . . .	Vol. ii. p. 191.
Overton . . . . .	1291-2 . . . .	Above, p. 17.
Preston . . . . .	[Edw. III] . . . .	Vol. ii. p. 194 <sup>6</sup> .

<sup>1</sup> See above, pp. 8, 59.

<sup>2</sup> See also vol. ii. p. 19.

<sup>3</sup> Cf. below, p. 196.

<sup>4</sup> See also Pictou, Memor., I. 13.

<sup>5</sup> See also Brand, Newc., ii. 131, 132.

<sup>6</sup> Harland, Mamec., 182, thinks that

Name.	Date.	Authorities.
Pwllheli . . . . .	1355 . . . . .	Above, p. 17.
Rochester . . . . .	1227 . . . . .	Vol. ii. p. 387.
Rhuddlan . . . . .	1278 . . . . .	Above, p. 18.
Scarborough . . . . .	1253 . . . . .	Vol. ii. p. 388.
Shrewsbury . . . . .	1227 . . . . .	Vol. ii. pp. 210, 211.
Welshpool . . . . .	[Edw. I] . . . . .	Vol. ii. p. 389.
Wigan . . . . .	1246 . . . . .	Sinclair, Wigan, i. 41.
Worcester . . . . .	1264 . . . . .	Vol. ii. p. 272.
York . . . . .	1200 . . . . .	Vol. ii. p. 279 <sup>1</sup> .

These passages in the town charters leave a strong impression on the mind that the hanse was in some way connected with the guild merchant, but in what way they do not reveal. For more light we must turn to other records.

The term 'hanse' was most commonly used to denote a mercantile tribute or exaction, either as a fee payable upon entering the guild merchant, or as a toll imposed upon non-gildsmen before they were allowed to trade in the town. Thus at Ipswich, in the second year of the reign of King John, the brethren, having established their guild, were directed to contribute their hanse to the fraternity ('et ad hansam suam eidem Gilde dandam<sup>2</sup>'). New members admitted to the guild at Ipswich generally made a payment to the hanse of the guild ('ad hansam gilde ville<sup>3</sup>'). In the principal towns of Wales (Beaumaris, Conway, Bala, Newborough, Carnarvon, Harlech, and Criccieth) it was necessary before entering the guild to pay the hanse, which in the Record of Carnarvon is expressly defined as a 'proficuum' or 'custuma<sup>4</sup>'. In a document relating to Conway we find a similar definition:—'Hansa, hoc est primum custumu[m] vocatum hansa<sup>5</sup>.' At Andover some of the members of the guild merchant had the 'gildam hansariam' in distinction from the 'gildam liberam'; in other words, their gildship was subject to a certain payment called 'hans<sup>6</sup>.' The burgesses of Bury St. Edmund's, who had revolted against the authority of the Abbot, and had claimed among other liberties the right of establishing

the charter in which the word 'hanse' occurs, was granted to the burgesses of Preston about A. D. 1100.

<sup>1</sup> See also Drake, Ebor., 228.—For the use of the word 'hanse' in other records besides town charters (at Andover, Bury St. Edmund's, Ipswich, Leicester, Oxford, and various boroughs of Wales and Scotland), see below, pp.

194-197.

<sup>2</sup> Vol. ii. p. 121.

<sup>3</sup> Vol. ii. pp. 123, 124, 377.

<sup>4</sup> Vol. ii. p. 16, 48.

<sup>5</sup> Williams, Aberconwy, 182.

<sup>6</sup> Above, p. 31. 'Gildam quam tenet, pro qua interrogatus fuit soluere suum hans' (vol. ii. p. 292).

a gild merchant, imposed a tax called 'hansing silver' upon all who wished to remain among them<sup>1</sup>.

In the Leicester Gild Rolls a newly admitted brother was often said to be 'quietus de introitu et de hansis.' In one case we find 'quietus de introitu, et de ansis per totam Angliam<sup>2</sup>.' Here hanses can only mean tolls or mercantile exactions. The term is used in a cognate sense in a charter granted by King John to the burgesses of Newcastle-upon-Tyne:—'quietantiam de theloneo et passagio et pontagio et de ansa et de omnibus aliis consuetudinibus per totam terram nostram<sup>3</sup>.' A charter of Edward II allows the burgesses of Grimsby to be quit, throughout the realm, of tolls, pontage, lastage, 'hansagio,' etc.<sup>4</sup>. At Oxford a similar prestation bore the name of 'hanseria':—'uno redditu qui vocatur basket stallagio, piscaria, coquinaria, et hanseria, qui valent per annum xl. li.<sup>5</sup>' In the same category of hanse exactions, though bearing a different name, we may class the 'gildwite,' extorted by the gild of Lincoln from merchants passing near that city<sup>6</sup>, and the 'customa mercatorum,' called 'gild-silver,' at Henley<sup>7</sup>.

When, then, a charter granted to a town 'gilda mercatoria cum hansa,' or 'cum hansis,' it doubtless meant 'the gild merchant with the right to exact money requisitions or prestations from the brethren as well as from non-gildsmen trading in the town.' In the sixteenth and seventeenth centuries the Merchant Adventurers of England often used the word 'hanse' in one of the senses mentioned above, *i.e.* that of entrance-fee<sup>8</sup>.

<sup>1</sup> Vol. ii. p. 32.

<sup>2</sup> Vol. ii. pp. 137, 138.

<sup>3</sup> Rot. Chart., 86; Brand, Newc., ii. 131, 132.

<sup>4</sup> Oliver, Grimsby, 79. In 17 Edward II the king directed the bailiffs of Yarmouth not to impose toll, hanse, etc. upon the men of Grimsby, contrary to the latter's charter, but to allow them to be quit of the same: 'de hujusmodi thelonio, muragio, passagio [i. e. passagio], pontagio, stallagio, hansagio, anchorage, terragio, kayagio, passagio et sedagio, vobis ibidem de eisdem bonis et mercimoniis prestand[is] quietos esse permittatis.' (Swinden, Yarm., 28.)

<sup>5</sup> Madox, Firma Burgi, 94 (22 Edw. I). Turner (Oxford Records, 23) thinks that 'hanasterii,' the term applied to

freemen or gildsmen at Oxford, was derived from 'hanse.' See vol. ii. p. 194.

<sup>6</sup> Vol. ii. p. 147. Cf. above, p. 50, n. 1.

<sup>7</sup> Vol. ii. p. 109.

<sup>8</sup> 'It is ordered and enacted that for the futer for all Hanses, Fines and Brookes att Admissions and all Brookes condemned in Court for any kind of Transgressions against the orders of the Fellowship, and all other moneys whatsoever for which there are securitys put in to satisfy the Treasurer, the same shall be cleared by each respective Treasurer in whose time the said Debts did arise . . . .' (Jan. 1658.—Addit. MS., Mus. Brit., 18913, fol. 19.)—'Everie persone admitted into the Freedom of the Fellowship of Merchant Adventurers of the Realm of

Hanse was also sometimes employed in the middle ages as a synonym for 'gilda mercatoria'.<sup>1</sup> Thurstan, Archbishop of York, granted to the burgesses of Beverley a 'hans-bus,' which term is superseded in the confirmation charters of Archbishop William and King Henry I by 'gilda mercatoria'.<sup>2</sup> In the sixteenth century the gild-hall of Beverley was called the hanse-house.<sup>3</sup> At Ipswich 'gilda' and 'hansa' or 'hansa de gilda' were sometimes used synonymously.<sup>4</sup> In Liber Winton a gild-hall of Winchester bears the name 'hantachensele,' which looks like a corruption of 'hanse-sele' (German, 'hansa-saal'): 'hantachensele ubi probi homines Wintonie potabant Gildam suam'.<sup>5</sup> In charters conferred by English kings upon the Teutonic Hanse, gild and hanse are used synonymously.<sup>6</sup> The gild, or company, of Merchant Adventurers of England was also in later days called 'a haunce'.<sup>7</sup>

England shall pay at suche his admision yf he come in one the old hanse, as yt ys termed, 6s. 8d. sterlinge, And yf he come in one the new hanse, tenne markes sterlinge, according to the Rate of the Exchaunge.' (Circa 1600.—Ibid. f. 23.) See also Schanz, *Englische Handelspolitik*, ii. 557, 558, 561; Anderson, *Origin of Commerce*, i. 233; Malynes, *Center of Circle of Commerce*, 89.

<sup>1</sup> This is the view of Stubbs, *Constitutional History*, i. 411, 416; Dobson and Harland, *Preston Guild*, 5; Pauli, *Auftreten und Bedeutung des Wortes Hansa*, 17; Lappenberg, *Engl. i.* 611; Herbert, *Liv. Comp.*, i. 11; Thompson, *Essay on Municipal History*, 99; Owen and Blakeway, *Shrewsbury*, i. 100. But they do not give any example of the synonymous use of the two terms.

<sup>2</sup> Vol. ii. pp. 21, 22. 'Hans-bus' is here the equivalent of 'hanse,' just as 'domus' or gild-hall frequently stands for gild. See *English Guilds*, 60, 167, *et pass.*; Richards, *Lynn*, 457, 458; and vol. ii. pp. 5, 12, 109, 154, 162, 203, 207, 208, 271, 272.

<sup>3</sup> See Poulson, *Beverlac*, 314, 330, 332. 'The accompte of John Truslove, late maior of the townen of Beverley within the Countye of Yorke, of all the rents, revenewes, yssues, profittyes, and comoditytes perteyninge to the hanse house and comynaltie of the same towne,'

etc. (*Ibid.*, 330, 27 Eliz.) Poulson regards 'hanse-house' thus used as a synonym for gild-hall. (*Ibid.*, 332.)

<sup>4</sup> Rep. MSS. Com., 1883, pp. 240, 241; cf. vol. ii. pp. 123, 124, 377.

<sup>5</sup> Woodward, *Hampsh.*, i. 266. In the edition of the Liber Winton, published by the Record Commission (*Domesday*, iv. 556), this word has been incorrectly transcribed from the original. I have given the passage as it stands in the manuscript owned by the Society of Antiquaries of London.—In the thirteenth century the gild-hall of Leicester was called 'gild salle' (*Notes and Queries*, First Series, v. 532). For 'thol-sel,' see above, p. 82, n. 1. There was also a merchants' hall or 'Sele' in Winchester called 'chepmane-sela' (*Pipe Rolls*, 3 Hen. II, 108; 5 Hen. II, 48; 6 Hen. II, 49; and other early Pipe Rolls; *Archaeol. Journal*, vii. 381).

<sup>6</sup> Liber Albus, 535, 540; Sartorius, *Hanse*, i. 42; Campbell, *Materials for Reign of Henry VII*, i. 476.

<sup>7</sup> Rep. MSS. Com., 1874, p. 203 (A.D. 1552).—Some writers think that 'hanse' in the town charters of Great Britain refers to a union of burgesses for the purpose of carrying on foreign commerce. See Baines, *Liverpool*, 93; Drake, *Eboracum*, 228. But there is no evidence in the sources to support this hypothesis. Moreover, many of the

In some charters granted to Irish towns, the words 'gildam mercatoriam cum hansa' are replaced by the following: 'Liceat burgensibus meis gildam mercatoriam et alias gildas habere et suos scotenos, cum omni libertate ad ipsos spectante, sicut consuetudo est allarum bonarum villarum'.<sup>1</sup> It is quite probable that these words 'suos scotenos' confer the same privilege as 'hansa' in the English charters.

In Scotland the word 'hanse' was not as prevalent as in England. It rarely occurs in Scotch town charters. There is, however, one very noteworthy instance of its use. King William the Lion (1165-1214) granted to his burgesses of Aberdeen and all the burgesses of Moray and those north of the Munth (probably Kintore, Banff, Cullen, Elgin, Forres, Nairn, and Inverness) their free hanse:— 'Willelmus dei gracia Rex Scottorum omnibus probis hominibus tocius terre sue salutem. Sciant presentes et futuri me concessisse et hac carta mea confirmasse burgensibus meis de Aberdoen et omnibus burgensibus de Moravia et omnibus burgensibus meis ex aquilonali parti de Munth manentibus liberum ansum suum tenendum ubi voluerint et quando voluerint, ita libere et quiete, plenarie et honorifice, sicut antecessores eorum tempore Regis David aui mei ansum suum liberius et honorificentius habuerunt. Quare prohibeo firmiter ne quis eos inde vexet aut disturbet, super meam plenariam forisfacturam. Testibus . . . apud Perth'.<sup>2</sup> Some eminent Scotch writers have regarded this hanse as a federation of towns.<sup>3</sup> If this were true, the passage would be very valuable as furnishing us with the earliest instance of the use of the term in this sense; the 'ansum' north of the Munth would, in fact, be the harbinger of the celebrated Hanseatic League. But it is more probably intended, either as a general grant of the Gild Merchant<sup>4</sup>, or as a grant of the right to impose the hanse tribute upon merchants.

boroughs that received a grant to the gild and hanse were insignificant inland towns, the burgesses of which had little to do with foreign commerce. Drake calls the 'hansas' mentioned in the charter of York (vol. ii. p. 279) 'foreign colonies' of the gild (Eboracum, 228). It is far more probable that 'hansas' is to be construed with the words 'lestagia' and 'quieta,' the sense of the passage being simply that the burgesses are to be quit of mercantile imposts in England and Normandy. The plural

'hansas' also occurs in charters of Hedon and Scarborough (vol. ii. pp. 208, 388).

<sup>1</sup> Vol. ii. p. 134; and above, p. 59, note.

<sup>2</sup> Acta Parl. Scotl., i. [77] 87.

<sup>3</sup> Munic. Corp. Com., Scotl., Rep., p. 11; Burton, Scotland (2nd edition), ii. 89; Irving, Burghs in Scotland, Glasgow Archaeol. Society, Trans., i. 342; Innes, Anc. Laws and Customs, p. xxxix.

<sup>4</sup> Compare the following passage in

On the Continent, as is well known, the word *hanse* was used in the various senses noted above, viz. as an entrance-fee of a trading gild<sup>1</sup>, as a mercantile exaction<sup>2</sup>, as synonymous with merchant or craft gild<sup>3</sup>, and, above all, as a society of merchants trading in foreign parts<sup>4</sup>.

the 'Assise Regis Willelmi I':—'Item statuit quod mercatores regni habeant gildam suam mercatoriam et ita gaudeant in pace, cum libertate emendi et vendendi ubique infra limites libertatum burgorum.' (Acta Parl. Scot., i. 383.) The Guild Merchant was sometimes granted to the English towns with a clause similar to 'tenendum ubi voluerint et quando voluerint.' See above, p. 58; *Archaeol. Journal*, xxix. 352.

<sup>1</sup> Du Cange, *Gloss.*, s. v. 'apprenticiatus,' and 'hansa.'

<sup>2</sup> Höhlbaum, *Urkundenbuch*, iii. 408, 553; Du Cange, *Gloss.*, s. v. 'hansa'; *Giry*, *St. Omer*, 372, and *Documents*, 47; *Wauters*, *Lib. Com.*, 586, and *Preuves*, 234, 235; *Von Maurer*, *Städteverf.*, i. 194, ii. 279; *Sartorius*, *Hanse*, i. 75, ii. 9; *Warnkönig*, *Fland.*, i. 329 and *No. civ.*; *Grimm*, *Wörterb.*, s. v. 'hanse'; *Kemble*, *Saxons*, ii. 529.

<sup>3</sup> 'Mercatorum societati [of Brackel] que vulgariter hanse dicitur.' (A. D. 1309. *Gengler*, *Codex*, 267; cf. *ibid.*, 964.) There was also at Brackel a 'hanza pistorum' in 1315 (*ibid.*, 267). The 'handicraftsmen's hanse' of Driburg is spoken of in 1345: 'de der hantwerken hanze winnet,' etc. (*ibid.*, 904). See also Höhlbaum, *Urkundenb.*, iii. 553; *De Lettenhove*, *Flandre*, i. 272; *Van Mieris*, *Groot Charterboek*, i. 356; *Nitzsch*, *Niederd. Genoss.*, 22; *Wauters*, *Lib. Com.*, 586; *Von Maurer*, *Städteverf.*, ii. 254, 358; *Fortuyn*, *Specimen*, 18; *Grimm*, *Wörterb.*, s. v. 'hanse.'—For the Hanse of Paris, see *Warnkönig*, *Franz. Gesch.*, i. 317; *Fortuyn*, 107; *Boileau*, *Livre des Métiers*, 469. For the statutes of the hanse of St. Omer,

see *Giry*, *St. Omer*, 413, and *D'Hermansart*, *Anc. Com.* For the peculiar use of the term *hanse* at Göttingen, see above, p. 31, n. 4.

<sup>4</sup> For the Hanseatic League and various local hanses, see Höhlbaum, *Urkundenb.*, iii. 469, 553; *Von Maurer*, *Städteverf.*, ii. 254, 276; *Koppmann*, *Hanserecesse*, i. *Introd.*; *Sartorius*, *Hanse*, i. pp. xviii., 73-76; *Schäfer*, *Hansestädte*, 251, 252; *Du Cange*, *Gloss.*, s. v. 'hansa'; *Zimmern*, *Hansa Towns*; *Denicke*, *Von der deutschen Hansa*; *Mallet*, *Ligue Hans.*; *Lappenberg*, *Stahlhof*, *App. 3*, *et pass.*; *Worms*, *Ligue Hans.*; *Schäfer*, *Die Hanse*. The German Hanseatic League is not to be confused with the 'Hanse de Londres,' probably so called because London was its most important foreign emporium. It was also known as 'les dix-sept villes.' This Hanse of London flourished in the thirteenth and fourteenth centuries. A record of 1426 indicates that it was then in a state of dissolution. *Bruges* and *Ypres* were at the head of the league, which originally consisted of seventeen towns of Flanders, and North France, the number being probably gradually increased to at least fifty-six. No persons belonging to these towns could carry on trade with England unless they were members of the Hanse. See *Bourquelot*, *Foires de Champagne*, 134-139; *Warnkönig*, *Fland.*, i. 329-331, *App. 81-86*; *Varenbergh*, *Relations*, 145-155; *Giry*, *St. Omer*, 282, 283; *Ashley*, *Econ. Hist.*, 104, 106, 109, and *Artevelde*, 17-20; *Lappenberg*, *Stahlhof*, 6; *Thierry*, *Docum.*, i. 177.

## APPENDIX D.

### THE SCOTCH GILD MERCHANT.

#### § 1. *Inception and Distribution.*

THOUGH Scotland seems to have borrowed some of her early burghal laws from England<sup>1</sup>, the general development of her municipal history in the middle ages resembles that of the Continent more closely than that of England. This was probably due to the weakness of royal authority in Scotland<sup>2</sup>, and in part, perhaps, to the intimate relations existing between that country and the Continent. After the thirteenth century Scottish burghs sought municipal precedents in France and Flanders rather than in England<sup>3</sup>.

<sup>1</sup> Below, p. 257.

<sup>2</sup> The central government was much stronger in England than in Scotland or on the Continent. This greatly influenced the growth of English municipal institutions. Cf. above, pp. 106, 109.

<sup>3</sup> In 1593 the Gild Merchant of Scotch burghs was regulated 'according to the lovable forme of judgement visit in all the guid townis of France and Flanderia, quair bursses ar erected and constitute, and speciallie in Paris, Rowen, Burdeaulx, Rochell.' (Acta Parl. Scot., iv. 30.) For the close political relations between Scotland and France in the middle ages, see Moncrieff, *Memoirs of ancient alliances between French and Scots*; and *Misc. Scotica*, vol. iv. Active commerce was also carried on by the Scots in France and the Low Countries. (Rec. of Conv. of Royal Burghs, *pass.*; Höhlbaum, *Urkundenbuch*, iii. 58, 62, 64, 194, 243, 352, 407, 523; *Libell of Engl. Politye*, 33, 34; *Warnkönig, Fland.*, ii. 146; *Giry, St. Omer*, 283; *De Fréville, Commerce de Rowen*, i. 108, 255.) Many Flemings settled in Scot-

land and formed a powerful element in Scotch burghal life. (Above, p. 109; *Rot. Scacc.*, i. p. lxxxii, lxxxiii; *Crawford, Trades' House*, 23; *Scottish Review*, xi. 11; *Acta Parl. Scot.*, xii. 543; *Chalmers, Caled.*, l. 600, 735, 782.) A charter granted by Earl David (1171-1199) was addressed to 'Francis et Anglis et Flamingis et Scottis.' (*Rot. Scacc.*, i. p. lxxxii; *Hist. MSS. Com.* 1870, p. 121.) In a royal charter of 1357 there is a reference to Flemish law existing in Scotland, 'lege Flaminga, que dicitur Fleming lauche.' (*Ibid.*; cf. *Acta Parl. Scot.*, i. 37 [31].) These foreigners must have aided in making the Scots familiar with continental civic institutions. The presence of such words as 'maisterstick', 'sigillum ad causas', 'Maison Dieu', etc. testify to considerable continental influence. See *Michel, Inquiry into Scottish Lang.*, vii., viii., 162, *et pass.*; *Bain, Ab. Guilds*, 107, 199, 204; *Groome, Gaz.*, iv. 331; below, p. 208, n. 2. See also *Rec. of Conv.*, i. 76; *Mackenzie, Roman Law*, 41.



As it is commonly asserted that the development of the burghal polity was the same in Scotland as in England<sup>1</sup>, I will indicate some of the points of divergence between the two countries, without attempting to treat the subject exhaustively. Burghs in Scotland comprised three well-defined classes, namely, royal burghs, burghs of regality, and burghs of barony<sup>2</sup>—a classification unknown to England. In Scotland there was considerable national legislation concerning burghs in general, and hence more uniformity of constitution than in England. For example, the statute of 1469, c. 5, made the burgh councils of Scotland self-elective. In England each town council had a history of its own as regards the development of the principle of self-election. It is also to be remembered in this connection that there was no body of general laws in England like the medieval 'Leges Burgorum'.<sup>3</sup> Again, one of the most striking features of Scottish municipalities was their strong spirit of federation. The Convention of Royal Burghs, which was an outgrowth of the more ancient Parliament or Court of the Four Burghs, continued to wield great influence down to modern times<sup>4</sup>. In England there

<sup>1</sup> For example, Merewether and Stephens, i. p. xvii.

<sup>2</sup> The chief characteristics of a royal burgh were that it was held directly of the crown, it had the election of its own officers, exercised the right to export and import merchandise, and after 1326 was represented in Parliament. Burghs of regality and barony were held of mesne lords, the former having a more extensive jurisdiction than the latter. Both were open to the interference of their lords in the management of burghal affairs; and the burghage tenure in both was inferior to that by which burgesses in royal burghs held their tenements. (Munic. Corp. Com., Scotl., 1835, Rep., 16, 20, 21, 75; 1836, pp. 3, 4; Skene, Royall-Burghs, 17, 18; Innes, Anc. Laws, xxxviii., xlii.; Acta Parl. Scot., ix. 152, App. 146.) The royal burghs paid certain public taxes from which other burghs were exempt. By the Acts of Parliament 1672, c. 5, and 1693, c. 51, the right to engage freely in foreign trade was extended to such burghs of barony and regality as agreed to bear the burdens of taxation

with the royal burghs. (Misc., Preface, xxv-lxi, lxxvii; Rec. of Conv., iv. p. v.)

<sup>3</sup> These laws are commonly ascribed to the reign of David I. They are printed in Acta Parl. Scot., i. 327-356 [17-44], and in Innes, Anc. Laws, 4-58. For the diversity in the constitution of burgh councils, notwithstanding the Act of 1469, see Misc., lxvii. et seq.

<sup>4</sup> The Court of Four Burghs originally consisted of Berwick, Stirling, Edinburgh, and Roxburgh. In 1368 Lanark and Linlithgow were substituted for Berwick and Roxburgh, which had fallen into the hands of the English (Acta Parl. Scot., i. 507). This Court or Parliament of Four Burghs exercised a general supervision over the burghs of Scotland, making laws for them, and, above all, acting as a high court of appeal in difficult questions relating to burghal usages and privileges. It is surmised that the 'Leges Burgorum' were framed by this body in the reign of David I. The Convention of Royal Burghs seems to have emerged from the Court or Parliament of Four Burghs in the fifteenth century, though

has always been a conspicuous absence of federative unions of towns<sup>1</sup>. Moreover, the general aspect of the burghal constitution differed in the two countries. The hundred organization, pie-powder courts, and municipal incorporation were common in English boroughs, but almost unknown in those of Scotland<sup>2</sup>. Many of the latter, like the Roman 'civitas,' enjoyed privileges in adjacent territory extending far beyond the burgh walls<sup>3</sup>; which was very rarely the case this side of the Tweed. Roman law in general had more influence in Scotland than in England<sup>4</sup>. The names of Scotch burghal institutions were strange to the townsmen of England. There was a provost instead of a mayor, there were gildries, corpor-

the latter name was not superseded by the former until the sixteenth century. A document of 1405 indicates that the Convention was then just beginning to emerge from the older Court or Parliament. In that year it was enacted that two or three burghesses from each of the King's burghs south of the Spey should assemble annually 'ad tractandum, ordinandum et determinandum super his omnibus que ad vtilitatem reipublice burgorum universorum dicti domini nostri Regis et ad eorum libertates et Curiam dignoscuntur pertinere.' (Acta Parl. Scot., i. [339], 703.) In 1454 it was enacted that the Court of Four Burghs should assemble annually at Edinburgh to determine appeals from the burghal courts of the Kingdom, to regulate the standards of weights and measures, and to determine other matters relating to burghs. (Ibid., xii. 23.) In 1578 a statute enacts that the Convention was to meet four times every year, each borough sending one commissioner, except Edinburgh, which could send two. (Ibid., iii. 102.) The Convention acted as a high court of appeal or arbitration, deciding disputes between different burghs or between the burghesses and their magistrates; it also frequently framed or altered the 'actis' or written constitutions of burghs; it made general regulations relating to commerce, foreign and domestic; it sent commissioners to, and negotiated treaties with, foreign cities and states;

and apportioned among the burghs their respective shares of the national taxes. It still exists, its meetings being held once a year at Edinburgh. It now merely makes suggestions regarding matters of municipal interest, with a view to influence public opinion and parliamentary action. There is no good account of its history, though it is worthy of careful investigation. For many important documents relating to the subject, see Records of Conv. of Royal Burghs. See also below, pp. 215, 258; Munic. Corp. Com., Scotl. 1835, Rep., 15, 16, 19; 1836, App. 10-21; Acta Parl. Scot., xii. 267, 367; Innes, Scotl., 170; Sets, *pass.*; Documents, 75-77; Chalmers, Caledonia, i. 777; McDonall, Laws, ii. 579; Houard, Traités, ii. 461-463; Register of Privy Council, vi. 32; Black, Royal Burrows, Pref., 37-159; Mackay, Conv. of Royal Burghs; Burton, Scot., ii. 90, 91; Misc. Records Soc., Pref.

<sup>1</sup> Above, p. 106.

<sup>2</sup> Robertson, Scotl. under Early Kings, i. 303; Irving, Dumbartonsh., 5; Colston, Guildry of Ed., 62.

<sup>3</sup> Below, pp. 206, 214; Robertson, Scotl. under Early Kings, i. 304; Innes, Anc. Laws, p. xxvii; Acta Parl. Scot., l. 86, 88 [76, 78]; Munic. Corp. Com., Scotl., 1835, Rep. fo. 11, 15; 1836, pp. 3, 4, 299; Irving, Burghs, 338; Hamilton of Wishaw, 256.

<sup>4</sup> Acta Parl. Scot., xii. 330; MacKenzie, Roman Law, 40, 41.

ations (i. e. crafts), conveneries of crafts<sup>1</sup>, seals of cause<sup>2</sup> by which the crafts were incorporated, etc. We shall soon see that the general development of the Gild Merchant and crafts forms a striking point of divergence in the municipal history of the two countries.

There are two periods in the growth of the Scotch Gild Merchant or Gildry. The first comprehends the twelfth, thirteenth, and fourteenth centuries, during which its history did not differ greatly from that of the English Gild Merchant. The second period extends from the fifteenth to the nineteenth century, and is marked by a bitter conflict between the Gildry and the crafts.

The Gild Merchant or Gildry of Scotch towns first comes to view in the reign of David I (1124-1153)<sup>3</sup>. It must have been a common feature of the royal burghs of Scotland in the twelfth and thirteenth centuries<sup>4</sup>. In the sixteenth and seventeenth centuries

<sup>1</sup> 'In many burghs there exists an aggregate body composed of representatives of the different [craft] corporations, called the Convenery, or Convener's Court. The functions of this body are to consult on all matters in which the general interests of the crafts are concerned; to protect their rights and privileges, as by assisting corporations in prosecuting unfreemen; to determine all differences that may arise among them; and, in some cases, to make bye-laws relative to the several corporations. . . . There are conveneries in Edinburgh, Glasgow (there called the Trades' House), Aberdeen, Dundee, Banff, Perth, Inverness, Dumfries, St. Andrew's, Leith, Lanark, and several other burghs. There were slight differences in the constitution of the convenery in different burghs; but ordinarily it consisted of the deacons of the trades, who elected out of their number a chairman, who was formerly called the deacon warner, but now the deacon convener; and he, in all burghs, is accounted the head of the tradesmen.' (Munic. Corp. Com., Scotl., 1835, Rep., p. 84.) See also *ibid.*, 1835, pp. 159, 181, 425; 1836, pp. 68, 313; Irving, *Burghs*, 347; McDouall, *Laws*, ii. 578; *Acta Parl. Scot.*, ix. 509; *Sketch of Ed. Const.*, pp. xxxvi, 24; Crawford, *Trades' House*, 125-132; *Constitution of Burghs*,

193; *Rec. of Conv.*, iii. 298, iv. 377; and below, pp. 220-223. This office still exists in Glasgow and Edinburgh. (Goudy and Smith, *Local Gov.*, 28.)

<sup>2</sup> A 'sigillum ad causas' was a charter granted by the burghal authorities to any body of craftsmen, specifying their rights and privileges; above all, excluding non-members from using their craft, giving the members the right to make bye-laws, to elect their own officers, etc. But such a grant did not release the craft from the control of the civic magistrates. (Munic. Corp. Com., Scotl., 1835, Rep., 78-80.) At St. Omer a seal of cause was used by the civic magistrates for minor transactions. (Giry, *St. Omer*, 230, 231.) A seal of cause was also used at Campvere, with which city Scottish burghs had intimate commercial relations. (*Rec. of Conv.*, ii. 362.) I have never met with any mention of this seal in the local records of England.

<sup>3</sup> See the extract from the *Leges Burgorum* given below, p. 213, n. 2.

<sup>4</sup> The wording of many medieval documents shows that the Gild Merchant was a common feature of Scotch burghs. See below, p. 204, notes, and p. 205, n. 1; also the extracts from the public records, below, pp. 207-209.

few royal burghs were without a Gildry<sup>1</sup>. Subjoined is a list of the burghs in connection with which I have met with references to this institution; the asterisk indicates that the Gildry or its chief officer still survives<sup>2</sup>.

Name.	Date.	Authorities.
*Aberdeen . . . .	1222 . . . .	Below, p. 219, n. 3.
*Annan . . . . .	1538 . . . .	Misc., 228; Groome, Gaz., i. 51; Munic. Corp. Com., Scotl., 1835, p. 61.
Anstruther-Easter .	1583 . . . .	Constitution of Burghs, 104.
Anstruther-Wester	1587 . . . .	Ibid., 85.
*Arbroath . . . . .	1599 . . . .	Ibid., 89, 194; Hay, Arbroath, 306- 313; Sets, 52; Misc., 279, 293 <sup>3</sup> .
*Ayr . . . . .	1428 . . . .	Dickson, Gild Court of Ayr, 225; Acta Parl. Scot., i. 180, 181; Sets, 71; Charters of Ayr, 195.
*Banff . . . . .	1592 . . . .	Constitution, 90, 198; Sets, 55; Munic. Corp. Com., Scotl., 1835, p. 110; Imlach, Banff, 77.
Berwick . . . . .	[1249] . . . .	Below, p. 211, n. 1.
*Brechin . . . . .	1601 . . . .	Black, Brechin, 46-48; Reg. Privy Council, vi. 391; Constitution, 115, 185; Misc., 195, 291.
Burntisland . . . .	1541 . . . .	Constitution, 115, 182; Sets, 61.
*Campbeltown . . .	1700 . . . .	Constitution, 124, 216; Sets, 72.
Cullen . . . . .	1617 . . . .	Constitution, 203; Sets, 64; Misc., 226; Annals of Cullen, <i>pass.</i> ; Cramond, Inventory, <i>pass.</i>
Culross . . . . .	1588 . . . .	Constitution, 89; Misc., 216; Beve- ridge, Culross, i. 296, 316, ii. 162; Rec. of Conv., v. 135.

<sup>1</sup> Below, p. 206, n. 2; p. 207, n. 1; Black, Royal Burrows, 29; Misc. of Scot. Burghs Rec. Soc., p. 21; Mackenzie, Works, i. 65. A few burghs of barony and regality had a dean of Gild (Dunkeld, Fraserburgh, Kilsyth, Maybole, Rosehearty, etc.).

<sup>2</sup> My chief authority for determining the burghs in which a Gildry or a dean of Gild still exists is Groome's Ordinance Gazetteer, under the names of the respective towns.

<sup>3</sup> A 'Gildry and Gildrymen' were

not introduced in Arbroath until 1725, though the privilege had been granted in 1509. (Rec. of Conv., v. 161, 369, 373.) Likewise in Culross; in 1668 and in Brechin in 1658, though the grant had been made in 1588 and 1601 respectively. (Ibid., iii. 464, 568, 578, 588, 602-606.) It should also be noted, in connection with the list of Gild Towns, that a burgh often had a dean of Gild without having a Gildry fraternity. (Munic. Corp. Com., Scotl., 1835, pp. 61, 63, 190; 1836, p. 68.)

Name.	Date.	Authorities.
*Cupar . . . . .	1369 . . . . .	Acta Parl. Scot., i. 509 [176]; Charters of Cupar, 7; Constitution, 177; Sets, 42.
*Dingwall . . . . .	1497 . . . . .	Constitution, 98, 212; Sets, 57; Munic. Corp. Com., Scotl., 1835, p. 190.
*Dornoch . . . . .	1648 . . . . .	Misc., 293; Constitution, 105.
*Dumbarton . . . . .	1609 . . . . .	Constitution, 87, 190; Sets, 45.
*Dumfries . . . . .	1827 . . . . .	McDowall, Dumf., 310, 311, 651 <sup>1</sup> .
Dunbar . . . . .	1603 . . . . .	Constitution, 117; Miller, Dunbar, 250; Rep. of Com., 1793, p. 18.
Dundee . . . . .	1249-86 . . . . .	Warden, Burgh Laws, <i>pass.</i> ; Char- ters of D., 9; Thomson, Dundee, 255; Acta Parl. Scot., iii. 232; Mackie, Dundee, 207, 208; Misc., 166, 289; Sets, 14; Munic. Corp. Com., Scotl., 1835, pp. 229, 233; Beatts, Dundee, 46, <i>et pass.</i> ; Roll of Burgesses, 2-7 <sup>2</sup> .
*Dunfermline . . . . .	1395 . . . . .	Chalmers, Dunf., i. 389, 399; Con- stitution, 188; Sets, 24; Misc., 201, 240-260; Henderson, Dunf., 192, 307, 323, 408, 421; Rep. of Com., 1819, pp. 429-455.
Dunkeld . . . . .	1704 . . . . .	Munic. Corp. Com., Scotl., 1836, [pt. ii.], p. 42.
*Edinburgh . . . . .	1403 . . . . .	Below, p. 216, n. 1.
Elgin . . . . .	1234 . . . . .	Carlisle, Top. Dict., 'Elgin'; Munic. Corp. Com., Scotl., 1835, p. 425; Sets, 53; Constitution, 104; Young, Annals of E., 157-159, 549-552 <sup>3</sup> .

<sup>1</sup> In 1709 the municipal authorities of Dumfries asserted that their burgh was not a 'gild-town,' i. e. it had no Gildry. (Misc., 180; Sets, 75.) See also Rec. of Conv., iii. 445, 537, 559.

<sup>2</sup> In 1325 a jury stated that during the reign of Alexander III, Dundee had 'eandem libertatem emendi et vendendi per aquam et per terram sicut aliqui burgenses per totum regnum Scocie liberius aut quociens habuerunt aut possederunt, videlicet in nundinis, in mer-

cato, in libero portu, cum accessu narium, oneracione et exoneracione eandem, cum gilda mercatoria et aliis libertatibus universis sicut liberi burgenses.' (Munic. Corp. Com., Scotl., 1835, p. 238.)

<sup>3</sup> Alexander II in 1234 granted the burgesses of Elgin 'Gildam suam mercatoriam adeo libere et sicut aliqui burgorum nostrorum in toto regno nostro Guildam suam habent.' (Shaw, Moray, 238.)

Name.	Date.	Authorities.
Forfar . . . . .	1372 . . . . .	Hist. MSS. Com. 1871, p. 206; Talbot, Case of Forfar; Constitution, 123; Munic. Corp. Com., Scotl., 1835, p. 444.
*Forres . . . . .	1711 . . . . .	Constitution, 200; Sets, 48; Munic. Corp. Com., Scotl., 1835, p. 451.
*Fortrose . . . . .	1708 . . . . .	Constitution, 215; Sets, 49; Misc., 213.
Fraserburgh . . . . .	1588 . . . . .	Munic. Corp. Com., Scotl., 1836, [pt. ii.], pp. 64, 172.
Galloway, New . . . . .	1629 . . . . .	Constitution, 94.
*Glasgow . . . . .	1605 . . . . .	Hill, Merchants' House, 15; and below, p. 221, n. 4.
Greenock . . . . .	1797 . . . . .	Williamson, Old Greenock, 181.
*Haddington . . . . .	1655 . . . . .	Munic. Corp. Com., Scotl., 1836, p. 68; Miller, Lamp of Lothian, 486; Rec. of Conv., iii. 381, 423, 452.
Inverary . . . . .	1648 . . . . .	Constitution, 96.
*Inverbervie . . . . .	1709 . . . . .	Ibid., 210; Sets, 52.
*Inverkeithing . . . . .	1598 . . . . .	Constitution, 121, 183; Sets, 36.
*Inverness . . . . .	1676 . . . . .	Constitution, 181; Sets, 15; Munic. Corp. Com., Scotl., 1836, p. 113.
*Inverurie . . . . .	1619 . . . . .	Constitution, 209; Davidson, Inverurie, 206.
*Irvine . . . . .	1371 . . . . .	Robertson, Index, 95; Sets, 71; Constitution, 109, 185 <sup>1</sup> .
*Jedburgh . . . . .	1692 . . . . .	Sets, 65; Munic. Corp. Com., Scotl., 1836, pp. 133-135; Misc., 106.
Kelso . . . . .	1836 . . . . .	Munic. Corp. Com., Scotl., 1836, [pt. ii.], p. 97; Haig, Kelso, 100, 101.
*Kilmarnock . . . . .	. . . . .	Groome, Gaz., iv. 376.
Kilsyth . . . . .	1836 . . . . .	Munic. Corp. Com., Scotl., 1836, [pt. ii.], p. 106.
Kinghorn . . . . .	1611 . . . . .	Constitution, 85.
*Kintore . . . . .	. . . . .	Groome, Gaz., iv. 411; Munic. Corp. Com., Scotl., 1836, p. 153.

<sup>1</sup> The royal charter of 1371 contains the following:—'quod burgenses de Irwyne teneant illud burgum in liberam burgum, absque exactione cujuscumque tollone, seu alterius cujuslibet servi-

tutis; et quod gaudebant Gylda, et omni Gylda libertate qua alii quicumque regni burgenses hactenus sunt gavisii.' (Robertson, Index of Charters, 95.)

Name.	Date.	Authorities.
Kirkcaldy . . . .	1644 . . . .	Constitution, 114; Sets, 60; Munic. Corp. Com., Scotl., 1836, p. 158; Misc., 176, 276; below, p. 223.
*Kirkwall . . . .	1712 . . . .	Constitution, 217; Sets, 55.
*Lanark . . . . .	1631 . . . .	Sets, 47; Munic. Corp. Com., Scotl., 1836, p. 190; Misc., 206; Davidson, Lanark, 28-30.
*Linlithgow . . . .	1709 . . . .	Constitution, 171; Sets, 46; Munic. Corp. Com., Scotl., 1836, p. 228.
*Lochmabin . . . .	1612 . . . .	Constitution, 110; Sets, 75.
Mayhole . . . . .	1589 . . . .	Munic. Corp. Com., Scotl., 1836, [pt. ii.], p. 173.
*Montrose . . . . .	1372 . . . .	Hist. MSS. Com. 1871, p. 206; Sets, 50; Documents on Reform, 78-90; Munic. Corp. Com., Scotl., 1836, p. 242; Misc., 178, 287 <sup>1</sup> .
*Nairn . . . . .	1589 . . . .	Constitution, 100; Misc., 292.
*Peebles . . . . .	1621 . . . .	Charters of Peebles, 85; Constitution, 196; Sets, 46 <sup>2</sup> .
*Perth . . . . .	1165-1214 . .	Acta Parl. Scot., i. 86 [76]; Munic. Corp. Com., Scotl., 1836, pp. 299, 307, 310; Hunt, Perth Hammermen, Introd.; Irving, Dumbartonshire, i. 5; Documents on Reform, 117; Marshall, Perth, 442-445.
*Renfrew . . . . .	1703 . . . .	Constitution, 88; Sets, 42.
Rosehearty . . . . .	1681 . . . .	Munic. Corp. Com., Scotl., 1836, [pt. ii.], p. 148.
*Rutherglen . . . .	1617 . . . .	Munic. Corp. Com., Scotl., 1836, pp. 371, 374; Ure, Rutherglen, 15, 62.

<sup>1</sup> 'Montrose, wham ne'er a town surpasses  
For growling Guild and ruling asses.'

Warden, Angus, i. 249.

<sup>2</sup> In 1621 James VI granted the burgh of Peebles power 'frequentandi, viendi et exercendi mercaturas, *lic trade and traffique of merchandice*, emendi, transigendi, vendendi et revendendi omne genus mercantiarum, tam peregrinarum quam conterranearum, non solum infra libertatem et territorium ac jurisdictionem dicti nostri burgi sed etiam infra omnes alias partes infra

integras bondas vicecomitatus nostri de Peblis tam regalitatis quam regalis . . . ac infra eundem burgum et territorium eiusdem pro perpetuo mercatorum gilda gaudendi, fruendi et possidendi, cum gildarum curiis, concilio, membris et jurisdictione eidem pertinentibus, libertatibus et privilegiis huiusmodi, similiter et adeo libere sicuti per nos aut predecessores nostros quibusuis liberorum nostrorum burgorum regalium infra dictum regnum nostrum Scocie concessa sunt.' (Charters of Peebles, 85.)

Name.	Date.	Authorities.
*St. Andrews . . .	1591 . . .	Register of Privy Council, v. 61-65, vi. 276; Documents on Reform, 115; Misc., 169-171, 282-286.
*Sanquhar . . .	1598 . . .	Constitution, 94, 206; Sets, 74; Misc., 238.
*Selkirk . . .	1694 . . .	Brown, Selk., ii. 183-186; Constitution, 213; Sets, 46.
*Stirling . . .	1226 . . .	Charters of S., 6-9, 143, 218-221; Munic. Corp. Com., Scotl., 1836, pp. 403, 409; Gen. Hist. of S., 56-67; Register of Privy Council, iii. 216; Constitution, 169; Sets, 21; Extracts from Records of S., <i>passim</i> ; Misc., 167, 269.
Stonehaven . . .	1836 . . .	Munic. Corp. Com., Scotl., 1836, App., p. 94.
*Stranraer . . .	1617 . . .	Constitution, 97, 210; Sets, 70.
*Tain . . .	1671 . . .	Constitution, 122, 197; Sets, 58; Rec. of Conv., iv. 494.
Thurso . . .	1633 . . .	Munic. Corp. Com., Scotl., 1836, [pt. ii.], p. 162.
*Wick . . .	1589 . . .	Constitution, 106, 215; Sets, 56; Munic. Corp. Com., Scotl., 1836, p. 433; Misc., 235, 274 <sup>1</sup> .

### § 2. *Early History. Berwick Statutes.*

Let us first glance at the history of the Gild in the period prior to the fifteenth century, a period in which the national records of Scotland furnish us with the principal data. According to a law of William the Lion (1165-1214), the merchants of the realm were to have their Gild Merchant with the liberty of buying and selling everywhere within the bounds of burghs<sup>2</sup>. Merchant strangers were not to buy or sell outside of burghs, nor were they to cut cloth and offer it for sale, nor sell anything else by retail, but only in gross, and that only within burgh and to the merchants of the burgh. Any merchant strangers found guilty of breaking this law

<sup>1</sup> In 1692 there were 65 royal burghs in Scotland. (Misc., xcvi.) Of these 54 appear in my list of Gild Towns.

<sup>2</sup> Item, statut quod mercatores regni habeant gildam suam mercatoriam et ita gaudeant in pace cum libertate

emendi et vendendi ubique infra limites libertatum burgorum, etc. (Assise Regis Willielmi, c. 39. Acta Parl. Scot., i. 383 [61]; Innes, Anc. Laws, 60.) See also above, p. 197.



were to be arrested by the officers of the Gild and punished<sup>1</sup>. An ancient law, the date of which is not known, enacts that if a gildsman fall into poverty, the brethren of the Gild shall help him by a donation from the common stock of the Gild, or make a collection for him; and if he die, they shall have him buried<sup>2</sup>. According to a law made by the Court of Four Burghs in 1405, no Templar was to buy or sell merchandise pertaining to the Gild, unless he were a Gild brother<sup>3</sup>.

It is evident from these passages that in Scotland, as in England, the object of the Gild was the maintenance and regulation of the burgh's trade monopoly. Foreigners or strangers could not sell to each other<sup>4</sup>; they could not retail cloth or other wares<sup>5</sup>; nor purchase certain articles, above all, wool and hides<sup>6</sup>. If a merchant stranger brought merchandise to a burgh, he was obliged first to offer it for sale to the dean of Gild or to the town council, and no other person was to buy these wares for less than the price at which it was so offered. If the dean of Gild bought it, he disposed of it to the members of the Gild, the profits flowing into the town treasury<sup>7</sup>.

<sup>1</sup> 'Et si aliquis extraneus mercator faciens in contrarium reperiat, capiatur per ministros de gilda et detineatur et puniatur tanquam defensionem regiam confringens.' (Ibid., c. 41. Acta Parl. Scot., i. 383; Innes, Anc. Laws, 61.)

<sup>2</sup> '*Lex bona de fratribus gilde.*—Si aliquis de fratribus gilde deenerit pauper, fratres gilde ipsum adiuvent de bonis gilde, aut faciant collectam per ville communitatem vsque viginti solidos, et si obierit ipsum venerabiliter facient sepeliri.' See Innes, Anc. Laws, 161; Acta Parl. Scot., i. 719 [355].

<sup>3</sup> 'Item, quod nullus Templarius debet se intromittere cum aliquibus mercimoniis vel bonis pertinentibus ad gildam emendo vel vendendo infra terram suam vel extra nisi fuerit confrater Gilde.' (Ibid., i. 704 [340]; Innes, Anc. Laws, 158.)

<sup>4</sup> Charters of Dundee, 9.

<sup>5</sup> 'Nullus emat coria, lanam, aut pelles lanatas ad revendum, aut pannos scindat, nisi fuerit confrater gilde nostre.' (Berwick Gild Statutes, c. 23. Acta Parl. Scot., i. 435 [93<sup>o</sup>]; Innes, Anc. Laws, 74.) See also Charters of Dun-

dee, 9; Hay, Arbroath, 309; Hill, Merchants' House, 124; Acta Parl. Scot., i. 86, 87 [76, 77]; Extracts from Ed. Records, 1573-1589, p. 277.

<sup>6</sup> Acta Parl. Scot., i. pp. 509, 536, 537; Charters of Dundee, 9; Mackie, Dundee, 207, 208; Colston, Gildry of Ed., 63; Extracts from Ed. Records, 1528-1557, p. 142.

<sup>7</sup> The following is from the records of the Ayr Gild, A.D. 1428: 'Curia gilde coram preposito et decano gilde . . . electi fuerunt v. personas (*sic*) pro utilitate gilde, viz. [five names follow], qui electi eodem die et jurati fuerunt ad emendum omnia mercimonia intrantia portus maris ad comodum gilde, et equaliter debent participare sine fraude' (Dickson, Gild Court of Ayr, 223, 226). See also Extracts from Ed. Records, 1403-1528, pp. 4, 37; Skene, Royall-Burghs, 141-143; Thomson, Dundee, 255; Acta Parl. Scot., ii. 373; Dumbarton Burgh Records, 14; Misc., xxxv.; cf. above, pp. 136, 137. The deacon of a craft sometimes made similar purchases for the craftsmen (Bain, Ab. Guilds, 273).

No inhabitants of a royal burgh could engage in foreign trade unless they were brethren of the Gild<sup>1</sup>. The bounds within which the Gild monopoly of a borough prevailed, were generally much more extensive than in England, often embracing a whole county or sheriffdom<sup>2</sup>.

The public records of this period also show that gildsmen and burgesses were not synonymous terms. In the fourteenth century it was necessary that each burgh should present to the Chamberlain on his eyre all the names of the burgesses, 'the names of the Gild brethren by themselves and those of the other burgesses by themselves<sup>3</sup>.' A manuscript volume compiled early in the fourteenth century gives the oath of admission to burghship, and then states that after the oath was taken by the new burgher he ought to kiss the provost and townsmen ('vicini'), in case he were a brother of the Gild<sup>4</sup>. It is evident from this passage that there were burghers who were not gildsmen. In the oldest portions of the 'Gild Buick' of Edinburgh there are separate fees for admission to the gildship and the burghship<sup>5</sup>.

<sup>1</sup> Bannerman, Guildry of Ab., 19; Chalmers, Dumferm., i. 389, 390; Hay, Arbroath, 309; Mackenzie, Works, i. 68; Munic. Corp. Com., Scotl., 1835, pp. 89, 90.

<sup>2</sup> See above, p. 207, n. 3.

<sup>3</sup> 'Item, petantur in scriptis omnia nomina burgensium infra habitantium et extra, videlicet nomina fratrum gilde per se, et aliorum per se.' (Acta Parl. Scot., i. 695 [331]; Innes, Anc. Laws, 135.)

<sup>4</sup> '*Integrum juramentum burgensis et confratris gilde.*—Quod erit leel et feol domino Regi et communitati illius burgi in quo factus est burgenais. Et quod dabit Regi firmam fideliter pro terra quam defendit. Et quod erit obediens in licitis preposito et balliuis. Et quod celet archanum consilium communitatis. Et si dampnum eorum noverit premaniet eis uel in hoc ponet remedium si poterit. Et quociens requisitus fuerit pro communi negotio fidele consilium et auxilium eis dabit pro posse suo. Et quod libertates, leges et consuetudines dicti burgi durante vita secundum posse suam manutenebit. —Et facto hujusmodi sacramento osce-

lari debet prepositum et vicinos si frater Gilde fuerit.' (Acta Parl. Scot., i. 683 [319]; Innes, 127.)

<sup>5</sup> Hist. sketch of Ed. Const., xx. For other illustrations of the distinction between gildsmen and burgesses, or gild and borough, see below, p. 212; Bannermann, Guildry of Ab., 7, 15, 19, 21; Munic. Corp. Com., Scotl., 1835, Rep., 11; Ewing, Guildry of Glasg., 8; Hill, Merchants' House, 6, 7. This distinction continued to exist down to recent times. See Hill, Merchants' House, 95; Maitland, Edinb., 234; Extracts from Ed. Records, 1403-1528, p. 113; 1528-1557, p. 148; Crawford, Trades' House, 303, 304; Sketch of Ed. Const., 16; Hay, Arbroath, 307; Misc., 190; Munic. Corp. Com., Scotl., 1835, pp. 89, 90, 181, 227, 451; 1836, pp. 93, 113, 130, 190, 228, 295, 383, 409; and below, p. 212. In 1583 the council of Edinburgh expressly calls attention to the 'distinction betwixt ane gild brother and vthir singill burgessia,' and also speaks of those who are 'nather gild brether nor burgessia.' (Extracts from Ed. Records, 1573-1589, pp. 277, 278.)

There were in Scotland, as in England, non-resident as well as resident gildsmen<sup>1</sup>.

To this period of Scotch history belong the important 'Statuta Gildae' or the Gild Statutes of Berwick, which, though pre-eminently a Scotch town until the fourteenth century, has been taken by certain writers as the prototype for the early history of the Gild Merchant in England<sup>2</sup>. These Statutes of Berwick were evidently regarded as a model by the other Scotch burghs; for they are found in old collections of the laws side by side with the 'Leges Burgorum,' and an ancient English translation calls them 'the statutis of the gilde of Scotland'<sup>3</sup>. Moreover, town charters occasionally refer to the Berwick Gild as an exemplar<sup>4</sup>.

Almost all writers who in recent years have emphasised the importance of these Gild laws, have followed the old and badly-edited versions of Skene or Houard, evidently not being aware of the existence of Cosmo Innes's scholarly edition in the Acts of the Parliament of Scotland (1844) and in the same author's Ancient Laws and Customs of the Burghs of Scotland (1868)<sup>5</sup>. Innes's edition differs very materially from the older ones. Not to speak of important variations in the wording of the text, it is evident that the Berwick Statutes are not, as the older versions would lead us to suppose, the result of local legislation extending over only a few months in the years 1283-1284<sup>6</sup>; but that they constitute several separate bodies of enactments made at long intervals extending from about 1249 to 1294.

See also *ibid.*, 273, 274; *Rec. of Conv.*, i. 449, iii. 486; *Rep. of Com.*, 1819, pp. 104, 385, *et pass.*

<sup>1</sup> About the year 1431 there were nineteen 'confratres gilde extra manentes' connected with the Gild of Ayr. (*Dickson, Gild Court of Ayr*, 229.) See also *Rec. of Conv.*, i. 98; above, p. 209, n. 3, and below, p. 240.

<sup>2</sup> See below, p. 212, n. 1.

<sup>3</sup> *Acta Parl. Scot.*, i. 431 [89<sup>o</sup>]; *Innes, Anc. Laws*, 64.

<sup>4</sup> *Charters of Dundee*, 9; *Munic. Corp. Com., Scotl.*, 1835, p. 239. Cf. *Warden, Burgh Laws*, 88; *Misc.*, lxiv.

<sup>5</sup> They are also printed in *Colston's Guildry of Edinburgh*, 91-114; *Honard, Traités*, ii. 467, *et seq.*; *Wilda, Gildenwesen*, App.; *Thierry, Récits, Pièces Justif.* An old English version will be

found in *Scott's Berwick*, 465-469. See also *English Gilds*, 338-346; *Merewether and Stephens*, 563-567.

The texts commonly cited are those of Houard and Wilda. Wilda's text is a careless reprint of Houard's. The latter adopted uncritically the readings in the *Veteres Leges* of Skene, whom Innes (*Anc. Laws*, p. xxi.) calls 'the most incompetent editor of a not unlearned age and country.' Innes's text is printed below, pp. 227-240.

<sup>6</sup> Most writers speak as though these statutes were all made in 1283-1284. See, for example, *English Gilds*, pp. xcix, 346; *Colston, Guildry of Edinb.*, 30, 37; *Wilda, Gildenwesen*, 254; *Walford, Gilda*, 27, 30; *Thierry, Récits, Pièces Justif.*; *Ashley, Econ. Hist.*, 67; *Drioux, Assoc.*, 139; *Von Maurer, Städteverf.*, i. 168.

The preamble states that these Statutes (i.e. the first of them) were made by Robert de Bernham<sup>1</sup>, Simon Maunsell, and other good men of the burgh, in order that the many bodies congregated in this one place might be in unity and concord ('ut per multa corpora in uno loco congregata sequatur et unica voluntas,' etc.); so that no particular congregation of burgesses may encroach upon the liberty of the 'general Gild' ('generalis Gilde'), break its statutes, or in the future take counsel against it. All particular gilds shall be dissolved, and their property shall be given to the new gild; no other gild shall hereafter be formed, but 'all are to be united in one firm fellowship and in one true friendship ('una societas firma et amicitia verissima')<sup>2</sup>.

Sections 3-17 of the Berwick Statutes relate to legacies of the brethren, their attendance at funeral services, fines for improper conduct, entrance-fees, relief to brethren in distress, etc. These fifteen articles probably constitute the earliest body of enactments made by the Gild. They deal exclusively with the affairs of the fraternity, not with those of the burgh at large. They may be old regulations of the Gild Merchant, made while it was a strictly private society, that is to say, before it became an integral and official part of the town government<sup>3</sup>. The next five statutes deal with lepers, the throwing of filth in the highway, the mode of pleading in the town courts, the compulsory possession of horses by burgesses, and the use of hand mills. Sections 23-34 treat of mercantile affairs, regulating the sale of wares, etc. Sections 35-38 have to do with the general government of the town; and the last thirteen sections deal chiefly with the regulation of trade and industry. Sections 42-51 were made in the years 1281-1294.

Doubtless the 'general Gild' formed by the union of the various fraternities at Berwick was a Gild Merchant. This is evident from the provision that only brethren of the Society were to buy the staple articles of the town or to sell cloth by retail<sup>4</sup>.

Brentano and his followers rely upon these Statutes as their chief evidence in support of the theory that the germ of the municipal constitution both in Great Britain and on the Continent was an old Frith or Merchant Gild, which comprehended all the burgesses; that, in the course of time, other gilds sprang up and, after a struggle with

<sup>1</sup> Robert de Bernham was mayor of Berwick in 1248-1249. (Acta Parl. Scot., i. 44 [38]; Scott, Berwick, 61.)

<sup>2</sup> C. a.

<sup>3</sup> Cf. the Southampton Statutes (vol. ii. p. 231).

<sup>4</sup> Above, p. 208, n. 5.

the original Gild Merchant, united with the latter to form a single fraternity<sup>1</sup>. That there was a conflict among various gilds at Berwick before their union is quite probable; but the rest of Brentano's hypothesis receives very little confirmation from these Statutes.

The key-stone of his theory is the assumption that the Gild of Berwick constituted the whole municipal government, the terms gildsmen and burgesses being synonymous. A careful examination of the Berwick Statutes will show that this was not the case. The Gild administration and the town administration, though intimately connected, were evidently regarded as distinct conceptions, 'gilda' being applied with preference to the one, and 'burgus' or 'communitas' to the other<sup>2</sup>. The alderman, dean, and ferthingmen presided over the Gild<sup>3</sup>, the mayor and bailiffs presided over the borough as such<sup>4</sup>. Certain fines and forfeitures fell to the Gild, others to the bailiffs of the town<sup>5</sup>. Gildsmen and burgesses are distinguished even more clearly than 'gilda' and 'burgus,' 'burgensis' being used with preference when matters of general interest to townsmen rather than to merchants or gildsmen are spoken of<sup>6</sup>. One enactment applying to all burghers ('quicumque burgensis') concludes with the important reservation: 'this is to be understood of brethren of the Gild and not others' ('et hoc intelligendum est de confratribus Gilde et non de aliis')<sup>7</sup>, which seems to imply that most or all gild-brethren were burgesses, but not *vice versa*. The Gild would thus consist of the more privileged burgesses, and was doubtless a very influential body which could easily control the counsels of the borough. This aristocratic trait was, as I shall soon show, a characteristic of the Scotch Gild Merchant, in general, as distinguished from that of England.

The later general history of the Scotch Gild Merchant enables us

<sup>1</sup> English Gilds, xcix., c.; Walford, Gilds, 27, 28, 70; Winzer, 81; Gierke, i. 243, 345; and above, p. 170. Cf. Wilda, Gildenwesen, 254, 255.

<sup>2</sup> CC. 2-17, 27, 28, 34, *et pass.* ('fratres Gilde,' etc.); 31, 34, 37, 38, 42 ('villa,' 'tota communitas ville,' etc.).

<sup>3</sup> CC. 6, 7, 9, 12, 13, 17, 25, 39, 47.

<sup>4</sup> 'Statuimus . . . quod communia de Berwico gubernentur per viginti-quatuor probos homines . . . una cum majori et quatuor prepositis' (c. 37). 'Statuimus quod maior et prepositi eligantur per visum et considerationem totius com-

munitatis' (c. 38). See also cc. 2, 20, 32, 43. The mayor of the borough and the alderman of the Gild continued to exist as distinct officers down to recent times. See vol. ii. p. 20; Scott, Berw., 257, 259.

<sup>5</sup> C. 2. See also c. 43 ('. . . tercia pars remanere debet Balliuis Burgi et residuum ad Gildam').

<sup>6</sup> CC. 3-17, 23, 25; cf. cc. 21, 35, 39, 40. Note also such expressions as 'fratres Gilde et burgenses ville' (cc. 11, 50, 51).

<sup>7</sup> C. 41.

to understand the relations between the Gild and borough in the Berwick Statutes. It is certain that from the fifteenth to the nineteenth century the powers and functions of the Gildry were very extensive, covering a large part of the area of municipal government, but by no means the whole of it; that the gildsmen were generally burgesses, but many burgesses were not gildsmen; and that the gildsmen generally had a dominating influence in the administration of the burgh<sup>1</sup>.

Whether the above interpretation of the 'Statuta Gildae' is the correct one or not, I wish to protest earnestly against their being used as one of the chief sources for the history of the English Gild Merchant. Like most other records of Scotch Gilds, they throw light upon the development in England as much by contrast as by analogy.

### § 3. *Later History. Conflict with Crafts.*

Let us now pass to the second period of the history of the Scotch Gildry. The latter seems to have been from the outset a more aristocratic body than the Gild Merchant of England, the line of demarcation between merchants and craftsmen being much more sharply defined. The 'Leges Burgorum' of the twelfth century enact that no dyer, butcher, or cobbler should be admitted to the Gild, unless he abjure the exercise of his craft by his own hand, leaving it to his servants<sup>2</sup>. By § 30 of the Berwick Statutes 'it is ordained that no butcher, as long as he chooses to practise his trade, buy wool or hides, unless he will abjure his axe and swear that he will not lay his hand upon beasts<sup>3</sup>.' At Aberdeen, Stirling, and Perth the fullers and weavers seem to have been excluded from the Gild Merchant as early as the thirteenth century<sup>4</sup>. Nothing, however, indicates that

<sup>1</sup> See below, pp. 214-224; and the references given above, p. 209, n. 5.

<sup>2</sup> 'Nullus tinctor vel carnifex vel sutor potest esse in gilda mercatoria nisi abiuret facere officium suum manu propria sed per servientes suos sub se.' (Leges Burgorum, c. 94. Acta Parl. Scot., i. 351 [39]; Innes, Anc. Laws, 46. Cf. Acta Parl. Scot., i. 703 [338]; Innes, 152.) The Ayr MS. (of the early part of the fourteenth century) adds 'piscator' to the men of trades excluded from the Gild Merchant (Innes, Anc. Laws, 46).

<sup>3</sup> Acta Parl. Scot., i. 436 [94\*];

Innes, Anc. Laws, 78. For other regulations concerning the butchers, see Leges Burgorum, c. 64, 65, 67; Statuta Gilde, c. 44; Innes, 31-33, 84; Acta Parl., i. 345, 346, 437 [33, 34, 95\*].

<sup>4</sup> Kennedy, Aberdeen, i. 11; Acta Parl. Scot., i. 86, 87; Charters of Stirling, 6-9; Irving, Dumbartonsh., i. 5; Munic. Corp. Com., Scot., 1836, App. 6. The charter granted by William the Lion to Perth, about 1210, has the following:—'Concedo etiam burgensibus eisdem meis de Perth ut habeant gildam suam mercatoriam exceptis fulonibus et telariis. Prohibeo etiam fir-

craftsmen as a class were excluded from either the Gild or burghship<sup>1</sup>, though the crafts, as such, had no political power in the civic community. The merchant class was the dominant element in the government of most royal burghs.

As the artisans became wealthier, more numerous, and more conscious of their strength, they felt that their crafts ought to have greater independence, and ought to be allowed to participate in the burghal government. Hence in the fifteenth, sixteenth, and seventeenth centuries a bitter struggle raged in many burghs between the tradesmen or crafts and the merchants or Gildry, the conflict reaching its height in the sixteenth century. The main question at issue in the fifteenth century was the right of the members of each craft to meet and choose their own chief officer or deacon—the *sine qua non* of self-government. In 1424 an Act of Parliament gave them this privilege; but it was afterwards repeatedly repealed and re-enacted<sup>2</sup>. After securing the right of convening and the election of deacons, the craftsmen aspired to obtain a share in the government of the burgh. Already in 1469 a national law was passed allowing one person from each craft to participate in the election of burghal officers<sup>3</sup>. The main cause of contention during the sixteenth century was the demand of the crafts to be represented in the town councils. Subordinate to this question, though of considerable importance, was the craftsmen's claim of the right to deal

*mitter ne quis manens extra burgum meum de Perth in vicecomitu de Perth faciat pannum tinctum vel mixtum intra vicecomitatum de Perth nec facere faciat preter burgenses meos de Perth qui sunt in gilda mercatoria et communicant ad auxilia mea cum burgensibus solvenda exceptis illis qui de hac libertate cartam suam hucusque habuerunt* (Acta Parl. Scot., i. 86). The charters of Alexander II (1214-1249) to Aberdeen and Stirling contain similar clauses. It is possible that in these towns, as in Berwick (above, p. 109), the weavers and fullers were mainly Flemings, who perhaps had obtained charters from the King allowing them to form fraternities of their own. In the eighteenth century the weavers and walkers were debarred from being members of the civic Council of Perth, though twelve other craftsmen sat in the latter (Misc., 165). The con-

text of the charters to Perth, Aberdeen, and Stirling shows that there were some burgesses of the Gild Merchant who were engaged in cloth-making. See also *Leges Burgorum*, c. 20: 'Nullus nisi burgensis potest emere lanam ad tingendum nec pannum facere nec se-care' (Innes, *Anc. Laws*, 11).

<sup>1</sup> According to c. 40 of the Berwick Statutes some skinnors and glovers were burgesses, while others were not (below, p. 236). See also the last two sentences of the preceding note.

<sup>2</sup> See Acts of Parl., 1424, c. 17; 1427, c. 4, 3; 1491, c. 19; 1493, c. 14; 1555, c. 26 (Acta Parl. Scot., ii. 8, 14, 15, 227, 234, 497). See also the charters of Mary and James VI (Bain, *Ab. Guilds*, 79, 329; Warden, *Dundee*, 82-84; *Memorabilia of Perth*, 323-330; *Rec. of Conv.*, ii. 469-479).

<sup>3</sup> Acta Parl. Scot., ii. 95.

in merchandise (to import the materials for the manufacture of their wares, to buy goods for resale, etc.). This they had been forbidden to do by various Acts of Parliament<sup>1</sup>. There were several other minor points of controversy, varying in different towns, all caused by the efforts of the craftsmen to secure greater independence—more freedom of action in their relations to the town authorities and in the regulation of their own affairs.

The conflict between the crafts and the Gildry was often settled by a royal 'decreet arbitral,' or through the mediation of the Convention of Royal Burghs<sup>2</sup>, the craftsmen in most towns being allowed a certain number of representatives in the burgh council. But it was not a victory such as the crafts on the Continent frequently gained in the fourteenth century; for the Scotch merchants generally remained very much in the ascendancy in the burgh councils<sup>3</sup>, and the magistrates were chosen exclusively from their ranks<sup>4</sup>.

<sup>1</sup> 1466, c. 2; 1487, c. 13; 1503, c. 38; 1639, *pass.*; 1661, c. 310 (Acta Parl. Scot., ii. 86, 178, 245; v. 273, 275, 277; vii. 284). Cf. Extracts from Ed. Records, 1403-1528, pp. 87, 88; Misc., 187, 190, 191. Mary in 1556 and James VI in 1581 granted charters in favour of the craftsmen of Scotland, allowing them to deal in merchandise; but they do not seem to have been enforced. (Rec. of Conv. of Burghs, ii. 469-479; Bain, *Ab. Guilds*, 79, 80, 329; Warden, *Burgh Laws*, 82-84; Memorabilia of Perth, 323-330.) In 1793 it was decided by the courts of law that craftsmen might import all the materials of their respective trades and export wares of their own make; but they could not import manufactured goods. By another decision of 1823 they were allowed to import and sell goods manufactured in England provided that these belonged to their own branch of industry. All restrictions upon craftsmen were finally removed by the Statute of 9 Vict. c. 17. (Munic. Corp. Com., Scotl., 1835, Rep. 77; Misc., lxi.)

<sup>2</sup> Misc., lxxi., lxxii., 209, 216, 240-260; Rec. of Conv., i. 448-450, 460, iii. 61-65, 110, 466, 467, *et pass.*; and below, pp. 220, 223.

<sup>3</sup> Hist. Sketch of Ed. Constit., xxxii.; Extracts from Council Register of Ab.,

1570-1625, p. 138; Sets, 25, 61, 75, *et pass.*; Constit. of Burghs, 164-217. In 1552 the Convention of Royal Burghs decreed that there should be two craftsmen and ten merchants on the council of each burgh. (Records of Conv., i. 3; Misc., lxxvii.) In 1555 Parliament ordered that no craftsman was to hold office within burgh excepting two of them who were to be chosen yearly on the civic council, and who were also to act as auditors of accounts. (Acta Parl., ii. 498.) In 1681 Parliament increased the number of craftsmen on the council of Dumbarton from two to five 'conform to the orders and customs of other royal burghs where Gildries are erected, who always have a considerable number of trades upon the council.' (Acta Parl., viii. 411.) In the eighteenth century there were generally from one to twelve craftsmen, and from ten to twenty-one merchants in the different burgh councils. In many places the number of merchants in the council was more than double that of the craftsmen. In some burghs the crafts were represented on the burgh council by their deacons. See the references at the beginning of this note; also Misc., 178, 196, 209, *et pass.*; Munic. Corp. Com., Scotl., *pass.*; and below, pp. 217-223.

<sup>4</sup> According to various Acts of Par-



This conflict forms the most striking episode in the history of the Scotch, in contrast with the English, Gild; hence I propose to treat the subject in detail, taking my illustrations chiefly from Edinburgh, Aberdeen, and Glasgow.

The Gildry of Edinburgh is first mentioned in existing records in 1403<sup>1</sup>. It was evidently composed of the merchants, or better class of burgesses, who exercised a controlling influence in the administration of municipal affairs during the fifteenth century. In 1518 the Gildry was re-organized by a charter from the burgh council. The 'Merchants fraternity and Gild brethren' were granted an aisle lately built in the church of 'Sanct Geill'; they were to choose a master of faculty and other officers, who were to 'haif power to put ordour to all maner of merchandice or stapill gudis pertenying to the gildry,' and to punish all those trespassing against the privileges of the brethren; and 'to haif power to hold courtis quhilkis sall be callit courtis of Gildry.' Moreover, the fraternity was given power to make statutes 'for the common welfare of all merchants of this realm as well beyond the sea as on this side.' Deputies were to be appointed beyond sea to punish trespasses against the statutes of the fraternity. The Gild was given power to raise taxes. It was not to be considered lawful to make any person burgess or Gild brother without the consent of the master and his counsellors. The provost and baillies of the burgh on taking their oaths of office were always to swear to maintain the privileges of the Merchant Gild or Gildry<sup>2</sup>.

There can be no doubt that the council granted these extensive powers to the Gildry because the same class predominated in both

liament (1503, c. 28, 25; 1535, c. 35; 1555, c. 26; 1609, c. 15; Acta Parl., ii. 244, 252, 349, 498; iv. 435) only craftsmen could occupy the chief offices of the burgh (provost, baillies, etc.). Cf. below, pp. 217, 220; Misc., lxxvi., 191, 196, 249, 277; McDowall, Dumfries, 132. The Convention of Royal Burghs in 1578 enacted that only merchants could represent a burgh in the Convention or in Parliament. (Misc., lxxviii., Records of Conv., i. 75.) See also *ibid.*, ii. 411, iii. 80.

<sup>1</sup> 'Prima Gilda Capitalis post festum Beati Michaelis tenta in Pretorio burgi de Edinburgh, convocatis confratribus gilde et comparentibus, 3 Octobris

1403. Electi sunt officarii gilde prout sequitur.' The names of a 'prepositus,' 'decanus gilde,' 'seriandi gilde,' and other officers follow. (Extracts from Ed. Records, 1403-1528, p. 1.) For the history of the Edinburgh Gild in general, see Colston, *Guildry of Edinb.*; Hist. Sketch of Ed. Constitution, xx.-lxx.; Extracts from Ed. Records, *pass.*; Proceedings of Ed. Guildry; Maitland, Ed., 228-240; Munic. Corp. Com., Scotl., 1835, pp. 283, 318; Walford, *Gilda*, 39-43; Rep. of Com., 1819, pp. 37-53, 104-106, 161-244.

<sup>2</sup> Rep. of Com., 1819, p. 234; Extracts from Ed. Records, 1403-1528, pp. 181-185.

bodies. The earliest reference to an attempt on the part of the crafts to secure from the merchants greater participation in the government of the town appears to be in 1508. In that year the craftsmen petitioned that they might be qualified to serve in the town offices, and that they might be represented in the burgh council by six or eight of their number. The answer which they received was that the council would make no such innovation in the government of Edinburgh without advice from king and parliament<sup>1</sup>.

By the middle of the sixteenth century the craftsmen had secured a foothold in the council, in which they were allowed to be represented by two of their number<sup>2</sup>. But they continued to quarrel with the merchants on various matters<sup>3</sup>. The conflict reached its climax in 1582. On October 2nd of that year the crafts protested that it was illegal for the town assessors to vote for the chief civic officers. (These assessors had evidently voted in harmony with the merchants.) The protest of the crafts being disregarded, 'ane gritt multitude of pepill of the craftis assemblit to the number of 200 persones or thairby,' 'the multitude ansuering with tumultuous wordis mening, as apperit, to sedition . . . thairefter the said people eschit and brak in per force at the said counsalhous dur, invading and persewing the said baillies and counsaile with contumelious and dispytfull wordis.' At length, on October 13th, it was agreed that all matters in dispute should be adjusted by six arbiters. Their decision was rejected by the craftsmen, and James VI chosen as oversman. On April 22nd, 1583, he and the six arbiters issued a decree, which settled the controversy<sup>4</sup>.

According to this 'Decreet Arbitral' of 1583<sup>5</sup>, the magistrates and town officers, such as provost, baillies, dean of Gild, and treasurer, were to come from the estate or calling of merchants. The council

<sup>1</sup> Extracts from Ed. Records, 1403-1528, p. 118.

<sup>2</sup> Sketch of Ed. Constit., xxviii.; Extracts from Ed. Records, 1557-1571, pp. 83, 122, 185. In 1552 the council consisted of ten merchants and two craftsmen. (Misc., lxxvii.) The crafts continued to be thus represented by only two of their number until 1583.

<sup>3</sup> Extracts from Ed. Records, 1557-1571, pp. 52-56, 90, 93, 150, *et pass.*; 1573-1589, pp. 32-34, 51, 57-58, 85.

<sup>4</sup> Extracts from Ed. Records, 1573-1589, pp. 250-265, 569-571.

<sup>5</sup> The document is printed in Acta Parl. Scot., iii. 360-364; Sketch of Ed. Constit., 1-19; Documents on Reform, 28-38; Extracts from Ed. Rec., 1573-1589, pp. 265-275; Misc., 161-164; Maitland, Ed., 229-235; also printed separately under the title, 'The Sett or Decreet Arbitral,' etc. Supplementary articles were added by the town council in June, 1583. (Extracts, 277-279.)

was to consist of ten merchants and eight craftsmen (six deacons and two other craftsmen), together with the seven principal town officers, namely, the provost, four baillies, dean of Gild and treasurer. The mode of election of the town officers, the town council, and the deacons of the fourteen crafts is then carefully regulated. No unlawful meetings of merchants or craftsmen were to take place; but the dean of Gild could assemble his brethren and council in their Gild courts, and any one craft could convene for the transaction of lawful business. 'Item, toward the lang contrauersies for the gildrie, it is finallie with commoun consent appointit, aggreit and concludit that alsweill craftismen as merchandis salbe ressaut and admittid gild brether<sup>1</sup>, and the ane not to be refusit nor secludit thairfra mair nor the vther, thay being burgesses of the burgh als meit and qualifeit thairfoir; and that gild brodor to haif libertie to vse merchandice; thair admissioun and tryell of thair qualificatioun to be in the power and handis of the provost, baillies, thesaurare and counsell with the deane of gild and his counsall, quhilk sall consist in equal nowner of merchantis and craftismen gild brether, not exceding the nowner of sex personis by [i. e. not reckoning] the deane of gild himself.' One of Edinburgh's representatives in Parliament and in the Convention of Burghs is to be chosen by the provost and baillies from the craftsmen; said person is 'to be ane burges and gild brother of the burgh.' The auditors of the town accounts are to consist of an equal number of merchants and craftsmen. Further on it is stated that 'the merchantis and craftismen of this burgh ar now to be incorporat in ane societie and to make ane hail toun and commoun weill,' which reminds us somewhat of the wording in the preamble of the Berwick Statutes.

But the contest between the merchants and craftsmen of Edinburgh did not end with the Decree Arbitral. In the seventeenth and eighteenth centuries disputes between the two bodies frequently broke out, the crafts seeking to secure more freedom in the election of their deacons, and to place greater power in the hands of the latter and of the head deacon or convener<sup>2</sup>. In 1729 the Earl of Islay was chosen arbitrator, and in 1730 issued his decree arbitral, which regulates various matters in dispute, defining the powers of the deacons of crafts, etc.<sup>3</sup>. He recognized the office of convener

<sup>1</sup> In 1577 the council refused to admit certain craftsmen to the Gildry unless they consented to give up their crafts. (Extracts, 57, 58, 62.)

<sup>2</sup> Sketch of Ed. Constit., xxx.-xxxvi.

<sup>3</sup> This decree is printed in Sketch of Ed. Constit., 20-26; Documents on Reform, 38-41; Maitland, Ed., 135.

as lawful. By-laws made by the crafts were to have no force unless ratified by the magistrates and council.

In 1763 the crafts made a futile attempt to secure uncontrolled power in the election of their deacons<sup>1</sup>. Other conflicts took place between the merchants and craftsmen<sup>2</sup>; but the two Decrees spoken of above continued to form the basis of the municipal constitution of Edinburgh down to the reforms of the nineteenth century.

The Gild Merchant of Aberdeen is mentioned as early as 1222<sup>3</sup>. Violent conflicts between the merchants and the craftsmen broke out in the sixteenth century. One of the chief matters in dispute was the composition or dues charged when new members were admitted to a craft. The council claimed that these entrance fees interfered with the payment of dues demanded for admission to the freedom of the burgh. In 1579 a number of craftsmen were arrested for taking such fees, and the burgh council ordained that the deacon of every craft shall present all persons desiring to be free of the said craft to the dean of Gild; the deacons of crafts are to take no fees from such persons until after the dean of Gild has exacted what is due to the town authorities<sup>4</sup>.

In 1581 a controversy arose between the Gildry and crafts of Aberdeen concerning the latter's right to deal in merchandise. In that year the craftsmen secured a charter from James VI allowing them 'to use and exerce all maner of merchandize within our said Realme, and outwith the same, as they shall think most expedient,'

<sup>1</sup> Sketch of Ed. Constit., xliii.

<sup>2</sup> *Ibid.*, xlvi., *et seq.*—The Gildry or Gild Merchant is not to be confused with the Company of Merchants or Merchant Company of Edinburgh, which was established in 1681, and is still in existence. According to its foundation charter, the Company was to include all the 'merchants, sellers or importers of cloths, stuffs or other merchandise, for the apparel or wear of the bodies of men and women, Burgesses and Gild Brethren of the said burgh.' The charter also states that 'none shall have liberty to exercise the trade of the Company within the City of Edinburgh or privileges thereof, unless they join the Company.' See Mackie, *Merchant Company of Ed.*, 5. *et seq.*; *Acta Parl. Scot.*, ix. 334; *Munic. Corp. Com.*,

*Scot.*, 1835, p. 320; *Colston, Guildry*, 79.

<sup>3</sup> *Bain, Aberdeen Guilds*, 36; *Acta Parl. Scot.*, i. 87; *Munic. Corp. Com.*, *Scot.*, 1836, App. 6; *Kennedy, Ab.*, i. 11. For the Gildry of Aberdeen in general, see *Bain, pass.*; *Bannerman, Guildry of Ab.*; *Kennedy, Aberd.*, i. 11, 150-164; *Report of Guildry of Ab.*; *Constitution of Burghs*, 125; *Hist. MSS. Com.*, 1870, p. 122; *Extracts from the Council Register, pass.*; *Colston, Guildry of Ed.*, 184-197; *Constitution of Royal Burghs*, 129-164; *Rep. of Committee of Dean of Guild's Assessors*; *Walker, Deans of Guild*; *Misc.*, 166; *Analecta Scotica*, ii. 296-321; *Spalding Club, Misc.*, v. 43-181; *Rep. of Com.*, 1793, pp. 3-24.

<sup>4</sup> *Bain, Aberdeen Guilds*, 76, 77.

notwithstanding the Act of Parliament of 1466. But the brethren of the Gild compelled the craftsmen to renounce the privileges granted in this charter<sup>1</sup>.

These and other matters in dispute, especially the representation of the crafts in the burgh council, were settled in 1587. This agreement, known as the Common Indenture, was made 'betwixt the saidis provest, bailleis, counsaill and brethrene of gild on ye ane part, and ye saides craftsmen on ye other'; and was formally ratified upon the 6th day of August, 1587. Its aim was to end 'all contests and debates betwixt the said brethren of gild and craftsmen for avoiding of the said debates whilk has been among them in time bygane.' The first point settled in this agreement relates to the admission of craftsmen to the freedom of the town and of the various trades. Such persons were first to present themselves to the council to be made free burgesses of the burgh. Then they were to be admitted to their respective crafts. The composition or entrance fee for admission to any craft was fixed; the deacons being ordered to hand over two-thirds of such monies to the dean of Gild for the common charges of the town. The craftsmen were not to 'meddle with na kind of foreane nor oversea wares.' And as regards the holding of the principal town offices, 'we decern that na craftsmen sall aspyre thereto unto the time that they be promotit to be bretheren of gild.' Two of them, however, were to be appointed auditors of the town accounts. Lastly, the Common Indenture permits craftsmen to buy and sell such articles as butter, sheep, raw cloth and cloth made in their own houses; but they were not to deal in any staple goods, such as fish, hides, skin, and wool; the handling of these 'sall properly appertain unto the merchantis bretheren of gild allenarly<sup>2</sup>.'

New disputes between the merchants and craftsmen of Aberdeen took place within a few years after this agreement. In 1595 a quarrel concerning the election of magistrates was referred to the Convention of Burghs. The latter decided that the two craftsmen of the old council and the two of the new together with the six deacons of crafts were to have a vote in the election of magistrates or town officers. The two representatives of the crafts in the town council generally voted as the convener court directed them<sup>3</sup>. The

<sup>1</sup> Bain, *Aberdeen Guilds*, 79, 80.

<sup>2</sup> *Ibid.*, 81-84, 331-336.

<sup>3</sup> *Ibid.*, 85-88; *Extracts from Council*

*Register, 1570-1625*, p. 138; *Rec. of Conv.*, i. 460.

convenery or convention of craft deacons came into being towards the close of the sixteenth century<sup>1</sup>.

Contests between the Gildry and crafts continued to occur even in the present century<sup>2</sup>. But the Common Indenture of 1587, which was confirmed by royal charter in 1617 and was ratified by Parliament in 1633, remained the basis of the municipal constitution down to the Burgh Reform Act of 1833<sup>3</sup>.

We do not meet with any mention of the Gildry of Glasgow<sup>4</sup> until the beginning of the seventeenth century; it probably did not exist long before that period<sup>5</sup>. On November 8, 1604, the deacons of the fourteen incorporated trades or crafts assembled in one place, and 'the whole body of the merchant rank' in another, for the purpose of removing 'the ill-blood, strife, and contention' between the two bodies<sup>6</sup>. The deacons of crafts named a committee of twelve, and the merchants also appointed a committee of twelve, as commissioners 'to consult, reason, and conclude.' These twenty-four nominated four persons to arbitrate on the matters in dispute. The result was an agreement or decree arbitral, commonly called 'The Letter of Guildry,' which was signed by the commissioners on February 6, 1605, and approved by the magistrates and council of Glasgow on February 9, 1605. It was agreed that 'there shall be, in all time coming, a dean of Gild and a deacon conveener.' The

<sup>1</sup> 'A convener of deacons is first heard of when the crafts had to combine for their common interests against what they considered encroachments in their privileges by the merchant class of burgessees.' (Bain, 43, 76.) Bain (pp. 44-46) gives a list of the deacon-conveners of Aberdeen from 1587 to 1886. See also *ibid.*, 122-123.

<sup>2</sup> *Ibid.*, 90-97. In a contest that took place in 1638 the crafts convened 'with swords, pistollis, and lang wappynae.' (Extracts from Council Reg., 1625-1642, pp. 125-127.) See also Records of Conv., i. 312-383; Misc., lxi.; *Abredoniae Descriptio*, 20.

<sup>3</sup> Bain, 84, 90.

<sup>4</sup> For the history of the Gildry of Glasgow, see Ewing, *View of Guildry of Glasgow*; Hill, *View of Merchants' House*; Crawford, *Trades' House*; Merchants' House, *Regulations*; Campbell, *Cordiners*; Gordon, *Glasghu*

*Facies*; Extracts relating to River Clyde; Senex, *Glasgow*, i. 1-21; Misc., 171-174, 261-266, 286, 287; Extracts from Gl. Records, *pass.*; Glasgow Archaeol. Soc. Trans., 1859, i. 29-37.

<sup>5</sup> In 1582 it was enacted that a president of the merchants should be elected as in other burghs. (Extracts from Gl. Rec., 1573-1642, p. 95.) This may refer to a dean of Gild. But the latter is not mentioned in the lists of town officers (given in the Extracts from Glasgow Records) until 1605. In 1595-1598 the Convention of Royal Burghs tried to induce the magistrates of Glasgow to establish a Gildry; but they refused to introduce such 'ane grit noveltie.' (Records of Conv., i. 469, 479, 495; ii. 27.)

<sup>6</sup> For examples of such contests in the sixteenth century, see Extracts from Gl. Rec., 1573-1642, pp. 54, 96, 102.

dean of Gild shall always be a merchant, and shall be chosen yearly by the provost, baillies, council, and deacons. The dean of Gild's council shall be composed yearly of eight persons, four merchants 'and four craftsmen and gild brether.' The powers of the dean of Gild's council are then carefully defined. All burgesses residing in the town and bearing its burdens shall be admitted to the Gild on payment of a mark to the dean; 'and shall use all kind of handling and trade that is lawful during all the days of their life-time.' A merchant must be worth 500 marks before he can be admitted to the Gildry, a craftsmen 250 marks. It shall not be lawful for any one who is made burges and Gild brother in the future, 'to tapp tar, oil, butter, or to tapp eggs, green herring, pears, apples, corn, candle, onions, kail, straw, bread (except bakers, who may sell bread at all licit times at their pleasure), milk, and such like small things, which is not agreeable to the honour of the calling of a Gild brother.' It shall not be lawful for 'a single burges, who enters hereafter to be a burges, and becomes not a Gild brother,' to sell silk, spices, drugs, stuffs above twenty shillings per ell, hemp, iron, wine, etc.; nor to buy by wholesale beef, herring, cloth, tallow, etc. It was also agreed that there should be a 'deacon conveener, who shall ever be of the rank of craftsmen.' He shall 'always be an ordinary counsellor of the town's great council.' 'He shall conveen all the deacons of crafts and their assistants, at such times as occasion shall require, and shall judge betwixt them, and any of them, in matters pertaining to the crafts and callings; and shall make acts and statutes for good order among them, with the advice of the rest of the deacons and their assistants<sup>1</sup>.'

The Glasgow Letter of Gildry was ratified by Parliament in 1672<sup>2</sup>. It remained the basis of the civic constitution down to 1833, though some alterations were made in 1747 and 1754<sup>3</sup>. The Merchants' House or Gildry and the Trades' House or the aggregate of the fourteen incorporated crafts of Glasgow still exist.

The contests between the merchants or Gildry and the crafts

<sup>1</sup> Crawford, Trades' House, 46-48, 296-315; Hill, Merchants' House, 20-22, 28-30; Ewing, Guildry, 72-92; Campbell, Cordiners, App. In 1605 there were 576 burgesses of Glasgow, 213 of them being merchants and 363 craftsmen. (Crawford, 59.)

<sup>2</sup> Acta Parl. Scot., viii. 186; Crawford 83, 315, 316.

<sup>3</sup> Hill, Merchants' House, 22, 23; Ewing, Guildry, 13, 94-98. Some amendments of the Letter of Gildry were also made in 1623. (Extracts from Gl. Rec., 1573-1642, pp. 341, 343.) For some conflicts between the crafts and merchants after 1605, see *ibid.*, 258, 382-384; *ibid.*, 1630-1662, pp. 353-355, 407.

were not confined to Edinburgh, Aberdeen, and Glasgow. Other examples are found in the history of Dundee<sup>1</sup>, Stirling<sup>2</sup>, Perth<sup>3</sup>, Dumbarton<sup>4</sup>, Brechin<sup>5</sup>, St. Andrews<sup>6</sup>, Inverness<sup>7</sup>, Inverkeithing<sup>8</sup>, Montrose<sup>9</sup>, Banff<sup>10</sup>, Burntisland<sup>11</sup>, Haddington<sup>12</sup>, Kirkcaldy<sup>13</sup>, Elgin<sup>14</sup>, Culross<sup>15</sup>, Lanark<sup>16</sup>, Dunbar<sup>17</sup>, Cupar<sup>18</sup>, Kirkcudbright<sup>19</sup>, and Dunfermline<sup>20</sup>.

<sup>1</sup> Disputes took place between the nine crafts and the Gildry of Dundee early in the sixteenth century. Their differences were settled by a Decreet Arbitral in 1527. (Warden, Burgh Laws, 97-101, 240.) In the same century we find the crafts of Dundee united together into one body probably for the purpose of making common cause against the Gildry. (Ibid., 242-249.) Warden gives many documents illustrating the history of the Gildry of Dundee. There was a conflict between the merchants and craftsmen of Dundee in 1604-5, because the latter wished to have four representatives in the burgh council instead of two. (Maxwell, Dundee, 353-368.) See also Rec. of Conv., ii. 582, iii. 297.

<sup>2</sup> Register of Privy Council, iii. 216; General Hist. of Stirling, 57-64. The main cause of dispute at Stirling was the claim of the merchants to exclude the seven incorporated trades or crafts from dealing in certain wares. 'A misunderstanding was produced between the merchants and crafts which lasted many years, and often broke out into quarrels between the individuals of the different communities . . . But, in 1641, when the Town's grand charter was obtained, the conveyery court and the guildry got the privileges formerly granted them ascertained, which from their high antiquity were indifferently understood, and not till then regularly defined.' (General Hist. of Stirl., 58-60.) For some documents throwing light on this struggle at Stirling, see Misc., 269-272; Extracts from Rec. of Stirl., 138-145, 174-176. In 1636 the craftsmen asserted that 'the maist part of the merchandis of the said burgh . . . has borne ane very great heatret and malice aganes the haill craftsmen of

the said tonn.' (Ibid., 174.) See also Rec. of Conv., ii. 459, iii. 110, 111.

<sup>3</sup> Memorabilia of P., 108-113, 323-326; Marshall, Perth, 428-434; Misc., 164; Hunt, Hammermen, cvii.-cxv.; Const. of Burghs, 166; Rec. of Conv., iii. 466, 467.

<sup>4</sup> In 1681 it was enacted that the crafts should have five representatives in the town council of Dumbarton instead of two. (Acta Parl. Scot., viii. 411.) See also Misc., 203; Dumb. Records, 89, 90.

<sup>5</sup> Register of Privy Council, 1602, vi. 391; Black, Brechin, 47; Rec. of Conv., iii. 602-606.

<sup>6</sup> Reg. of Priv. Council, 1593, v. 61-65, vi. 276, 277; Rec. of Conv., i. 460.

<sup>7</sup> Documents on Reform, 76-77; Colston, Guildry of Edinb., 36; Sets, 15-19; Misc., 183-192; Rec. of Conv., iv. 559-563, v. 312.

<sup>8</sup> Documents on Reform, 76-77; Misc., 260.

<sup>9</sup> Acta Parl. Scot., vii. 39; Rec. of Conv., iii. 489, 538.

<sup>10</sup> Rec. of Conv., iv. 375-378; Munic. Corp. Com., Scotl., 1835, p. 112.

<sup>11</sup> Ibid., 1835, p. 240; Misc., 277; Rec. of Conv., iv. 18, v. 317.

<sup>12</sup> Misc., 175; Rec. of Conv., iii. 423.

<sup>13</sup> Rec. of Conv., iii. 461-481, 517; Misc., 176, 276.

<sup>14</sup> Misc., 209; Dunbar, Soc. Life, 175, 176; Rec. of Conv., iv. 396, 397.

<sup>15</sup> Misc., 216; Beveridge, Culross, i. 297; Rec. of Conv., iii. 464, 484, 485.

<sup>16</sup> Davidson, Lanark, 30; Rec. of Conv., iii. 481.

<sup>17</sup> Miller, Dunbar, 250, 251.

<sup>18</sup> Rec. of Conv., iii. 406, 418.

<sup>19</sup> Ibid., iv. 406-408.

<sup>20</sup> Sets, 24-36; Misc., 240-260; Rec. of Conv., i. 448, iii. 61, 552, 561.



In fact, this struggle seems to have been common to most of the principal burghs of Scotland in the sixteenth and seventeenth centuries. Queen Mary's charter in favour of craftsmen, granted in 1556, speaks of 'the dissensions, private and public hatreds and contentions of our merchants and craftsmen dwelling within our burghs'.

Though the merchants continued to monopolize the chief municipal offices and to retain a dominating influence in the town councils, the result of the struggle was, on the whole, favourable to the craftsmen. It gave them a representation in the burgh council; in some burghs, it secured them as a class more freedom in buying and selling; and it facilitated their admission to the Gildry<sup>2</sup>.

The functions of the Gildry in this later period were very important. It was the duty of the dean of Gild and his court to admit persons to the freedom of the town, to adjudicate in disputes between merchants and merchants or merchants and mariners<sup>3</sup>, to guard against forestalling and infringements of the monopoly of buying and selling, to supervise the regulations relating to foreign shipping, to suggest measures for promoting the mercantile interests of the town, to receive the indentures of apprentices, to adjust disputes between neighbours in reference to boundaries of estates, encroachments of buildings, etc., to superintend the public works of the burgh as well as the erection of private buildings, the destruction of dangerous ruins, etc., and to see that the prices of wares fixed by the town council were maintained, and that the assize of weights and measures was duly kept<sup>4</sup>. This court of the dean of Gild

<sup>1</sup> Bain, *Aberdeen Guilds*, 75, 330; *Memorabilia of Perth*, 323-326; *Warden, Burgh Laws*, 82, 83; *Rec. of Conv.*, ii. 471. Cf. *Extracts from Ed. Records, 1528-1557*, p. 234. The charter granted by James VI to craftsmen in 1581 contains words of a similar nature. (*Rec. of Conv.*, ii. 478; *Warden*, 84.)

<sup>2</sup> Though craftsmen seem to have been admitted to the Gildry in Edinburgh and Glasgow, it remained the rule in most burghs that a craftsman had to renounce his craft before being allowed to enter the Gildry. Thus the burghesses were divided into two well-defined classes, gildrymen or merchants, and craftsmen. See the works referred to in the notes, above, p. 223.

<sup>3</sup> The maritime jurisdiction of the Gildry was superseded by that of the Admiralty Court, *temp.* Charles II. (*Acta Parl. Scot.*, 1681, c. 16.) The jurisdiction of the Gildry in disputes between merchants and merchants gradually vanished in the seventeenth and eighteenth centuries. (*Erskine, Inst.*, Bk. i. Tit. iv. § 24; *Hill, Merchants' House*, 30.)

<sup>4</sup> For the jurisdiction of the dean of Gild, see *Acta Parl. Scot.*, 1593, iv. 30, c. 38; also *ibid.*, vii. 178, ix. 476, x. 151; *Munic. Corp. Com., Scot.*, 1835, pp. [54], 4, 19, 91, 205, *et pass.*; 1836, pp. 27, 158, 307, 398, *et pass.*; *Black, Royal Burghs*, 30, 31; *Skene, Royall-Burghs*, 140-144; *Extracts from Coun-*

exercised a jurisdiction distinct from that of the other municipal courts, to which it was in no wise subordinate. Its decisions could be revised only by the national Court of Session<sup>1</sup>.

The history of the Scotch Gild Merchant or Gildry thus differs from that of England in two important points, namely, in the inimical relations between the crafts and the Gild, and in the continuance of the Gildry as a separate but constituent part of the burghal administration down to the present day. Other differences worthy of note are the greater power and wider functions of the Gildry and its chief officer, the aggregation of crafts into a convenery or trades' house, and their representation in the councils of a much larger number of towns.

The Scotch Burgh Reform Act of 1833 regulated the relations of the Gildry and crafts to the town councils. No deans of Gild, deacons or representatives of crafts were henceforth to form 'official and constituent members of the town councils.' The functions performed by a dean of Gild in the town council or in the dean of Gild court were henceforth to be performed by a member of the said council, elected by a majority of the councillors. But the dean of Gild in Edinburgh, Glasgow, Aberdeen, Dundee, and Perth, and the deacon convener in Edinburgh and Glasgow were to remain constituent members of their respective town councils, and were to retain their old powers unchanged. The Gildries and crafts in all burghs were to continue to have the management of their own internal affairs<sup>2</sup>.

The exclusive privilege of trading in Scotch burghs was abolished in 1846. An Act of Parliament passed in that year states that 'it shall be lawful for any person to carry on or deal in merchandize, and to carry on or exercise any trade or handicraft, in any burgh and elsewhere in Scotland, without being a burges of such burgh, or a guild brother, or a member of any guild, craft, or incorporation<sup>3</sup>.'

cil Reg. of Ab., 1625-1642, p. 48; Extracts from Gl. Rec., 1573-1642, p. 338; Chalmers, Dunferm., i. 309; Sketch of Ed. Const., xxiv, xxv; Hill, Merchants' House, 14, 29-32; Senex, Glasgow, i. 21; Crawford, Trades' House, 299; Colston, Guildry, 18, 37, 115; Chalmers, Book of Scot., 65, 66; Hay, Ar-

broath, 309; Brown, Selk., ii. 183; Maxwell, Dundee, 597; Rec. of Conv., i. 12, 14, 304, 322; ii. 4; iii. 381, 488.

<sup>1</sup> McDouall, Laws, ii. 582; Hill, Merch. House, 14.

<sup>2</sup> Statutes of the Realm, 3 & 4 Wm. IV, c. 76, §§ 19-23.

<sup>3</sup> Statutes, 9 & 10 Victoria, c. 17.

But a dean of Gild and craft fraternities still exist in many Scotch burghs, though the Act of 1846 deprived them of most of their ancient functions<sup>1</sup>. The principal duty of the dean of Gild now is to supervise the erection of buildings,—to see that they do not encroach on private property or on the public streets; and to cause houses in danger of falling to be torn down<sup>2</sup>.

<sup>1</sup> For the burghs in which a dean of Gild still exists, see above, p. 203. There are also crafts or trade incorporations in some boroughs; there are twelve in Edinburgh, fourteen in Glasgow, nine in Dundee, eight in Perth,

seven in Aberdeen, and seven in Stirling. (Bain, *Aberdeen Guilds*, 26–30.)

<sup>2</sup> Goudy and Smith, *Local Gov.*, 32; Colston, *Guildry*, 18; Hill, *Merchants' House*, 31.

## STATUTA GILDE<sup>1</sup>.

### HIC INCIPIUNT STATUTA GILDE APUD BERWICUM FACTA.

IN nomine Domini Dei et indiuidue Trinitatis et beate Marie Virginis et omnium sanctorum, Hec sunt Gilde burgensium statuta per dispositionem domini Roberti de Bernhame militis tunc maioris de Berwico, Symonis Maunsel et aliorum predicti Burgi proborum virorum primo et principaliter constituta, Vt per multa corpora in vno loco congregata sequatur et vnica voluntas et vna eorundem in relacione vnus ad alterum firma et sincera dilectio, ne particulariter aliqui Burgensium nostrorum congregati in aliquo [loco] generalis Gilde libertatem uel statuta possint elidere aut noua consilia contra Gildam hanc possint concipere in futurum.

#### I.

##### PROHIBICIO NE ALIQUA ALIA GILDA PROCURETUR.

Statuimus ut omnes particulares Gilde hactenus in Burgo nostro habite abrogentur et catalla eis rationabiliter et de jure debita huic Gilde exhibeantur. Et nullus amodo aliquam aliam ab ista in Burgo nostro presumat procurare. Set habito omnium membrorum ad vnum capud vno respectu vnum inde in bonis actibus proueniat consilium, vna societas firma et amicitia verissima.

#### II.

##### DE FORISFACTIS SPECTANTIBUS AD GILDAM.

Statuimus quod omnia forisfacta excedentia octo solidos nisi fuerint de tollonio Regis, iuri uel libertati communi prepositorum spectantia, huic Gilde exhibeantur.

<sup>1</sup> These Statutes are here reprinted from Innes, Ancient Laws and Customs, 64-88. I have made some slight changes in the punctuation.

## III.

## QUOD FRATRES GILDE LEGENT ALIQUID AD GILDAM.

Statuimus etiam ut fratres huius Gilde in dispositione testamentorum tertio loco secundum quod eis libuerit de parte eos tangente huic Gilde delegent nisi ex negligencia fuerit omissum ita quod aliquid legent.

## IV.

## DE ILLO QUI NON EST CONFRATER GILDE.

Item si quis non fuerit confrater huius Gilde et in extremis suis aliquid de bonis suis eidem Gilde delegauerit recipimus eum in confraternitatem nostram et ad debita sua perquirenda et in aliis necessitatibus suis ac si esset confrater predictæ Gilde eidem concilium nostrum et auxilium concedimus.

## V.

## DE DELICTO CONFRATRIS GILDE CONTRA CONFRATREM.

Item Statuimus insuper quod si quis confratrum nostrorum verbotenus deliquerit, ad Gildam nostram adeundo uel morando ibidem seu inde redeundo, erga confratrem suum, primo, secundo, et tercio emendacionem faciat Gilde in xl. denariis.

## VI.

## ORDINACIO QUALITER TRANSGRESSOR PUNIATUR.

Item si quarto deliquerit verbo uel facto, condempnetur et puniatur secundum arbitrium Aldirmanni, Ferthingmannorum, Decani et aliorum confratrum Gilde et secundum decretum eorundem satisfiat leso.

## VII.

## ALIA ORDINACIO DE TRANSGRESSORIBUS.

Item si quis confratrum nostrorum pugno alium percusserit emendet Gilde in dimidia marca et secundum arbitrium Aldirmanni [Decani et] aliorum confratrum satisfiat leso. Et si quis con-

fratrum ab alio sanguinem extraxerit violenter emendet Gilde in xx. solidis, et secundum arbitrium Aldirmanni [Decani] et ceterorum confratrum leso satisfaciatur secundum delicti quantitatem; nec debet aliquid de emendis istis prece alicui relaxari.

## VIII.

## INHIBICIO CONTRA CONTUMELIOSUM.

Statuimus insuper quod nullus contumeliosus audeat uel presumat infra limina Gilde nostre cultellum cum puncto portare, quod si fecerit emendet Gilde in xij. denariis.

## IX.

## DE SANGUINE EXTRACTO.

Item si quis baculo aut armo ferreo ab alio sanguinem violenter extraxerit aut aliquod membrum mutilauerit secundum arbitrium Aldirmanni condempnetur.

## X.

## DE FORISFACTO PERTINENTE AD LUMEN GILDE.

Item si quis minxerit super calciamenta sua in vili modo aut super parietes domus Gilde nostre durante Gilda nostra emendet in quatuor denariis ad lumen Gilde.

## XI.

## ORDINACIO CONFRATRIS GILDE.

Statuimus etiam ut nemo recipiatur in confraternitatem nostram huius Gilde nostre minus quam xl. solidis exceptis vero filiis et filiabus burgensium et confratrum Gilde nostre.

## XII.

## DE CONFRATRE IN DECREPITA ETATE VEL MORBO.

Item si quis confratrum nostrorum Gilde nostre in decrepitam etatem uel paupertatem aut morbum incurabilem inciderit et de proprio non habuerit unde possit sustineri, secundum dispositionem Aldirmanni et aliorum confratrum releuetur secundum facultates Gilde nostre.

## XIII.

## DE FILIA CONFRATRIS GILDE.

Item si quis confratrum nostrorum Gilde post obitum suum relinquat filiam suam ex eius vxore coniugata que sit laudabilis conuersationis et bone fame et non habens de proprio vnde sibi prouideri poterit de viro vel de domo Religionis si caste viuere voluerit, secundum dispositionem Aldirmanni et aliorum proborum secundum facultates Gilde de viro vel de domo Religionis sibi prouideatur.

## XIV.

## ORDINACIO SUPER EXEQUIAS FRATRIS GILDE IN PAUPERTATE.

Item si confrater Gilde nostre moriatur et non habuerit de proprio unde exequias suas poterit celebrare confratres Gilde nostre de facultatibus eiusdem Gilde corpus defuncti honorabiliter faciant humari. Et si qui de confratribus Gilde in villa existentes ad humacionem confratris sui non venient sint in forisfacto vnus bolle ordeacei brasei.

## XV.

DE CONFRATRE CALUMPNIATO QUOMODO VICINI CUM EO  
LABORABUNT.

Item si quis confratrum nostrorum aut plures extra burgum de vita et membris fuerint calumpniati uel vexati probi viri duo vel tres de Gilda laborabunt cum eo duas dietas recedendo super expensas Gilde; si vero vltra duas dietas cum ipso laborauerint reus tunc propriis expensis suis eos cum ipso adducet et reducet. Similiter si necesse fuerit vltterius super expensis rei cum eo laborabunt, Si per aliquem super aliquo facto iniuste vexatus fuerit. Si vero iuste vexatus reus adducet super propriis expensis confratres et secundum arbitrium Aldirmanni, etc. condempnabitur.

## XVI.

## DE VICINO NOLENTE LABORARE CUM VICINO.

Item statuimus quod si quis confratrum nostrorum hanc confraternitatem nostram contumaciter neglexerit nullus de confratribus

nostris ei consilium uel auxilium uerbo uel facto infra Burgum uel extra ministrabit. Et si etiam super uita et membris placitatus fuerit uel in aliquo honorem terrenum tangente vexatus fuerit non ei succurremus.

### XVII.

#### ORDINACIO QUALITER VICINI AGGREGARI DEBENT.

Statuimus etiam ut quocienscumque Aldirmannus et Ferthingmanni et ceteri probi congregare uoluerint confratres ad negocia Gilde tractanda omnes confratres Gilde conueniant indilate audita campana super forisfactum xij. denariorum.

### XVIII.

#### CONSTITUTIO DE LEPROSIS.

Statuimus quod nullus leprosus ingrediatur limina portarum Burgi nostri, et si quis casualiter ingressus fuerit per seruientes Burgi nostri statim eiciatur. Et si contra hanc prohibitionem nostram aliquis leprosus portas Burgi nostri consuetudinarie ingredi presumpserit, indumenta sua quibus indutus est capiantur et comburantur, et nudus eiciatur, quia de communi consilio prouisum ut eis colligantur elemosine ad eorum sustentacionem in loco competenti extra Burgum nostrum; et hoc dico de leprosis alienigensis.

### XIX.

#### ORDINACIO NE FIMUM PONATUR IN FORO NEC IN COMMUNI VIA.

Statuimus ut nullus presumat uel audeat apponere fimum uel aliquod puluerulentum uel cineres in uia communi uel in foro uel super ripam de Twede in dampnum et lesionem circumtransientium. Et si quis hoc fecerit condampnetur in octo solidis ad forisfactum.

### XX.

#### ORDINACIO LOQUENDI IN CURIA.

Statuimus quod in placitis nostris nullus loqui audeat de hoc quod tangat causam nisi tantummodo actor et reus aut eorum aduocati, Et tantummodo Balliui qui tenent curiam, et hoc ad inquisitionem



cause vtriusque partis. Set tam actor quam reus ad consilium suum vnumquemque indifferenter poterit euocare. Et si quis contra hanc prohibitionem nostram venire presumpserit condempnetur in octo solidis.

## XXI.

## DE BURGensi CARENTE EQUO.

Statuimus insuper ut quicumque Burgensis habuerit in catalla x. libras habeat in stabulo suo equum decentem ad minus de valore xl. solidorum. Et si quis ab equo suo aliquo casu priuatus fuerit, morte, vendicione, donacione, uel quocunque alio modo, equum perquirat infra xl. dies; sin autem condempnetur in octo solidis ad Gildam.

## XXII.

## ORDINACIO DE MOLIS MANUALIBUS.

Statuimus quod nullus frumentum, mastilionem uel ciliginem ad molas manuales molere presumat nisi magna tempestate cogente uel penuria molendinorum hoc faciente, et si quis in tali casu moluerit ad molas manuales dabit pro multura xij. vas. Et si quis hanc prohibitionem nostram contraire presumpserit a molis manualibus priuetur imperpetuum et braseum suum molet ad molendina ad xxiiij. vas.

## XXIII.

## DE LIBERTATE CONFRATRIS GILDE.

Statuimus ut nullus emat coria, lanam aut pelles lanutas ad reuendendum aut pannos scindat nisi fuerit confrater Gilde nostre uel extraneus mercator ad sustentacionem officii sui, et non habebit loth neque cauil cum confratre nostro.

## XXIV.

## ORDINACIO DE SUTORE TANNATORE.

Statuimus ut nullus sutor debet tannare aliqua coria nisi quorum cornua et aures fuerint eiusdem longitudinis equalis. Et nullus tannator debet salsare aliqua coria.

## XXV.

## DE ALIENA PECUNIA NON MERCANDA.

Statuimus ut si quis confrater noster accipiat denarios alicuius mercatoris alienigene ad negociandum et de hiis super forum certum lucrum capiat de sacco lane uel lasta coriorum aut de pellibus uel aliis mercimoniis, condempnetur primo et secundo in xl. solidis. Et si tertio super hoc conuictus fuerit amittet Gildam in perpetuum; Nisi Aldirmannus et confratres Gilde sibi gratiam concedere uoluerint.

## XXVI.

## ORDINACIO SUPER EMPCIONE ALLECIUM ET PISCIIUM.

Item statuimus quod nullus emat allec [nec] pisces aliquos qui per nauim deferuntur ad villam antequam nauis iaceat super siccam terram et remus foris mittatur; Nec aliqua alia mercimonia scilicet de blado, fabis, pisis, uel sale. Et si quis conuictus fuerit super hoc dabit vnum dolium vini ad Gildam pro forisfacto, aut per vnum annum et diem a villa euacuetur.

## XXVII.

ORDINACIO QUOD NULLUS NEGET VICINO SUO PARTEM DE HIIS  
SUBSCRIPTIS.

Item si quis emerit allec, sal, bladum, fabas, aut pisas ad naues uel aliquod de consimilibus mercimoniis non negabit vicino suo partem quantum uoluerit emere ad cibum suum ad sustentacionem domus sue pro foro quod [i. e. quo] ille emerit. Sin autem condempnabitur in suo plenario forisfacto vnus dolii vini ad Gildam. Et similiter qui emerit plus quam ad cibum suum et vendiderit eadem pena puniatur quia dixit se tantum ad cibum suum emere et super hoc partem petierit et optinuerit. Et quod quarta pars tocuis rei empte semper remaneat emptori. Et quod soluat infra bordam cum optinuerit rem emptam.

## XXVIII.

## CONSTITUCIO DE ARRIS DATIS MERCATORI.

Item si quis emerit allec uel alia predicta mercimonia et dederit denarium dei uel aliquod argentum in arris, pacabit mercatori a quo

predicta emerat secundum forum prius factum sine felling uel herlebreking; et si non fecerit et in hoc conuictus fuerit dabit vnum dolium vini ad Gildam, aut a villa per annum et diem euacuetur.

## XXIX.

CONSTITUCIO DE MERCATURA BONA SUPER ET DETERIORA  
SUBQUAM.

Item statutum est si contigerit quod emptor alicuius rei viderit aliquod mercimonium quod bonum sit supra et deterius subquam, emendare debeat venditor rei per visum et considerationem proborum hominum ad hoc assignatorum.

## XXX.

## [DE CARNIFICIBUS.]

Item statutum est quod nullus carnifex donec voluerit officium exercere emat lanam aut coria nisi velit abiurare suam securim et quod manum suam bestiis non apponat.

## XXXI.

## QUOMODO BROCCARII ELIGI DEBENT.

Statuimus quod Broccarii sint electi per visum communitatis ville Berwici qui dabunt singulis annis vnum dolium vini communitati ville predictae ad festum sancti Michaelis sine ulteriori dilacione. Et nomina eorum per commune consilium inbreuientur.

## XXXII.

CONSTITUCIO DE REGRATARIIIS QUOD NON EMANT ANTE CERTAM  
HORAM.

Statuimus etiam quod nullus regratarius emat pisces, fenum, auenas, caseum uel aliquod aliud quod ad Burgum differatur vendendum ante pulsacionem campane in berfredo. Et si quis vero contra hanc prohibitionem nostram venire presumpserit, res empta capiatur et secundum considerationem Balliuorum nostrorum pauperibus ville erogetur.

## XXXIII.

## CONSTITUCIO DE MERCIMONIIS EMENDIS.

Statuimus insuper quod nullus emat aliqua mercimonia que ad Burgum differantur ad vendendum super pontem de Twede neque in Briggate neque extra portas ville antequam ad forum Burgi perueniat. Et si quis super hoc conuictus fuerit rem emptam amittet et commodum illius ad Gildam nostram vertatur.

## XXXIV.

## CONSTITUCIO FACTA DE LANA ET CORIO VENIENTIBUS AD VILLAM.

Item statuimus quod nulla mulier virum habens emat lanam in vico, nec aliquis burgensis habeat tantummodo vnum garcionem ad lanam uel coria emenda. Et si quis irrationabiliter emat lanam uel coria vltra statutum mercatorium in deteriorationem communitatis ville, dicta lana vel coria capiantur et ad commodum Gilde vertantur, et dictus homo uel garcio sit in forisfacto viij. solidorum.

## XXXV.

## CONSTITUCIO QUOD NULLUS PROCURET FORINSECUM PRO EO PLACITARE CONTRA VICINUM SUUM.

Item ordinamus et stricte percipimus quod nullus comburgensis noster procuret aliquem forinsecum extra libertatem nostram manentem ad placitandum pro ipso contra aliquem vicinum suum super plenariam forisfacturam vnus dolii vini sine fauore vel prece leuandi.

## XXXVI.

## CONSTITUCIO FACTA DE CONSPIRATORIBUS.

Item statuimus si aliquis faciat conpirationem aliquam retro communitatem ad eam separandam vel spergendam et super hoc conuictus fuerit dabit vnum dolium vini ad forisfactum.

## XXXVII.

## CONSTITUCIO FACTA DE GUBERNACIONE COMMUNITATIS BERWICI.

Statuimus insuper per commune consilium quod communia de Berwico gubernentur per xxiiij. probos homines de melioribus et discretioribus ac fidedignioribus eiusdem Burgi ad hoc electos vna cum maiori et quatuor prepositis. Et quandocunque predicti xxiiij. homines fuerint citati ad commune negocium tangendum, qui non venerit ad citacionem sibi factam ultra noctem dabit duos solidos ad Gildam.

## XXXVIII.

## CONSTITUCIO DE ELECTIONE MAIORIS ET PREPOSITORUM.

Item statuimus quod maior et prepositi eligentur per visum et consideracionem tocius communitatis. Et si aliqua controuersia fuerit in electione maioris uel prepositorum fiat tunc electio eorum per sacramenta xxiiij. proborum hominum predicti Burgi electorum ad eligendum vnam personam ad dictam communitatem regendam.

## XXXIX.

## DE CONSILIO OSTENSO CONTRA SACRAMENTUM.

Statuimus insuper si aliquis Burgensis contra sacramentum suum prestitum consilium uel secreta Gilde nostre ostendere presumpserit prima vice secundum considerationem Aldirmanni et aliorum fidedignorum Gilde nostre puniatur. Si vero secunda vice in tali casu deliquerit libertatem Burgi nostri per annum et diem amittet. Et si tertia vice super talia conuictus fuerit libertatem Burgi amittet pro termino vite sue. Et sciendum est vltra quod infra illud Burgum nec in aliquo alio infra regnum amplius libertatem gaudere de iure non poterit, quia infamis reputatur.

## XL.

## CONSTITUCIO FACTA DE CYROTECARIIS ET PELLIPARIIS DE PELLIBUS LANUTIS.

Item statuimus quod nullus pelliparius aut cyrotecarius aut aliquis alius Burgensis faciat lanam de aliquibus pellibus a festo Pentecostis

vsque ad festum Sancti Michaelis set vendat pelles quales fuerint secundum quod melius poterit. Et si aliquis pelliparius uel cyrotarius super contrarium conuictus fuerit ab officio suo per vnum annum et diem depriuetur. Et si aliquis Burgensis contrarium fecerit et super hoc conuictus fuerit quociens esset dabit vnum dolium vini ad Gildam.

## XLI.

CONSTITUCIO FACTA DE ALLECIBUS ET DE MODO EMPCIONIS  
EORUMDEM.

Item statuimus ut quicumque Burgensis emerit allec omnes vicini sui quicumque presentes fuerint ad empcionem dictorum allecium habebunt pro eodem precio quo ipse emit sine aliqua fraude. Et si quis voluerit partem habere qui ad empcionem dictorum allecium presens non fuerat dabit emptori ad lucrum xij. denarios. Et si quis conuictus fuerit de contrario dabit vnum dolium vini ad Gildam. Et si quis non satisfecerit venditori dictorum allecium de solucione pecunie sibi debite et super hoc conuictus fuerit, similiter ipse dabit vnum dolium vini ad Gildam. Et hoc intelligendum est de confratribus Gilde et non de aliis.

## XLII.

A. D. MCCLXXXI.

CONSTITUCIO FACTA DE TRACTAGIO VINI.

Item statutum fuit die Mercurii proxima ante festum sancti Marci Anno domini m<sup>o</sup>cc<sup>o</sup> iij<sup>o</sup> primo quod quilibet Burgensis dabit plenum tractagium pro quolibet dolio vini quod ponit in tabernam et quod ponit in nauem et extra. Pro dolio remouendo de vno sellario ad alterum dabit duos denarios et obolum, videlicet vnum denarium ville et denarium et obolum pro Beriugio. Et pro uno dolio ad potum suum dabit denarium pro Beriugio.

## XLIII.

DE Auenis Venientibus Burgo Vendendis.

Item statutum fuit in Ecclesia sancti Nicholai in crastino sancti Cuthberti proximo sequente anno supradicto quod nulla mulier emat in foro auenas ad faciendum braseum ad vendendum plusquam vnam

celdram. Et si plus emerit amittet quantum emerit. Et sciendum est quod tertia pars remanere debet Balliuis Burgi et residuum ad Gildam.

**XLIV.**

A. D. MCCLXXXIII.

**CONSTITUCIO FACTA DE CARNIFICIBUS ANIMALIA EMENTIBUS.**

Item statutum fuit die Mercurii in vigilia apostolorum Symonis et Jude Anno MCCLXXXIII. quod nullus carnifex a festo sancti Martini vsque ad Natale debet ire extra villam ad obuiandum bestiis venientibus ad villam vendendis nec aliquo die infra dictum tempus bestias emere in foro ante prandium nec in fraude procurabit sibi bestias vsque post prandium teneri. Et si quis vero contrarium fecerit ab officio suo per annum et diem exponatur.

**XLV.**

**CONSTITUCIO DE CORIO TANNATO.**

Item statuimus quod nullus extraneus ferens coria tannata ad vendendum vendat ea infra domum set in foro communi et hoc tantum per diem fori statutum. Et licet coria fuerint cesa in frustra dabit tolloneum.

**XLVI.**

**CONSTITUCIO DE MOLIS MANUALIBUS.**

Item nullus habeat nisi duo paria molarum et qui plura habuerint a molis suis per vnum annum et diem priuentur.

**XLVII.**

A. D. MCCLXXXIV.

**CONSTITUCIO DE CONGREGACIONE COMMUNITATIS PRO COMMUNI NEGOCIO.**

Item ordinatum fuit die Sabbati proximo post festum sancte Trinitatis anno Domini m<sup>o</sup>cc<sup>o</sup> octogesimo quarto quod quodocunque Aldirmannus et Ferthingmanni propter commune negocium tractandum voluerint confratres Gilde congregari, campana per vices pulsata

in berfredo scilicet primo, secundo, et tercio, debet per interualla pulsari. Et quicumque confrater Gilde hoc audierit et ad locum congregationis possit accedere et noluerit uenire antequam a pulsacione cessatur, sit in misericordia xij. denariorum.

## XLVIII.

## CONSTITUCIO DE LOTH ET CAUYL.

Item die Jouis proximo ante festum beati Mathei apostoli Anno domini m<sup>o</sup>cc<sup>o</sup>iiij<sup>to</sup> ordinatum fuit quod nullus confrater Gilde nostre debet habere lotte neque cauyll cum alio in minori quam dimidio quarterio pellium et dimidia dacra coriorum et in duabus petris lane.

## XLIX.

## A. D. MCCXCIV.

## DE EMPCIONE FABARUM ET PISARUM VEL SIMILIIUM AD NAUES.

Prima curia tenta die Jouis ante festum Penthecostes anno Domini m<sup>o</sup>cc<sup>o</sup> nonagesimo quarto in aula fratrum ordinis sancte Trinitatis statutum et ordinatum per vnanimem concensum et assensum expressum et voluntarium omnium fratrum Gilde quod nullus emat ali-quod genus bladi, fabarum, pisarum, salis, carbonum, seu cetera venalia apud Berwicum venientia per mare nisi sit ante bordam nauis videlicet *at the Rade bra*, nec portet dicta bona empta de naue ante ortum solis set ab ortu vsque ad declinacionem solis fiat portagium sine requie. Et si quis huius rei contrarium fecerit et super hoc conuictus fuerit dabit vnum dolium vini fratribus Gilde.

## L.

## DE AMERCIAMENTIS LEUANDIS CONFRATRIBUS GILDE.

Item ordinatum fuit eodem die per assensum et consensum omnium fratrum Gilde in aula predicta in crastino sancti Mathei anno supradicto, Quod omnia merciamenta capta ab extraneis mercatoribus pertinere debent fratribus Gilde et Burgensibus ville exceptis illis que pertinent ad dominum Regem que sibi de iure sunt reseruata.



## LI.

## CONSTITUCIO FACTA DE BURGENSE FORISHABITANTE.

Item eodem die ordinatum est ex assensu et consensu predictorum confratrum Gilde quod nullus Burgensis vel confrater Gilde nostre forishabitans audeat nec presumat aliqua mercimonia ad Gildam nostram pertinentia infra Burgum nostrum emere vel vendere nisi tantum in die fori. Et quod nullus forishabitans emat aliqua victualia ad Burgum nostrum per naues venientia ad tabernanda nisi tantum ad sustentacionem domus sue. Et si quis contrarium fecerit et super hoc conuictus fuerit dabit vnum dolium vini ad Gildam nostram.

## APPENDIX E.

### THE AFFILIATION OF MEDIEVAL BOROUGHS<sup>1</sup>.

MODERN society is pre-eminently distinguished from that of the middle ages by a less intense and less pervasive spirit of association. The weakness of central authority, the imperfect administration of justice, rendered amalgamation of interests imperative. 'Were I alone, in no society, then woe me!' sang the Dutch poet of the fourteenth century—

'Mi es goet gheselcap bi,  
Waer ic allene, soo wee mi<sup>2</sup>.'

Men were more to each other or less to each other than they are to-day, according as they were constituent parts of the same or different fraternal aggregations. Nor were these aggregations confined to a given place or community; members of various communities, the different communities themselves<sup>3</sup>, formed combinations. Social isolation, in the middle ages, when it does appear, is often more apparent than real. The knight in his solitary castle was but one of a larger fraternity; the mendicant monk on his lonely pilgrimages greeted many a brother monk; the towns, isolated from the rest of the world by lofty walls and almost impassable roads, were united by a tie closer and more organic than any that binds together such communities in our age of rapid transit and great commercial activity. This peculiar affiliation of medieval towns as it existed on the Continent has been incidentally dwelt upon by various writers, but the English phase of it has never yet been investigated.

<sup>1</sup> This paper appeared in the *Antiquary*, 1885, vol. xi. I now reprint it with many additions.

<sup>2</sup> Van der Lore cited by De Vigne, *Recherches sur les Gildes*, Introd., p. ix.

<sup>3</sup> For example, Pappenheim (*Schatz-gilden*, 184) describes a federation of eighteen Danish guilds which held general synods at Skanör in the thirteenth century.

§ 1. *Great Britain.*

When the ancient mark became surcharged with inhabitants, the newly-married sons, bidding farewell to the old home, went forth into the forest, appropriated a portion of the virgin soil strewn in profusion about them, and reared for themselves new habitations<sup>1</sup>. Even in recent times Russian peasants have resorted to a very similar expedient<sup>2</sup>. In both cases the new village maintained a close connection with the older community, adopting its institutions, appealing to it for counsel and support. The affiliation of English boroughs in the twelfth, thirteenth, and fourteenth centuries was similar to this, but with one important difference,—the mother town was generally a parent by adoption, and not by birth. When a prosperous village or a newly-founded town wished to secure the franchises of a free borough<sup>3</sup>, or when a borough sought an extension of its liberties, it was natural for the community to look for a model among its more privileged and flourishing neighbours. The innate tendency of the human mind to turn to account the experiences of others would have been a sufficient motive for such action; but the need of a reliable precedent of this kind was especially felt in an age when even the magistrates of most towns were unskilled in law, and when king and baron were ever ready to nullify chartered rights, the one by a quibbling ‘quo warranto,’ the other by evasions and encroachments. Among the boroughs that

<sup>1</sup> The newly-founded villages often remained dependent upon the mother community. For the whole subject, see Von Maurer, *Einleit.*, 175–181, and *Gesch. der Markenverf.*, 19–22, 362, 363.

<sup>2</sup> *Systems of Land Tenure* (Cobden Club), 355; Cunningham, *English Commerce*, 52. In North America, likewise, offshoots of the colonial towns were formed by emigration. For example, Newark, New Jersey, was founded by emigrants chiefly from New Haven in 1666 (Levermore, *New Haven*, 113–120). ‘The most ancient town-polity of New Haven touched the soil of New Jersey, and imparted to the city of Newark the first currents of its municipal life’ (*ibid.*, 120).

<sup>3</sup> In the agreement between the City of London and the Lords of Council,

1609, it is stated that the towns founded in Ulster shall have such liberties as shall be thought fit on view of the charters of London, the Cinque Ports, Newcastle, and Dublin. (Cox, *Hibernia*, ii. 16.) When the English conquered Ireland and Wales, most of the municipalities were remodelled, Bristol and Hereford respectively being the chief exemplars. See below, p. 257. In 24 Edward I a writ ‘de civibus eligendis pro quadam nova villa ordinanda’ was issued to twenty-three of the principal boroughs of England. Each of them was to elect two citizens, ‘qui melius sciant quandam novam villam disponere et ordinare,’ who were to meet the king at Bury St. Edmunds. (*Addit. MS.*, *Mus. Brit.*, 4530, ff. 4–6.) See also Merewether and Stephens, 415.

could be thus chosen as models, there was great diversity of custom and law; for as yet there were very few acts of parliament applicable to all boroughs, and no municipal 'corpus juris' of England like the 'leges burgorum' of Scotland.

The townsmen having selected a borough as an exemplar offered a fine to their lord in return for a grant of its privileges. Thus, in 1199, Gloucester gave the king two hundred marks that it might have the liberties of Winchester; in 1204 Derby offered sixty marks for a charter like that of Nottingham<sup>1</sup>. If the petitioners found a favourable hearing, they received a charter containing some such clause as the following:—'Sciatis nos concessisse . . . burgensibus nostris de Derby omnes illas liberas consuetudines quas burgenses nostri de Nottingham habent,' etc.<sup>2</sup> In this particular case the customs ('consuetudines'), or at least the more important ones, are specified in the charter; but they are frequently omitted. Sometimes they are enumerated without any intimation that they are those of another town. For example, the charter of 1199, for which the burgesses of Gloucester paid the fine referred to above, is in great part an exact transcript of the charter of Richard I to Winchester, though it does not mention this city<sup>3</sup>. Thus the phenomenon of affiliation will often explain certain remarkable resemblances existing between charters of different boroughs<sup>4</sup>. A town could have two or more models at the same time, or could change from one to another<sup>5</sup>. Now and then we meet with a general grant of 'the liberties of any borough,' or 'the liberties that a free borough ought to have,' by which was doubtless meant a vague aggregate of privileges common to most free boroughs<sup>6</sup>. Not infrequently a

<sup>1</sup> Rot. de Oblatis, 17, 223. For other examples, see *ibid.*, 99, 111; Madox, *Exch.*, i. 398; and below, p. 245, n. 1. John Gray, Bishop of Norwich, selected an exemplar for his town of Lynn:—'Quia Dominus Rex nobis per cartam suam concessit ut elegerimus Burgum in Anglia quemcumque vellemus, ut eadem Libertates quas Burgus ille habet, haberet etiam villa nostra de Lenn', et nos eligimus Ozenfordiam.' (Mackerell, *King's Lynn*, 248; Parkin, *King's L.*, 118.)

<sup>2</sup> A. D. 1204. Rot. Chart., 138.

<sup>3</sup> *Ibid.*, 56; Stubbs, *Charters*, 265.

<sup>4</sup> Examples will be found in Surtees,

Durham, i. 297; Brand, *Newc.*, ii. 130; Foedera, i. 63, 76; Oliver, *Exeter*, 279; Gribble, *Barstaple*, 374; Rot. Chart., 56, 219; Stubbs, *Charters*, 265; Seyer, *Charters of Bristol*, 5, 6; Acta Parl. Scot., i. 86, 87 [76, 77].

<sup>5</sup> Plac. de quo War., 384.

<sup>6</sup> 'Omnes illas libertates et liberas consuetudines quas aliquis liber burgus Anglie habet.' (Charter to Stafford, 7 John, in *Addit. MS.*, Mus. Brit., 6, 711, fol. 72.) See also Rot. Chart., 157; Picton, *Memorials*, i. 10; *Munic. Corp. Com.* 1835, p. 823; Merew. and Stephens, 413.

<sup>7</sup> Cf. above, pp. 5, 6.

daughter town itself became an exemplar for others, these in turn serving as precedents for a fourth group. Sometimes only particular institutions or customs of the mother town were granted, as, for example, her markets, fairs, gilds, or courts, etc. Illustrations of all these peculiarities will be found in the following table, which, however incomplete it may be, will reveal at a glance that burghal affiliation was a familiar and characteristic feature of English municipalities in the middle ages<sup>1</sup> :—

Borough.	Mother Town.	Date.	Authorities.
Aberdeen . . .	Perth . . . . .	1222 . . . . .	Kennedy, Aberdeen, i. 11; Acta Parl. Scot., i. [77] 87.
Aberystwith . .	Montgomery . . . . .	1277 . . . . .	Placita de q. W., 817.
Abingdon . . .	{ Banbury . . . . . Higham Ferrers . . . . . }	2-3 P. & M. . . . .	{ Brady, Treatise (ed. 1777), 51.
Agarslee . . .	*Stafford . . . . .	51 Edw. III . . . . .	Petyt MS., i. 259.
Alnwick . . .	Newcastle-upon-Tyne . . . . .	Hen. II . . . . .	Tate, Alnw., i. 96, ii. App.
Altrincham . .	Macclesfield . . . . .	1290 . . . . .	Leycester, Antiq., 203.
Andover . . .	{ *Winchester . . . . . *Wilton . . . . . *Salisbury . . . . . }	Hen. II . . . . .	{ Above, p. 9; vol. ii. p. 3.
Appleby . . .	York . . . . .	Hen. II . . . . .	Plac. de q. W., 792; Rot. Chart., 41.
Arbroath . . .	*Brechin . . . . .	1725 . . . . .	Misc., 279, 280; Rec. of Conv., v. 374.
Athboy . . .	*Dublin . . . . .	1407 . . . . .	Merew. and Stephens, 810; Cal. of Pat. and Close Rolls, ii. 453.
Atheury . . .	*Trim . . . . .	1574 . . . . .	Munic. Corp. Com., Irel., p. 287.
Athlone . . .	{ Wexford . . . . . *Dublin . . . . . }	1606 . . . . .	Ibid., 125.
Bala . . .	Carmarvon . . . . .	1324 . . . . .	Rec. of Caeru., 174.
Banagher . . .	Cariesfort . . . . .	1628 . . . . .	Cal. of Pat. and Close Rolls, iii. 364.
Bandon Bridge .	Armagh . . . . .	1613 . . . . .	Liber Munerum, 8.
Banff . . .	Aberdeen . . . . .	1372 . . . . .	Munic. Corp. Com., Scotl. 1835, p. 99.
Barnard Castle .	Richmond . . . . .	[Stephen] . . . . .	Spearman, 51; Surtees, iv. 71.

<sup>1</sup> The dates in the third column refer to the earliest charter or other source known to the writer in which the affiliation is mentioned. The asterisk in-

dicates that not all, but only particular, customs or institutions of the mother town are granted.

Borough.	Mother Town.	Date.	Authorities.
Barnstaple . . .	London . . . . .	Hen. II . . . .	Gribble, Barnst., 371, 374.
Bath . . . . .	{ London . . . . .	1256 . . . . .	Falconer, Charters, 3, 4.
	{ Winchester . . . . .	1189 . . . . .	Vol. ii. p. 351.
Beaumaris . . .	*Hereford . . . . .	1296 . . . . .	Rec. of Caern., 160.
Bedford . . . .	{ London . . . . .	19 Rich. II . . .	Schedule of Records, 9-15.
	{ Oxford . . . . .	1189 . . . . .	Plac. de q. W., 17 <sup>1</sup> .
Beverley . . . .	{ *York . . . . .	1119-35 . . . . .	Vol. ii. pp. 21-22.
	{ *London . . . . .	[Edw. I] . . . . .	Liber Cust., 131.
Bideford . . . .	Bristol . . . . .	John . . . . .	Watkins, Bidef., 12.
Bosiney . . . .	Launceston . . . . .	Hen. III . . . .	Willis, Notitia, ii. 542.
Boston . . . . .	*Winchester . . . . .	Hen. VIII . . . .	Rec. Office, Conf. Roll 3 Eliz., m. 27.
Bradninch . . .	Exeter . . . . .	10 John . . . . .	Rep. Rec. Com. 1837, p. 434.
Brecknock . . .	Hereford . . . . .	4 Edw. I . . . .	Lewis, Wales, l. 100.
Bristol . . . . .	London . . . . .	1256 . . . . .	Seyer, Charters, 23, 37; vol. ii. p. 354.
Builth . . . . .	Hereford . . . . .	1278 . . . . .	Vol. ii. p. 356.
Burford <sup>2</sup> . . . .	*Oxford . . . . .	1087-1107 . . . .	Vol. ii. pp. 28, 29; Fisher, Burf., 5.
Burford <sup>3</sup> . . . .	{ Bristol . . . . .	{ [1265] . . . . .	{ Eytton, Shrop., iv. 318.
	{ Hereford . . . . .		
Burialland . . .	Dunfermline . . . . .	1583 . . . . .	Rec. of Conv., l. 165.
Caergwrie <sup>4</sup> . . .	{ Flint . . . . .	{ 1351 . . . . .	{ Munic. Corp. Com. 1880, p. 755.
	{ Rhuddlan . . . . .		
Caerwys . . . .	{ Conway . . . . .	{ 1290 . . . . .	{ Ibid. 1835, p. 2609; vol. ii. p. 357.
	{ Rhuddlan . . . . .		
Cambridge . . .	Gloucester . . . . .	1200 . . . . .	Rot. de Oblat., 99.
Canterbury . . .	*London . . . . .	Hen. II . . . . .	Merew. and Stephens, 335.
Cardiff . . . . .	Hereford . . . . .	— . . . . .	Duncumb, Heref., l. 338.
Cardigan . . . .	{ Carmarthen . . . . .	{ 1284 . . . . .	{ Plac. de q. W., 820; Ayloff, Cal., 94.
	{ Newborough . . . . .	{ 1388 . . . . .	{ Merew. and Stephens, 778.
	{ *Bristol . . . . .	{ 1249 . . . . .	{ Vol. ii. p. 359.
Caricafort . . .	Jamestown . . . . .	1628 . . . . .	Cal. of Pat. and Close Rolls, iii. 422.
Carlisle . . . .	*Newcastle-upon-Tyne . . . . .	11 Hen. IV . . . .	Petyt MS., ii. 50, 51.

<sup>1</sup> 'Burgenses de Bedford reddunt com-potum de xl marcia, pro carta Regis habenda, ut sint in libertate Burgensium de Oxineford.' (Madox, Exch., i. 398, 13 Hen. II.) See also Munic.

Corp. Com. 1835, p. 2103.

<sup>2</sup> Oxfordshire.

<sup>3</sup> Salop.

<sup>4</sup> I. e. Hope.

Borough.	Mother Town.	Date.	Authorities.
Carmarthen . . .	Hereford . . . . .		Duncumb, Heref., i. 329.
	*London . . . . .	1764 . . . . .	Munic. Corp. Com. 1835, p. 203.
Carnarvon . . .	*Hereford . . . . .	1284 . . . . .	Rec. of Caern., 185.
Carrickfergus . . .	*Sligo . . . . .	1622 . . . . .	Liber Munerum, 3.
	Drogheda . . . . .	1568 . . . . .	Ibid., 2; Munic. Corp. Com., Irel., 745.
Cashel . . . . .	Bristol . . . . .	1216 . . . . .	Ibid., 461.
	Clonmel . . . . .	1378 . . . . .	Chartae Hibern., 75.
Chester . . . . .	London . . . . .	1303 . . . . .	{ Baines, Lanc. and Chesh., i. 645.
	Bristol . . . . .		
Chesterfield . . .	Nottingham . . . . .	1213 . . . . .	Rot. Chart., 195.
Clitheroe . . . .	Chester . . . . .	[1147]. . . . .	Harland, Mamec., 187.
Clonmel . . . . .	*Kilkenny . . . . .	1372 . . . . .	{ Munic. Corp. Com., Irel., 479; Chartae Hib., 66.
	*Wexford . . . . .		
	*Ross . . . . .		
	*Youghal . . . . .		
Conway . . . . .	*Hereford . . . . .	1284 . . . . .	Rec. of Caern., 164.
Cork . . . . .	Bristol . . . . .	Hen. II . . . . .	Cusack, Cork, 158.
	*Dublin . . . . .	1609 . . . . .	Munic. Corp. Com., Irel., 28.
	*London . . . . .	1318 . . . . .	Chartae Hib., 50; Liber Mun., 7.
Coventry . . . .	Lincoln . . . . .	Hen. II . . . . .	Dugdale, Warwick., 137.
Cricieth . . . . .	*Hereford . . . . .	1284 . . . . .	Rec. of Caern., 197; Lewis, Wales, i. 267.
Denbigh . . . . .	*Rhuddlan . . . . .	1379 . . . . .	Williams, Denb., 119.
	Hereford . . . . .	— . . . . .	Duncumb, Heref., i. 336.
Derby . . . . .	Nottingham . . . . .	1204 . . . . .	Rot. Chart., 138 <sup>1</sup> .
Devizes . . . . .	Marlborough . . . . .	Edw. III . . . . .	Waylen, Devizes, 158.
	Oxford, Winchester . . . . .	45 Edw. III . . . . .	Lansdowne MSS., 230, fol. 3.
Dinglecushe . . .	Drogheda . . . . .	1585 . . . . .	Cal. of Pat. and Close Rolls, ii. 105.
Dingwall . . . .	Inverness . . . . .	1227 . . . . .	Constit. of Burghs, 99; New Stat. Account, xiv. 219; Munic. Corp. Com., Scotl., 1835, p. 189.
Drogheda . . . .	Dublin . . . . .	1229 . . . . .	Gilbert, Doc., 94; Chartae Hib., 20, 63.
Drokedale . . . .	Bristol . . . . .	5 Rich. I . . . . .	Rec. Office, Pat. Roll 14 Edw. III, p. 2, m. 26.

<sup>1</sup> Cf. Madox, Exch., i. 407; Rot. de Obl., 223.

Borough.	Mother Town.	Date.	Authorities.		
Dublin . . .	Bristol . . . . .	1171 . . . . .	Chartae Hib., 1 <sup>1</sup> .		
Dumbarton . . .	Edinburgh . . . . .	1221 . . . . .	Glasgow Arch. Soc., Trans., i. 339; Sets, 45; Misc., 203.		
Dundalk . . .	*Dublin . . . . .	1379 . . . . .	Munic. Corp. Com., Irel., 891; Cal. of Pat. and Close Rolls, iii. 185.		
Dundee . . .	{ Berwick . . . . .	1327 . . . . .	Charters of Dundee, 10.		
				{ Melrose . . . . .	1817 . . . . .
Dungarvan . . .	{ Bristol . . . . .	1215 . . . . .	Rot. Chart., 211.		
				{ *Dublin . . . . .	1610 . . . . .
Dunstable . . .	London . . . . .	Hen. I . . . . .	Dunno's Originals, Pt. v. 6-8; Monast. Anglic., vi. 239.		
Durham . . .	Newcastle-upon-Tyne . . . . .	Hen. II . . . . .	Hutchinson, Dur- ham, ii. 2.		
Ellecmere . . .	Bristol . . . . .	Hen. III . . . . .	Owen and Blakeway, 1. 89.		
Exeter . . .	London . . . . .	Hen. II . . . . .	Oliver, Exeter, 279; Liber Cust., 667.		
Faversham . . .	Sandwich . . . . .	37 Hen. VIII . . . . .	Rec. Office, Conf. Roll, 1 Edw. VI, p. 4, m. 7.		
Fethard . . .	Kilkenny . . . . .	1553 . . . . .	Munic. Corp. Com., Irel., 501.		
Flint . . .	Rhuddlan . . . . .	1278 . . . . .	Rot. Parl., i. 1 <sup>2</sup> .		
Folkestone . . .	*Dover . . . . .	Stephen . . . . .	Boys, Sandw., 816.		
Francheville . . .	{ Wilton, Alresford . . . . .	1285 . . . . .	{ Petyt MS., i. 223; Munic. Corp. Com., 1835, p. 793.		
				{ Farnham, Taunton . . . . .	
Galway . . .	{ Drogheda . . . . .	1395 } . . . . .	{ Liber Munerum, 17.		
				{ *Bristol . . . . .	1484 } . . . . .
				{ Waterford . . . . .	20 Eliz. . . . .

<sup>1</sup> 'Henricus rex Anglie . . . salutem. Sciatis me dedisse et concessisse et presenti carta confirmasse hominibus meis de Bristowa civitatem de Davelina ad inhabitandam. Quare volo et firmiter precipio ut ipsi eam inhabitent et teneant illam de me et de heredibus meis bene et in pace, libere et quiete, integre et plenarie et honorifice cum omnibus libertatibus et liberis consuetudinibus quas homines de Bristowa habent apud Bristowam et per totam terram meam. Teste,

etc. (Chartae Hiberniae, 1.) Cf. *ibid.*, 12; Gilbert, *Doc.*, 54; Hunt, *Bristol*, 23, 24; vol. ii. pp. 59, 370. In 1363 Dublin was also granted all the liberties of Waterford, Cork, and Drogheda (Chartae Hib., 61).

<sup>2</sup> 'Item Burgenses ejusdem loci habent easdem libertates quas habent Burgenses Rodelan.' (Rot. Parl. i., 1.)

<sup>3</sup> Cf. Hardiman, *Galway*, App., xviii., xrvl.



Borough.	Mother Town.	Date.	Authorities.
Gateshead . . .	Newcastle-upon-Tyne . . .	Hen. II . . .	Boldon Buke, App. p. xl.
Gloucester . . .	{ London . . . . . Winchester . . . . . }	1194 . . . . .	{ Madox, Firma B., 134; Rot. de Obl., 17.
Gowran . . . . .	*Kilkenny . . . . .	1414 . . . . .	Hist. and Arch. Assoc. of Irel., Journal, 1871, i. 539.
Grimsby . . . . .	Northampton . . . . .	1201 . . . . .	Rot. Chart., 91.
Guildford . . . . .	Winchester . . . . .	1366 . . . . .	Vol. ii. p. 375; Hist. of Guildf., p. i.
Harlech . . . . .	*Hereford . . . . .	1284 . . . . .	Rec. of Caern., 193.
Hartlepool . . . . .	Newcastle-upon-Tyne . . . . .	1201 . . . . .	Rot. Chart., 86; Sharp, Hartl., 85.
Haverfordwest . . . . .	{ Hereford . . . . . Cardigan . . . . . }	— 1290 . . . . .	Duncumb, Heref., i. 337. Merew. and Stephens, 568 <sup>1</sup> .
	{ York . . . . . Lincoln . . . . . }	1200 . . . . .	{ Rot. Chart., 81; Petyt M.S., i. 336.
Hedon . . . . .	Launceston . . . . .	1201 . . . . .	Rot. Chart., 93.
Helston . . . . .	Bristol . . . . .	[1265]. . . . .	Munic. Corp. Com., 1835, p. 2858; cf. Eyton, Shrop., iv. 318; Owen and Blakeway, i. 89.
Higham Ferrers . . . . .	Banbury . . . . .	2-3 P. & M. . . . .	Bohun, Debates, 158.
Hull . . . . .	*Scarborough . . . . .	26-27 Edw. I . . . . .	Madox, Exch., i. 423.
Ilchester . . . . .	Winchester . . . . .	1204 . . . . .	Rot. Chart., 130 <sup>2</sup> .
Inistioge . . . . .	Cashel . . . . .	1608 . . . . .	Munic. Corp. Com., Irel., 522.
Jamestown . . . . .	Newborough . . . . .	19 Jac. I . . . . .	Ibid., 1093-94.
Johnstown, St. . . . .	Jamestown . . . . .	1627 . . . . .	Cal. of Pat. and Close Rolls, iii. 250.
Kells . . . . .	Bristol . . . . .	Rich. I . . . . .	Munic. Corp. Com., Irel., 181 <sup>3</sup> .
Kildare . . . . .	{ *Drogheda . . . . . *Dundalk . . . . . }	1515 . . . . .	{ Merew. and Stephens, 1142.
	{ *Gloucester . . . . . *Dublin . . . . . }	1383 . . . . .	{ Chartae Hib., 82.
Kilkenny . . . . .	{ *Dublin . . . . . *Waterford . . . . . }	1609 . . . . .	{ Munic. Corp. Com., Irel., 534-535.

<sup>1</sup> Cf. *Archaeologia Camb.*, Oct. 1878, p. xxxvii.

<sup>2</sup> 'Confirmavimus eis et heredibus suis in perpetuum quod habeant omnes libertates, quietantias et liberas consuetudines quas predicti cives nostri Wintonie habent . . . [et] quod si alicubi arestati fuerint vel vexati contra libertates Wintonie, deducantur et judicentur per cartam predictorum civium Wintonie.' (Rot. Chart., 130.)

<sup>3</sup> 'Sciatis presentes et futuri quod ego Walterus de Lacy dedi et concessi et hac presenti Carta mea confirmavi Burgensibus meis de Kenlis legem Bristolli habendam illis et eorum heredibus, sicut melius et liberius alicubi data et concessa est aliquibus Civibus secundum continentiam rationabilem legis Bristolli ei prima institutione concessa, etc. (Chartae Hib., 10.)

Borough.	Mother Town.	Date.	Authorities.
Kilmaclennyn	Bristol . . . . .	1251 . . . . .	Caulfield, Rot. Clon., 17.
Kilmallock . . . . .	{ *Kilkenny . . . . . *Clonmel . . . . . }	1584 . . . . .	{ Cal. of Pat. and Close Rolls, ii. 85.
Kilmeadan . . . . .	Bristol . . . . .	Hen. III . . . . .	Cal. Doc., Irel., 1292, No. 1179.
Kingston-upon-Thames . . . . .	{ *Guildford . . . . . Cork . . . . . }	1256 . . . . . 1334 . . . . .	Vol. ii. p. 91. Munic. Corp. Com., Irel., 75.
Kinsale . . . . .	{ Youghal . . . . . Skynburgh . . . . . }	1587 . . . . . 33 Edw. I . . . . .	Liber Munerum, 7 <sup>1</sup> . Petyt MS., L 242- 245.
Lampeter . . . . .	Cardigan . . . . .	Edw. III . . . . .	Bristol Council- House, Little Red Book, fol. 204.
Lancaster . . . . .	{ Bristol . . . . . London . . . . . Northampton . . . . . }	[1188]. . . . . 1199 . . . . . 1199 . . . . .	Harland, Mam., 195; Plac. deq. W., 384 <sup>2</sup> . Harland, Mam., 197. Rot. Chart., 26.
Laugharne . . . . .	Cardmarthen . . . . .	[1300]. . . . .	Spurrell, Carm., 23 <sup>3</sup> .
Leeds . . . . .	Pontefract . . . . .	1308 . . . . .	Whitaker, Leeds, 7; Wardell, App. iv.
Leighlin, Old . . . . .	Bristol . . . . .	[1201]. . . . .	Ryan, Carlow, 59.
Lichfield . . . . .	*Bristol . . . . .	10 Hen. III . . . . .	Abbrev. Plac., 102.
Lidford . . . . .	*Exeter . . . . .	1086 . . . . .	Below, p. 259.
Limerick . . . . .	{ Dublin . . . . . *Bristol . . . . . }	1199 . . . . . 1292 . . . . .	Chartae Hib., 36; Munic. Corp. Com., Irel., 344. Ibid., 345; vol. ii. p. 59.
Lincoln . . . . .	London . . . . .	1194 . . . . .	Foedera, i. 52 <sup>4</sup> .
Liskeard . . . . .	{ Launceston . . . . . Helston . . . . . }	1240 . . . . .	{ Vol. ii. p. 108; Al- len, Lisk., 537.
Llanfyllin . . . . .	Hereford . . . . .	Edw. II . . . . .	Powysland Club, iii. 92.
Llantrissaint . . . . .	Cardiff . . . . .	1346 . . . . .	Archaeol. Journal, xxix. 351.
Londonderry . . . . .	{ *Youghal . . . . . *Dublin . . . . . }	1621 . . . . . 1684 . . . . .	Colby, Londond., 41; Liber Mun., 27. Colby, 47; Liber Mun., 27.
Longford . . . . .	{ *Banagher . . . . . *Hillsborough . . . . . *Lanesborough . . . . . }	9 Car. II . . . . .	{ Munic. Corp. Com., Irel., 1247.

<sup>1</sup> See also Cal. of Pat. and Close Rolls, ii. 180.

<sup>2</sup> 'Johannes Comes Moretonii omnibus francis et anglis salutem. Sciatis me concessisse et hac presenti carta mea confirmasse Burgensibus meis Lancastrie omnes libertates quas Burgensibus Bris-

tollie concessi,' etc. (Addit. MS., Mun. Brit., 4531, fol. 82.)

<sup>3</sup> See also Archaeol. Camb., ix. 100; Munic. Corp. Com., 1835, p. 287.

<sup>4</sup> See also Rot. Chart., 5; Maitland, Sel. Pleas, 39.

Borough.	Mother Town.	Date.	Authorities.
Ludlow . . . .	*Bristol . . . . .	1461 . . . . .	Petyt MS., ii. 181.
Lydd . . . . .	Hastings . . . . .	Hen. II . . . . .	Munic. Corp. Com., 1835, p. 1013.
Lyme Regis . .	{ Melcombe Regis . . . . . } { London . . . . . }	1284 . . . . .	{ Hutchins, Dorset, ii. 41.
Lynn . . . . .	{ Oxford . . . . . } { Norwich . . . . . }	1204 . . . . . Edw. II . . . . .	{ Rot. Chart., 138. Year Book, Edw. II, fol. 103.
Maidstone . . .	Canterbury . . . . .	1548 . . . . .	Merew. and Stephens, 1163-64.
Manchester . . .	Salford . . . . .		Thompson, Essay, 189.
Mariborough . .	{ Winchester . . . . . } { *Boston . . . . . } { *Oxford . . . . . }	1204 . . . . .	Rot. Chart., 135.
Maryborough . .	*Dundalk . . . . .	1592 . . . . .	Cal. of Pat. and Close Rolls, ii. 222.
Melcombe Regis	London . . . . .	1280 . . . . .	Hutchins, Dorset, ii. 449; Rep. MSS. Com., 1876, p. 575.
Minehead . . . .	*London . . . . .	1 Eliz. . . . .	Merew. and Stephens, 1229.
Montgomery . .	Hereford . . . . .	1227 . . . . .	Eyton, Shrop., xi. 134.
Montrose . . . .	Perth . . . . .	David I . . . . .	Munic. Corp. Com., Scotl., 1836, p. 237.
Naas . . . . .	{ *Drogheda . . . . . } { *Dundalk . . . . . }	1596 . . . . .	{ Cal. of Pat. and Close Rolls, ii. 371, 372.
Neath . . . . .	Cardiff . . . . .	1359 . . . . .	Francis, Neath Char- ters, 3.
Netherwere . . .	{ Hereford . . . . . } { Bristol . . . . . }	7 Edw. I . . . . .	Petyt MS., ii. 241-2 <sup>1</sup> .
Nevin . . . . .	Newborough . . . . .	Edw. III . . . . .	Munic. Corp. Com., 1837-38, p. 99.
Newborough . . .	*Rhuddlan . . . . .	1303 . . . . .	Rec. of Caern., 178; Ryley, Plac., 405.
Newcastle- upon-Tyne . . .	{ Winchester . . . . . } { London . . . . . }	1216 . . . . .	{ Vol. ii. p. 183; Rot. Chart., 219.
Newton <sup>2</sup> . . . . .	London . . . . .	14 Edw. I . . . . .	Petyt MS., i. 225.
Newtown <sup>2</sup> . . . .	Hereford . . . . .	[Hen. VI] . . . . .	Powysland Club, xii. 101-102.
Northampton . .	London . . . . .	1189 . . . . .	Hartshorne, North, 25, 26; Rot. Chart., 45.
Norwich . . . . .	London . . . . .	Hen. I . . . . .	Thompson, Essay, 114; Foedera, i. 63; Blomefield, iii. 23, 129-131; Merew. and Stephens, 389.

<sup>1</sup> Cf. Cal. Rot. Pat., 267; Rec. Office, Pat. Roll 6 Hen. V, m. 20.<sup>2</sup> Dorset.<sup>3</sup> Montgomery.

Borough.	Mother Town.	Date.	Authorities.
Nottingham . . .	*Coventry . . . . .	1 Hen. IV . . .	Munic. Corp. Com., 1835, p. 1986.
Oswestry . . .	Shrewsbury . . . . .	Rich. I . . .	Eyton, Shrop., x. 325; Madox, Firma B., 250.
Overton . . .	*Rhuddlan . . . . .	21 Edw. I . . .	Madox, Firma B., 39.
Oxford . . .	London . . . . .	Hen. II . . .	Stubbs, Charters, 167; Liber Cust., 672; vol. ii. p. 386.
Palsley . . .	{ Dunfermline . . . . . Newburgh . . . . . Arbroath . . . . . }	1488 . . . . .	{ Munic. Corp. Com., Scotl., 1836, Pt. ii. p. 168.
Petersfield . . .	Winchester . . . . .	[Hen. II] . . .	Vol. ii. 387; Case of P., 202; Merew. and Stephens, 308.
Plymouth . . .	Oxford . . . . .	1440 . . . . .	Jewitt, Plym., 250; Rec. Office, Conf. Roll 2 Hen. VII, p. 1, m. 20; Devon Assoc., xvi. 744.
Plympton . . .	Exeter . . . . .	1241 . . . . .	Brady, Treatise, 46; Cotton, Plympton, 4.
Pontefract . . .	{ Grimsby . . . . . Stamford . . . . . }	1194 . . . . . 2 Rich. III . . .	Boothroyd, Pontef., App. i. Rep. MSS. Com., 1881, p. 271.
Poole . . .	Southampton . . . . .	1433 . . . . .	Patent Roll, 1 Edw. IV, p. 3, m. 20; Merew. and Stephens, 1239-42; Sydenham, 161; Hutchins, i. 72, 73.
Portsmouth . . .	{ Winchester . . . . . Oxford . . . . . }	1194 . . . . .	{ Rot. Chart., 77; Fœdera, i. 63; Liber Cust., 655.
Preston . . .	{ *London . . . . . Newcastle-under-Lyme . . . . . }	1635 . . . . . Hen. II . . . . .	Abram, Memor., 41, 42; Dobson and Harl., 96. Vol. ii. p. 194 <sup>1</sup> .
Pwllhell . . .	Newborough . . . . .	1355 . . . . .	Munic. Corp. Com., 1837-8, pp. 115, 116.
Rathcoole . . .	Bristol . . . . .	Hen. III . . .	Chartae Hib., 33; Gale, Inquiry, App. p. 2.
Rathmore . . .	Bristol . . . . .	[? Hen. III] . . .	Gale, Inquiry, App. p. 22.
Ravenspurne . . .	Scarborough . . . . .	26-27 Edw. I . . .	Madox, Exch., i. 423.
Redcliff . . .	Bristol . . . . .	1164 . . . . .	Hunt, Bristol, 39; Nicholls and Taylor, i. 91.

<sup>1</sup> See also Madox, Exch., i. 398; Dobson and Harland, 7.

Borough.	Mother Town.	Date.	Authorities.
Rhuddlan . . .	{ Bristol . . . . . Hereford . . . . . }	1086 . . . . .	{ Domesday, i. 269; Record of Caern., 179; below, p. 258.
Romney . . .	Hastings . . . . .	1205 . . . . .	Rot. Chart., 154.
Rosbercon . . .	Kilkenny . . . . .	1300 . . . . .	Chartae Hib., 39.
Ross, New . . .	{ Kilkenny } Banna } Wexford } Waterford }	1389 . . . . .	Chartae Hib., 84-86.
Ruthin . . .	Tenby . . . . .	1507 . . . . .	Munic. Corp. Com., Irel., 559.
Ruyton . . .	{ Bristol . . . . . Shrewsbury . . . . . }	1309 . . . . .	{ Munic. Corp. Com., 1835, p. 2858.
Rye . . .	*Hastings . . . . .	1191 . . . . .	Foedera, i. 53.
St. Alban's . . .	*London . . . . .	16 Car. II . . . . .	Rec. Office, Pat. Roll, 16 Car. II, p. 20, no. 6.
Salisbury . . .	Winchester . . . . .	1200 . . . . .	Rot. Chart., 54; An- tiq. Sarisb., 78.
Scarborough . . .	York . . . . .	Hen. II . . . . .	Hinderwell, Scarb., 156; Rot. Chart., 40; Baker, Scarb., 28; vol. ii. p. 388.
Seaford . . .	Hastings . . . . .	1543 . . . . .	Merew. and Stephens, 1132.
Shrewsbury . . .	{ London . . . . . Bristol . . . . . }	1199 . . . . .	Ibid., 387, 388.
Sligo . . .	Youghal . . . . .	1205 . . . . .	Rot. Chart., 142.
Sodbury . . .	Bristol . . . . .	1621 . . . . .	Liber Munerum, 35.
Southampton . . .	Winchester . . . . .	Hen. II . . . . .	Atkyns, Gloucester- shire, 347.
Stirling . . .	Winchester . . . . .	40 Hen. III . . . . .	Munic. Corp. Com., 1835, p. 871.
Stirling . . .	{ *Edinburgh . . . . . *Perth . . . . . }	1641 . . . . .	{ Munic. Corp. Com., Scotl., 1836, p. 403.
Stockton . . .	Newcastle-upon-Tyne . . . . .	17 Edw. III . . . . .	Hutchinson, Dur- ham, iii. 127.
Stratford . . .	*Bristol . . . . .	Rich. I . . . . .	Dugdale, Warw., 680 <sup>1</sup> .
Swords . . .	Dublin . . . . .	1196 . . . . .	Chartae Hib., 9; Mu- nic. Corp. Com., Irel., 259.
Tamworth . . .	*London . . . . .	3 Eliz. . . . .	Munic. Corp. Com., 1835, p. 2039.
Taunton . . .	{ London . . . . . Winchester . . . . . }	Stephen . . . . .	{ Addit. MS., Mus. Brit., 29436, fol. 17.
Thomastown . . .	Kilkenny . . . . .	1 Mary . . . . .	Munic. Corp. Com., Irel., 573.
Totnes . . .	Exeter . . . . .	1086 . . . . .	Below, pp. 259, 264.

<sup>1</sup> Cf. Munic. Corp. Com., 1835, p. 2858.

APP. E.] **The Affiliation of Medieval Boroughs.** 253

Borough.	Mother Town.	Date.	Authorities.
Trim . . . .	Bristol . . . . .	Rich. I . . . .	Munic. Corp. Com., Irel., 265; Char- tæ Hib., 10.
Wallingford . .	Winchester . . . . .	Hen. II . . . .	Foedera, i. 471.
Waterford . . .	*Bristol . . . . .	1205 . . . . .	Munic. Corp. Com., Irel., 579-580; Chartæ Hib., 13, 22.
Wearmouth <sup>1</sup> . .	Newcastle-upon-Tyne . .	[Hen. II]. . . .	Vol. ii. p. 388; Bol- don Bake, App. xli; Surtees, Dur- ham, i. 255, 297.
	*Westminster . . . . .	31 Hen. III . . .	Fordyce, Durh., ii. 397.
Welshpool . . .	Hereford . . . . .	[Edw. I] . . . .	Vol. ii. p. 389; Powyal. Club, i. 303-307.
Westchep . . .	Pontefract . . . . .	1255-8 . . . . .	Yorks. Top. and Arch. Journal, i. 170, 171.
Weymouth . . .	{ Southampton . . . . . Portsmouth . . . . . }	{ 1252 . . . . .	{ Hutchins, Dorset, ii. 466.
Whitby . . . .	{ Ripon . . . . . Beverley . . . . . }	{ 1351 . . . . .	{ Cartul. de W., ii. 424, 428.
Wilton . . . . .	{ *London . . . . . *Winchester . . . . . }	{ Hen. I . . . . .	{ Vol. ii. pp. 251, 390; Archæol. Assoc., Journal, xvii. 311; Rot. Chart., 125; Munic. Corp. Com., 1835, p. 1399.
Winchester . . .	{ *London . . . . . *Salisbury } *Coventry }	{ [Edw. I] . . . . 1430 . . . . .	{ Liber Cust., 130. Vol. ii. p. 261.
Winchelsea . . .	*Hastings . . . . .	1191 . . . . .	Foedera, i. 53.
Woodstock . . .	Windsor . . . . .	1453 . . . . .	Marshall, Wood- stock, 129.
Yarmouth . . .	*Oxford . . . . .	1208 . . . . .	Rot. Chart., 175.
Youghal . . . .	{ *Waterford } *Clonmel }	{ 1609 . . . . .	{ Munic. Corp. Com., Irel., 106.
	*Dungarvan . . . . .	1559 . . . . .	Liber Munerum, 8 <sup>2</sup> .

<sup>1</sup> I. e. Sunderland.

<sup>2</sup> See also Cal. of Pat. and Close Rolls, ii. 99.

Re-arranging this table, we can see at a glance which were the favourite parent boroughs.

	{	Barnstaple			
		Bath			
		Bedford			
		Beverley {	Whitby		
		Bristol			
		Canterbury {	Maidstone		
		Carmarthen			
		Chester {	Clitheroe		
		Cork			
		Dunstable			
		Exeter {	Bradninch		
			Lidford		
			Plympton		
			Totnes		
		Gloucester			
		Lancaster			
LONDON . . . . .	{	Lincoln {	Coventry {	Nottingham {	Chesterfield
			Hedon		Derby
		Lyme Regis			
		Melcombe Regis			
		Minchhead			
		Newton			
		Northampton {	Grimsby {	Pontefract {	Leeds
			Lancaster		Westchep.
		Norwich {	Lynn		
		Oxford			
		Preston			
		St. Alban's			
		Shrewsbury {	Oswestry		
			Rayton		
		Tamworth			
		Taunton			
		Wilton {	Franchiseville		
		Winchester			
	{	Bedford			
		Burford			
		Devizes			
		Lynn			
OXFORD . . . . .	{	Marlborough			
		Plymouth			
		Portsmouth			
		Yarmouth			
	{	Appleby			
		Beverley {	Whitby		
		Hedon			
YORK . . . . .	{	Scarborough {	Hull		
			Ravensparne		

**WINCHESTER** . . . {  
 Andover  
 Bath  
 Boston  
 Devizes  
 Gloucester { Cambridge  
 Guildford { Kingston-upon-Thames  
 Ilchester  
 Marlborough { Devizes  
 Newcastle-upon-Tyne  
 Petersfield  
 Portsmouth { Weymouth  
 Salisbury  
 Southampton { Poole  
 Weymouth  
 Taunton { Francheville  
 Wallingford  
 Wilton { Francheville

**HASTINGS** . . . {  
 Lydd  
 Romney  
 Rye  
 Seaford  
 Winchelsea

**DUBLIN** . . . . {  
 Athboy  
 Athlone  
 Cork { Kinsale  
 Drogheda { Carrickfergus  
 Dinglecashe  
 Galway  
 Naas  
 Dundalk { Kildare  
 Maryborough  
 Naas  
 Dungarvan { Youghal  
 Kilkenny  
 Limerick  
 Londonderry  
 Swords

**KILKENNY** . . . {  
 Clonmel { Cahel { Inistioge  
 Youghal  
 Fethard  
 Gowran  
 Kilmallock  
 New Ross  
 Rosbercon  
 Thomastown



RHUDDLAN . . .	{ Caergwrie Caerwys Denbigh Flint Newborough { Cardigan { Lampeter { Nevin { Pwllheli Overton	
BRISTOL . . .	{ Bidford Burford Cardigan Cashel { Inistioge Chester { Clitheroe Cork Drokedale Dublin Dungarvan Ellesmere Galway Hereford Kells Kilmaclenyn Kilmeadan Lancaster Leighlin, Old Lichfield Limerick Ludlow Netherwere Rathcoole Rathmore Redcliff Rhuddlan Ruyton Shrewsbury { Oswestry { Ruyton Sodbury Stratford Trim { Athenry Waterford { Kilkenny { New Ross { Clonmel { Cashel { Youghal { Kinsale { Kilmallock { Londonderry { Sligo { Carrickfergus	IRELAND
NEWCASTLE . . . .	{ Alnwick Carlisle Durham Gateshead Hartlepool Stockton Wearmouth	SCOTLAND

HEREFORD	Beaumaris Brecknock Builth Burford Cardiff { Llantrissaint { Neath Carmarthen { Cardigan { Lampeter { Laugharne Carnarvon { Bala Conway { Caerwys Criecieth Denbigh Harlech Haverfordwest Llanfyllin Montgomery { Aberystwith Netherwere Newtown Rhuddlan Welshpool	WALES
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Thus England may be divided into regions, each having a municipal centre, from which law and liberty radiated in all directions,—a division that constitutes the basis for a more natural and organic classification of medieval boroughs than any now in vogue. We must not, however, picture to ourselves a monotonous uniformity of constitution in the towns of a given region. They did not merge their identity in that of the parent community so as to become mere duplicates of the same. The framework of their constitution, and especially criteria in legal procedure, were borrowed from the parent town; but local peculiarities—certain immemorial usages and later accretions to the mother stock—gave to each borough an individuality of its own.

It is evident from the preceding tables that Bristol was the chief mother town of Ireland; and Hereford, of Wales. Newcastle was one of the principal sources of Scotch burghal law<sup>1</sup>. I have not found

<sup>1</sup> Acta Parl. Scot., i. 39-42, 722, 723; *Archæologia Aeliana*, lii. 109; *Innes, Anc. Laws*, 168-172, and *Mid. Ages*, 172. Cf. below, p. 263. Winchester is also casually referred to as an exemplar in a law of William the Lion. The burghesses of Scotland were to 'be denaigued by the law of Winchester'; and no

americiaments were to be imposed upon them except according to the custom of Winchester. (*Acta Parl. Scot.*, i. 720 [356]; cf. *ibid.*, i. 35 [41].) But these privileges were probably copied from Newcastle's charter. See vol. ii. p. 183.

much material illustrative of affiliation in Scotland. It probably did not prevail there to such an extent as in England. Scotland had less need of it; for the large towns all used the same burghal code of laws (the 'leges burgorum'), and resorted to the same appellate tribunal—the court of 'the Four Burghs'.<sup>1</sup> The Cinque Ports also form a group by themselves. The constitutions of the boroughs composing this federation were quite homogeneous.<sup>2</sup> They were all subjected to the same court of appeal (at Shepway, afterwards at Dover<sup>3</sup>). An 'unincorporated member' was under the jurisdiction of its 'head-port'.<sup>4</sup>

Burghal affiliation was evidently known to the Anglo-Saxons; for in Domesday Book we find certain towns taking others as their prototype. Rhuddlan had received the laws and customs of Hereford and Bristol<sup>5</sup>. Exeter 'gelded' when London, York, and Win-

<sup>1</sup> Acta Parl. Scot., i. 107, xii. 267; Munic. Corp. Com., Scotl., 1835, p. 15; Innes, Anc. Laws, p. xl., Middle Ages, 170, and Legal Antiq., 114; Acta Domin. Concilii, 19, 20, 24; Burton, Scotl., ii. 90; above, p. 200. The following fragment of ancient Scotch laws (undated) shows what were the functions of the Court or Parliament of the Four Burghs. 'Gif ony party nill fals a dome [i. e. gainsay a judgment] he sucht to say thus: This dome is fals, stynkand and rottin in the self, and tharto I streik a borch [i. e. procure a surety], and that I will preiff. And tharto he sall have a day in to the courte before the justice in other placis outtane [i. e. except] in borowis, for it is to wit that all domes falsit or agane-seid in burrow courte salbe determinyt and declarit in Hadingtoun, throw foure burges vsaste and sufficiandest of ilk one of thire burrowis, Berwik, Roxburgh, Edinburgh, Striueling, befor the chamerlane withoutyne delay.' (Innes, Anc. Laws, 185; Acta Parl. Scot., i. [378], 742; cf. *ibid.*, xii. 530.) In 1292, in a Parliament at Edinburgh, pleas were tried before the Wardens of Scotland. On motion of both parties in a suit it was determined that the Four Burghs should be consulted ('consulendum est cum quatuor Burgis'), regarding the legal point at issue. In due time the answer of the Four Burghs

was received, and judgment was pronounced accordingly: 'Et quia comperitum est per recordum et veredictum quatuor Burgorum quod lex et consuetudo talis est; ideo consideratum est,' etc. (Rot. Parl., i. 107, 108.) See also Rec. of Conv., ii. 482-484. In 1454 Edinburgh was made the seat of the Parliament or Court of the Four Burghs 'ad subeundum, ordinandum et finaliter determinandum de et super judiciis burgorum universalium regni nostri curis dictis sive contradictis,' etc. (Munic. Corp. Com., Scotl., 1835, p. 16.) In 1468 Edinburgh decided a legal question for Aberdeen. See Extracts from Ed. Records, 1403-1528, p. 24. For an appeal of Lanark to Edinburgh, see Innes, Anc. Laws, 169, 170; Acta Parl. Scot., i. [359], 723.

<sup>2</sup> Lyon, Dover, ii. 267, *et seq.*

<sup>3</sup> Burrows, Cinque Ports, 73, 185; Holloway, Rye, 119; Lyon, Dover, i. 246.

<sup>4</sup> Munic. Corp. Com., 1835, p. 924. Their 'causes were always tried at the Head-Port' (Burrows, 241). Pevensey, a corporate member of Hastings, was in scot and lot with the latter in the reign of Edward II (Ryley, Placita, 414).

<sup>5</sup> 'Ipsius burgensibus annuerunt leges et consuetudines quae sunt in Hereford et in Breuill', scilicet,' etc. (Domesday, i. 269).

chester 'gelded.' Totnes, Lidford, and Barnstaple regulated their military service according to the custom of Exeter<sup>1</sup>. It is indeed possible that municipal affiliation was an inheritance from the ancient mark system.

The way is now cleared for a more interesting portion of our inquiry, the determination of the exact relationship of the towns to each other after they had become thus affiliated. Did the new tie involve mutual obligations, and bring about more intimate intercourse between them? Until active interest is manifested in the printing and exploiting of town records, the complete solution of such questions of internal polity will be encompassed by almost insurmountable difficulties. Still a number of passages, gleaned from widely divergent sources, enable us to throw no inconsiderable light upon the question before us.

The first step taken by a borough, after receiving the liberties of another community—in case these were not fully enumerated in the grant—was to send to the latter for an exemplification of its charter. Thus Wilton and Norwich obtained such exemplifications from London<sup>2</sup>; Lancaster and Grimsby from Northampton<sup>3</sup>; Preston from Newcastle-under-Lyme<sup>4</sup>; Newborough from Rhuddlan<sup>5</sup>; Cork from Bristol<sup>6</sup>; and Limerick from Dublin<sup>7</sup>.

If difficulties afterwards arose as to the interpretation of any of the franchises thus exemplified, if a legal problem presented itself which the local magistrates could not solve, they would send messengers to the authorities of the mother town for a declaration of what was law and custom there. The archives of Hereford furnish us with the following interesting account of such proceedings:—

'At a courte holden for the cittie of Hereford, on the first Wednesdaie after the feast of the Epiphany, in the first yeare of the raigne of king Henrye the Second, the men of the towne of Drusselan [? Rhuddlan] in the Welsh partes, brought the kings writte, directed to the kings bayliffs of Hereford, wherein it was conteyned that the king, by his charter, graunted the said towne of Drusselan in fee-farme

<sup>1</sup> Domesday, i. 100. Totnes gelded only when Exeter gelded (ibid., i. 108 b).

<sup>2</sup> Munic. Corp. Com., 1835, p. 1399; Thompson, Essay, 131.

<sup>3</sup> Simpson, Lanc., 268; Munic. Corp. Com., 1835, p. 2249.

<sup>4</sup> Dobson and Harland, Preston Guild, 79.

<sup>5</sup> Munic. Corp. Com., 1835, p. 2810.

<sup>6</sup> 'Carta Regis Johannis' granting Cork all the laws of Bristol.—'Exemplar, ut videtur, consuetudinum veterum et legum Brist' in Civitate Cork' obtinentium.' (Harl. MS., Mus. Brit., 741, fol. 9 b.)

<sup>7</sup> Liber Munerum, 24. In some of these cases the exemplifications may have been secured from the king.

to the men thereof, to hould to them and theire heires, by the same lawes and customes as the cittizens of the cittie of Hereford doe hould; and that they should enquire of theire lawes and customes from the men aforesaid; soe that as when and as often as the said lawes and customes should bee required, they should bee delivered without delay, and under the common seale of the cittie, in case of disherison, otherwise not. Whereupon the said bailiffs warned six of the Kings fee, three of the Bishops fee, two of the Dean and Chapters fee, and one of the master of the hospitalls fee, to appeare on the morrowe to certifie them of their lawes and customes under the penaltie in the writte conteyned; who came on the morrowe, with many others of the cittie with them. . . . And they declared the lawes and customes which they have heard from theire auncestors, and were approved and used in their tyme, to bee as followeth.'

Quite a complete outline of the town constitution is then presented by the twelve jurymen.

'John le Gaunter, chief bayliffe of our soveraigne lord the king having called unto him twelve of the discreet men of the city, delivered unto the burgesses of the towne of Kermerdine [Carmarthen] the customes underwritten, for which he had one hundred shillings to the use of the commonalty; (to wit) concerning the state of their tenements,' etc.

After various laws relating to tenements we have this entry:—

'Robert Durewarde, capitall bayliffe, having called unto him twelve cittizens, sent by waye of certificate to the men of Hareford [Haverford-west] upon their petition and for an hundred shillings, which the said men have given, certain customes, in these words: To all bayliffs, burgesses, and other the men of the towne of Hareford, unto whom these present letters shall come, Robert Durewarde and his fellow bailiffs of the kings cittie of Hereford wish health. Upon a certaine petition of yours sent unto us and our fellow cittizens, wherein you desire that we would certifie you, for certaine causes, of some of our customes, for the bettering of your state and tranquillitie; We, conceiving your petition and supplication just, and that it doth so behove us, in these and the like cases, do certifie you and every of you, by these presents, that . . . [Customs concerning foreign merchants in Hereford and concerning suits for the recovery of debts follow.] In witness whereof the common seal of the office, being in the custody of our capital bayliffe, is affixed.'

'John of Gaunt, capitall bayliffe of Hereford, calling unto him twelve cittizens, required from them certaine customes to be observed

during his tyme, and which, in former tymes, were there used and approved of, which they should send and certifie to the men of Kerdiff [Cardiff] at that time requiringe those customes ; and for other townes which stood in need of them, when they should require those customes from him. And those twelve, with the advice and consent of their discrete fellow citizens, unto the customes required of them did declare : That although the kings citizens of Hereford who have the custodie of his city, (in regard that it is the principall citye of all the market-townes from the sea even unto the boundes of the Seaverne), ought of ancient usage to deliver their lawes and customes to such townes when need requires, yet in this case they are in noe wise bound to do it, because they say they are not of the same condition ; for there are some townes which hold of our Lord the Kinge of England and his heires without any mesne Lord ; and to such we are bound when and as often as need shall be, to certifie of our lawes and customes, chiefly because we hold by one and the same tenure ; and nothing shall be taken of them in the name of a reward, except only by our common towne-clerke, for the writinge and his paynes, as they can agree. But there are other market-townes which hold of diverse lords of the kingdome, wherein are both natives and rusticks of auncient tyme, who paie to their lords corporall services of diverse kinds, with other services which are not used among us, and who may be expelled out of those townes by their lords, and may not inhabit in them, or be restored to their former state, but by the common law of England. And chiefly those, and others that hold by such forreine services in such townes, are not of our condition ; neither shall they have our lawes or customes but by way of purchase, to be performed to our capitall bayliff as they can agree between them, at the pleasure and to the benefit of the city aforesaid. And such persons shall not have our common seale without a greate reward, or upon the speciall supplication of our fellow citizens. As touching the customes now required of us, we say,' etc.

Laws regarding debtors, fines for trespasses, the quarterly courts, etc., follow<sup>1</sup>.

In like manner, as we learn from other sources, Hereford sent

<sup>1</sup> The original, of which this is a translation, is lost. For this and other transcripts, see Duncumb, *Heref.*, i. 317-344; *Archaeol. Assoc., Journal*,

xxvii. 460-488; Johnson, *Customs of Heref.*, 9-46. The various parts of the document probably belong to the period of the three Edwards. See above, p. 13.

certificates explanatory of its laws to Rhuddlan<sup>1</sup>, Montgomery, Denbigh<sup>2</sup>, and Netherwere<sup>3</sup>. The ancient book in which the customs given to Drusselan, Haverford, Carmarthen, and Cardiff were recorded, was evidently regarded with no little awe and reverence by the burghers of Hereford. Every new mayor was sworn upon it, every incoming freeman kissed it. This practice of formally setting forth the customs of a borough and communicating the same to other towns, must have exerted a salutary influence upon municipal jurisprudence, shaping hazy oral tradition into tangible written law, giving birth, perhaps, to many a local 'corpus juris' like that of Hereford. The so-called charter of Henry I to Newcastle<sup>4</sup> and the Customal of Chester probably originated in this way. Both of them have much of the form and flavour of the Hereford record; both were communicated, on application, to affiliated towns, the Chester document to Clitheroe<sup>5</sup>, that of Newcastle to Stockton. The following is an old translation of a portion of the certificate sent to Stockton (17 Edw. III):—

'To their dearly beloved friends in Christ, the Maior and Bailiff and other honest men of the town of Stockton, the Maior and Bailiffs of the town of Newcastle-upon-Tyne send greeting and desire of continuall love. Whereas our beloved and special friend William Browne, your neighbour and fellow Burgess, upon your behalf hath

<sup>1</sup> *Consuetudines Herefordie*: 'Majori et Ballivis libertatis ville de Rothe-lan ac omnibus aliis ad quos presentes Littere pervenerint, N. et Socii sui, Ballivi Civitatis Domini Regis Herefordie, pro se et consivibus suis salutem. Super quasdam Petitiones vestras Nobis et consivibus nostris per vos missas, in quibus continentur ut vos de aliquibus Consuetudinibus nostris ad melioracionem status vestri et tranquillitatis certis de causis cerciorari voluerimus, ac nos Petitiones vestras et Supplicationes justas considerantes, ut in talibus et consimilibus tenemur, vobis et cuilibet vestrum per Presentes certificamus: . . . In cujus rei testimonium sigillum nostrum commune Presentibus est appensum.' 23 Edw. III. (Wotton, *Leges*, 517; *Rec. of Caern.*, 130; *Munic. Corp. Com.*, 1835, p. 2838.)

<sup>2</sup> *Munic. Corp. Com.*, 1837-38, p. 85; *Duncumb, Heref.*, i. 336.

<sup>3</sup> 'Et quod habeant legem et consuetudinem Herefordie, prout scriptum est dictis burgensibus de Netherwer ex communi assensu omnium Burgensium ville predictae Hereford' sub eorum sigillis.' *Charter of Edward [I] to the burgesses of Netherwere.* (*Rec. Office, Patent Roll*, 6 Hen. V, mem. 20; cf. *Petyt MS.*, ii. 241-242.)

<sup>4</sup> For some extracts from this document, see vol. ii. pp. 182, 183.

<sup>5</sup> *Munic. Corp. Com.*, 1835, p. 1483; *Harland, Mamec.*, iii. p. xv; *Charters of Clitheroe*, 27. This is probably only an English transcript of an older certificate given by Chester to other towns. At any rate, it is not the original of the Chester customal, as Harland seems to think. I have found the Latin document, of which the Clitheroe record is but an imperfect translation, in *Harley MS.* 2057, ff. 63-65. Cf. vol. ii. pp. 43, 44.

required us that upon certain articles and customes of our town aforesaid, the which amongst you in your town above remembered you claim to use and have, and which to you are not altogether well known, we would be careful to make you more certain . . . the which aforesaid articles and customes do thus begin . . . In testimonie whereof the seal of the Maioralty of our towne aforesaid to these presents to be fixed we have thought good,' etc.<sup>1</sup>

Newcastle also sent the following communications to the burgesses of Scotland:—

'Assisa tenta apud Novum Castrum determinavit quod cum aliquis burgensis fuerit in possessione alicuius terre sive iuste sive iniuste, et superveniat alius dicendo se verum esse heredem de illa terra, et evertet eum de dicta terra et extra possessionem propria auctoritate sua et sine iudicio. Queritur<sup>2</sup> utrum ipse qui prius fuit in possessione debet recuperare saisinam de deiectore antequam respondeat. Et responsio detur quod ipse qui prius fuit in possessione sive iuste sive iniuste semper primo debet recuperare saisinam et eam tenere vel amittere in forma iudicii. Et deiector erit in forisfactum domini regis<sup>3</sup>.'

'Till thar der frendis the burrougreffis and burges of Aberden, Patrik Dey, Mar of the New Castall and the burges of that ilk toun greeting. Knawyn be it to yow that sic be the custum in our burgh of the New Castall that gif a burges gettis childer with his wif lauchfully and scho dee [i. e. she die], and that ilk burges spous ane other wif, and that burges dee, the tother wif sall duell in the principall wonnyng of hir husband xl. dais after the deid of hir husband, discendande of his fader and his eldfader. And gif that wonnyng in the whilk he deyt was of his conquest, he may gif that woning, as all his other landis throw him of conquest gottin, als well till his wif as to any other man<sup>4</sup>.'

To show the wide prevalence of this practice of appealing to the parent community for information, a few more examples may be added. In the year 1360, and on various other occasions, Bristol sent an explication of certain customs to Dublin, in answer to

<sup>1</sup> Brewster, *Stockton*, 82-85; *Hutchinson*, *Durham*, iii. 127; *Surtees*, iii. 173.

<sup>2</sup> An ancient translation contains these words: 'Quharfor it is askit at us burges of þe New Castell,' etc. (*Acta Parl. Scot.*, i. [40]. 352.)

<sup>3</sup> 'Leges quatuor burgorum,' c. 99: *Acta Parl. Scot.*, i. [40], 352; *Innes*, *Anc. Laws*, 48. Cf. *Acta Parl. Scot.*, i. 722, 723 [358, 359]; *Innes*, 168.

<sup>4</sup> *Innes*, *Anc. Laws*, 170; *Acta Parl. Scot.*, i. 723 [359]. Cf. *ibid.*, 724 [360]; *Innes*, 172.



inquiries made by the magistrates of the latter<sup>1</sup>. The following passage taken from the Maire's Kalendar, p. 93 (fifteenth century), elucidates the filial relation of Bristol to London:—

'Forasmoche as at all tymes this worshipfull toune of Bristowe hath take a grete president of the noble Citee of Londone in excerciseing theire laudable customes, it is therfore requisite and necessarie vnto the hedde officers of the saide Towne of Bristow to know and vnderstonde the auncient vsages of the saide Citee of Londone. Whereof a grete parte foloweth hereaftir, wretin oute of a boke that was maister Henry Daarcy<sup>2</sup>.' The Kalendar then gives the 'constitutiones civitatis Londonii' in detail (pp. 93-113).

In the reign of Edward III Thomas de Wynburne was arraigned in the borough of Totnes for selling a pound of candles by weight, the pound weighing one ounce less than the assize prescribed, seeing that the weight of a pound ought to be two marks by goldsmiths' weight. 'And because it is unknown as to the weight, therefore let inquiry be made how the citizens of Exeter sell; and the said Thomas has his day till the next court to hear his verdict<sup>3</sup>.' Exeter's exemplar, on the other hand, was London. In the medieval records of Exeter were entered certain usages of London<sup>4</sup>, probably received from the latter by certificate.

During the reign of Edward III Oxford obtained from London a letter certifying as to the mode of holding pleas of land in the Husting Court of London. It begins as follows:—

'As honorables hommes et sages et lours tres chersamys meire et Baillifs de la ville D'Oxenforde les meire et Audermans de la cite de loundres salut et treschero amysteo. Nous avoms entendu vos lettres a nos naidgaires [i. e. naguère] enuoiees contenautes qe nous dussoms vous certefier dascune de nos usages come en vos dites lettres plus pleinement est contenu. Nous vous certefioms par cestes nos lettres q'a chescun husteng' des plees de terre tenu en la dite cite chescun Alderman par son Bedel de quint et qatre gardes retournera vn panel de xii. bones gentz somouns destre a mesme le husteng<sup>5</sup>,' etc.

<sup>1</sup> Munic. Corp. Com., Dublin, 2, 3.

<sup>2</sup> Doarcy was mayor of London in 1337-1338. (Noorthouck, London, 890.) Cf. Maire's Kal., 6.

<sup>3</sup> Devon Assoc., vi. 106; Rep. MSS. Com., 1872, p. 344.

<sup>4</sup> Izacke, Exeter, 95.

<sup>5</sup> Archives of the City of London, Roil of Letters, temp. Edw. III, No.

198. For an abstract of the document, see Sharpe, Cal. of Letters, 90; Liber Albus, 181-184. The same collection of letters (No. 228) contains a similar response in reference to pleas of 'fresh force' and 'mort d'ancestor,' but the name of the town making the inquiry is not given.

It appears that the burgesses of Oxford frequently made similar inquiries of the magistrates of the city of London. There is a document in the latter's archives of which the following is an abstract: 'Littera missa Maiori et Aldre[mannis] Londonie per Maiorem et Ballivos Oxonie.—A treshonorables biers et sages le Maire et les Audermans de la Citee de Loundres . . . Purceo seignurs qe nos sumes en awher d'un jugement rendre en cas d'un testament . . . [as to whether a husband could devise lands jointly settled on husband and wife]; vos prioms sires et reqerroms humblement et deuoutement qe [vos] escriure voillez de ceo a nos certeyn iugement et vos auisementz pleynement . . . Ista littera fuit indorsata et remissa apud Oxoniam . . . Maior, Aldermanni et Vicecomites respondent quod<sup>1</sup>' etc.

The subjoined document (dated July, 1327) also illustrates the filial relationship existing between London and Oxford:—'Maior et Burgenses Oxonie miserunt Maiori et Ciuibus Londonie quosdam articulos subscriptos sub eorum communi sigillo petentes ab eisdem Maiore et Ciuibus qualiter articuli illi in eadem Ciuitate tempore retroacto secundum consuetudinem eiusdem Ciuitatis fuerunt vsitati . . . [Seven questions and answers follow. Opposite an eighth question are the words 'non respondetur.' Three of these queries relate to the craft of bakers. The others relate to punishment in case a freeman refuses to answer the summons of the mayor; or refuses to pay tallage<sup>2</sup>; usage as to the demise of lands; procedure regarding recognizance of debts; legal measures taken if a foreigner impleaded by a citizen for debts should flee from the town. The following is the last paragraph of the record:] Et sciendum quod predictas questiones miserunt Maior et Burgenses Oxonie Maiori et Communitati Londonie, quia habent quandam punctum in carta sua de Libertatibus suis a Regibus eis concessis quod ipsi uti debent in dicta villa Oxonie<sup>3</sup> eisdem Legibus que utuntur in Ciuitate Londonie; et quod si ipsi sint in dubio de aliquo puncto legum suarum quod ipsi Londoniam mittent, et ibidem certiorabuntur per Maiorem et Communitatem<sup>4</sup>' etc.

<sup>1</sup> Archives of the City of London, Pleas and Memoranda Rolls, A, rot. xvii. temp. Edw. III. A translation of the question and answer is given by Sharpe, Calendar of Wills, vi-vii.

<sup>2</sup> 'Ad quem articulum responsum est quod non est tallagium in Ciuitate, set si aliquis assessus fuerit ad aliquod

auxilium faciendum et soluere noluerit, distringi debet per catalla sua.'

<sup>3</sup> Pleas and Memor. Rolls, A, rot. ii. Letter Book F, ff. 206, 209, throws some additional light upon the relations between London and Oxford. See also Madox, Firma Burgi, 260, 261.

Oxford, in turn, was appealed to, for an explanation of certain local usages, by the burgesses of Bedford. Various answers given under the corporate seal of Oxford, about the year 1560, are still preserved in the municipal archives of Bedford<sup>1</sup>.

In the ancient burghal records of Melcombe Regis<sup>2</sup> and Barnstaple are entered certain usages of London, their parent community. The chartulary of Barnstaple, containing these customs of London, has this note: 'The customs of London having been granted to the burgesses of Barnstaple by several charters . . . it is presumed this charter from the city of London was obtained by the burgesses of Barnstaple to certify to them what the customs of London were<sup>3</sup>.'

It is evident, from the preceding examples, that the muniments of boroughs formerly affiliated may frequently elucidate or supplement each other.

Thus a town was wont to transmit to others, bound to it by this peculiar tie, two different kinds of documents: on the one hand the exemplification of its charter or a transcript of its codex of general laws, on the other hand the certificate furnishing or interpreting particular laws and customs. The occasion giving rise to applications for the latter is known to us in only a very few cases. There can be little doubt, however, that they generally originated in the courts of the daughter town, being due to the magistrates' ignorance of the law regarding some particular custom, or to contentions caused by a difference of opinion among them as to what ought to be the judicial decision in a given case. This is evident from the Hereford responses, cited above, and especially from the language of certain town charters.

'Et habeant,' says the charter of Richard I to Bedford, 'omnes alias consuetudines per totam Angliam et libertates et leges suas quas habent communes cum civibus suis de Oxenfordia . . . et si dubitaverint vel contenderint de iudicio aliquo quod facere debeant, mittant nuncios suos Oxenfordiam et quod de hoc Oxeford (*sic*) cives Oxefordie iudicabunt, illud sine dubio firmum et ratum et certum habeant et faciant . . . Quia ipsi et cives Oxefordie sunt de una et eadem consuetudine et lege et libertate<sup>4</sup>.'

In almost the same words a charter of 6 John directs the burgesses of Lynn to appeal to those of Oxford, and one of

<sup>1</sup> Schedule of Bedford Records, 6; Hist. Soc., Trans., 1880, viii. 65.

<sup>2</sup> Moule, Cat. of Charters, 95.

<sup>3</sup> Chanter, Barnstaple Records, No. 36.

<sup>4</sup> Plac. de quo War., 17.

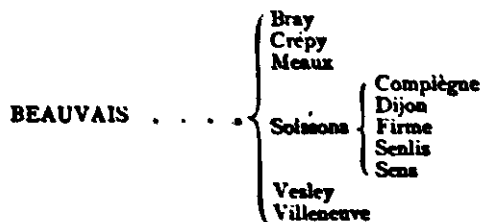
Henry II enjoins the latter in turn to appeal to the citizens of London<sup>1</sup>.

But the mother town in England never became a court of appeal in the full, legal acceptation of the term. It was merely a higher court of consultation, with informatory rather than reformatory functions. Favourable circumstances would have easily converted it into the seat of full appellate jurisdiction, but the atmosphere of Britain was not congenial to such a growth.

§ 2. *The Continent.*

A comparison between the development of affiliation in England and that of the Continent affords much food for reflection. Everywhere in Western Europe we meet with the same phenomenon, town affiliated with town, the one endowed with the laws of the other and appealing to it for counsel. The affiliation is even more prevalent on the Continent than in England, the relationship more intimate, the intercourse more active. We are struck above all by the fact that many mother towns acquired full appellate powers.

In France the most prominent of these municipal centres were Bordeaux for Guienne, Rouen for the western provinces, Beauvais and Laon for the north, Beaumont for Lorraine and the north-east, Soissons for Picardy and Champagne, Amiens for Ponthieu, Lyon for Lyonnais, and Lorris for Poitou, Orléanais, Berry, and Touraine. Lorris served as prototype for about three hundred towns, Beaumont for more than five hundred. The following is a more specific view of some of the scions of certain parent communities<sup>2</sup> :—



<sup>1</sup> Rot. Chart., 138; Stubbs, Charters, 167; vol. ii. p. 386.

<sup>2</sup> My general statements regarding affiliation in France, including the tabular view, are based on Warakönig and Stein, Franz. Gesch., i. 266-267; Giry, Étab. de Rouen, i. pp. xxii, 54; Thierry, Lettres, 150. *et pass.*, and Tableau de l'anc. Fr. Munic., 247, 283.

*et pass.*; Bouvalot, Le Tiers-État, 2, 156-252. See also Giry, St. Quentin, 16-37; Wauters, Libertés Communales, Preuves, 58, 62, 67, 119, 145, 175, 176, 217, *et pass.*; Prou, Les Coutumes de Lorris et leur Propagation; Rambaud, Civil. Franc., i. 248, 249; Luchaire, Instit. Monarch., ii. 138.

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I have intimated that the archives of one borough may supply the deficiencies of the other. France furnishes illustrations of this. For example, the copy of the old municipal laws ('établissements') at Rouen is incomplete, but the missing portions are to be found in transcripts still extant in the daughter towns Niort and Poitiers<sup>1</sup>. In like manner the archives of Eu and Ham supplement those of their parent town St. Quentin, and throw much light upon the early history of the latter<sup>2</sup>. Bonvalot calls the charter of Beaumont 'le complément indispensable de ses filiales, dont elle est le secours et la clé.'. The 'charte fille' and a transcript of the 'charte mère' lay side by side in the common chest of most of the pendant towns<sup>3</sup>.

In North France and Flanders the current expressions for the act of appealing to the parent community were 'to go to the chief or head,' 'to go for judgment,' etc. ('aller à chef, kief, hoofd'; 'aller à sens'; 'aller à kerke'; 'recursum habere ad caput'). St. Omer was the 'chef de sens' of Lannoy, Ardres, Fauquembergue, and Audruick; Bruges, of Dam, Ecluse, Ardenberg, etc. Other Flemish centres of affiliation were Arras, Furnes, Ghent, and Ypres<sup>4</sup>.

In 1203 the Count of Boulogne granted the town of Boulogne a commune modelled after that of Tournai; the magistrates of the

<sup>1</sup> Giry, *Établ.*, i. p. xxiii.

<sup>2</sup> Giry, *St. Quentin*, 27.

<sup>3</sup> Bonvalot, 253.

<sup>4</sup> Warnkönig, *Fland.*, i. 382; Giry,

St. Omer, 199. In 1303 Bruges was the 'hoofd' of twenty-seven towns. (*Coutume de Bruges*, 281.)

former being allowed to call on those of the latter in case of doubt regarding the proper judgment to be given in any plea :—

'... communiam juratam de Bolonia tenendam juravimus ad usus et consuetudines Tornaci, sicut eam tenendam nostri juraverunt antecessores, tali videlicet modo, quod aliquo casu emergente de quo jurati per se deffinire nescient et iudicium dicere, apud Tornacum ire deberent, iudicium inquisituri; et per inquisitionem quam de Tornaco retulerint, casum predictum diffinire debent et querelam illam terminare<sup>1</sup>.'

In 1251 Henry III, duke of Brabant, granted Merchten a constitution similar to that of Louvain, with the privilege of appealing to the latter in suits difficult to decide :—

'... villam nostram, quae Mergthen dicitur, liberam fecimus, conferentes, sub virtute praestiti iuramenti, eandem libertatem per omnia, quam contulerunt praedecessores nostri opido Lovaniensi, et ad majorem hujus rei evidenciam et expressionem praesenti cartae nostrae inseri fecimus transcriptum cartae concessae a praedecessoribus nostris praefato opido Lovaniensi, super sua libertate, cujus forma talis est . . . . Volumus insuper ut quotiescumque in opido de Merchten emerit aliqua dubietas super sentenciis aliquibus ferendis vel similibus, recursum habeant illi de Merchten ad opidum Lovaniense, tanquam ad caput suum, ut secundum sentenciam et consilium scabinorum Lovaniensium sententiae eorum ferantur, et dubietates omnes sive ambiguitates illorum sopiantur<sup>2</sup>.'

In the year 1272 Count Arnoul de Guines declares, in his confirmation of the privileges of Audruick, that the burgesses should seek law and judgment at St. Omer :—

'Doivent avoir et tenir par aucun establissement, loy et esche-

<sup>1</sup> Wauters, *Lib. Com., Preuves*, 58. A charter to Calais granted by the Count of Boulogne in 1210 contains this passage :—'Si autem scabini vel queremanni super se iudicium habuerint quod dicere nesciant et diffinire, apud Merc de iudicio illo suam facient inquisitionem; et si apud Merc super hoc docti esse non poterunt, iudicium illud inquirent apud Brebore.'<sup>2</sup> (*Ibid.*, 67.) Beeringen, in 1239, received the liberties of Liège :—'Si vero scabini praefate ville super sententia reddenda dubitaverint, illam a scabinis de Hasselt debent requirere, et sicuti ab illis didicerint, ipsam tanquam justam, ex warandia

eorumdem, debent pronuntiare. Quod si forte scabini de Hasselt super sententia requisita ipsos vel nolent vel non sufficienter certificare, extunc dicti scabini de Beringen sententiam illam a scabinis Leodiensibus requirent personaliter, quam, ut ab illis didicerint, eorum fulti auctoritate, tanquam justam pronuntiabunt.'<sup>2</sup> (*Ibid.*, 145.) Cf. also *ibid.*, 62.

<sup>2</sup> *Ibid.*, 175. Soon after this grant had been made, the magistrates of Louvain, on the demand of the duke of Brabant, sent a copy of their charter to the townsmen of Merchten. (*Ibid.*, 176.)

vinage de la ville de Saint Aumer, et que s'il leur en fault aucune chose, qu'il le doivent enquerre as eschevins de le hale de Saint Omer<sup>1</sup>.'

Lannoy is enjoined to resort to the same tribunal under similar circumstances:—

'Scabini de Alneto ad kerkam seu sensum ad hallam ipsorum majorum et scabinorum apud Sanctum Audomarum, quando ipsi scabini kerka seu sensu indigent, venire tenentur<sup>2</sup>.'

One might infer from these and other passages in the charters that the development in Flanders was virtually the same as in England; but, whatever the theory or the original intent of the law-givers may have been, the practice in Flanders was often something very different from what we find in Great Britain, as is evident from the following case. A dispute arose between Bruges and Dam, the former claiming appellate jurisdiction over the latter ('Ke on pooit apieler devant jugement de ceaus dou Dam a ceaus de Brouges, comme a leur kief'). In the year 1289 Count Guido, to whom the matter was referred, decided as follows:—Bruges is 'kief' of Dam, in this manner that the plaintiff can appeal to the magistrates of Bruges, if those of Dam do not decide the case within three adjournments ('trois respis par trois jours de plait continuels'). Any judgment rendered at Dam after such delay is null and void. But within this period the judges of Dam can consult with those of Bruges ('traire a leur kief a Bruges pour avoir sens et jugement'). If judgment is rendered at Dam within the time specified, and either of the parties is dissatisfied, he can appeal to Bruges ('apieler les puent de faus jugement a leur kief de Bruges<sup>3</sup>').

In West Flanders such dependent towns were called 'smale steden,' which in turn could have others affiliated with them ('smale steden' of the 'smale steden'). These smaller or minor towns were even required to range themselves under the banner of their 'kief' in time of war<sup>4</sup>. Bruges and Ypres are said to have acquired the right of appointing the magistrates ('scabini') of all their 'smale stede<sup>5</sup>'.

For Italy, one striking example of affiliation will suffice. Giovanni Villani<sup>6</sup> informs us that in the year 1338 Eternal Rome, the illus-

<sup>1</sup> Giry, *St. Omer*, 199.

<sup>2</sup> *Ibid.*, 146, A.D. 1279.

<sup>3</sup> Warnkönig, *Fland.*, ii. Pt. 2, p. 16, and No. cxxvi. Cf.  *Coutume de Bruges*,

260, 285.

<sup>4</sup> Warnkönig, *Fland.*, i. 382, 383.

<sup>5</sup> Ceuleneer, *Communes Belges*, 194.

<sup>6</sup> *Chronica*, liber xi. cap. 96. Pistoia

trious mother of laws, once the envied precedent of the greatest cities of the world, was not ashamed to send to Florence for the latter's laws and ordinances:—

'E mandoro loro ambasciadori a Firenze a pregare il nostro comune, che mandasse loro gli ordini della giustizia . . . et altri buoni ordini che noi avevamo.'

'And note,' the chronicler proudly adds, 'what mutations the centuries bring: the Romans in ancient times did build the city of Florence, and give their laws unto her; and now in our time they send unto us, the Florentines, for laws.'

The most famous Spanish exemplars were Sepulveda, Logroño, Sahagun, Leon, Toledo, and, above all, Cuenca for Castille and Leon; Jaca, Daroca, and Sobrarbe for Aragon and Navarre; Valencia for the kingdom of Valencia; and Barcelona for Catalonia<sup>1</sup>. In the year 1187, Alphonso II said that from Castille, Navarre, and other lands, people were wont to betake themselves to Jaca for the purpose of becoming acquainted with its customs, which they transplanted to their own communities:—

'Scio enim quod in Castella, in Navarra, et in aliis terris solent venire Jacam per bonas consuetudines et fueros ad discendos, et ad loca sua transferendos<sup>2</sup>.'

Pedro I conferred the privileges ('fueros') of the city of Valencia upon all the other towns of the kingdom of Valencia, desiring:—

'Quod in omnibus libertatibus [Valentiae] . . . . partem habeatis ac in eisdem omnibus vos et vestros esse volumus participes et consortes<sup>3</sup>.'

According to a charter of Alphonso V of Aragon, dated 1450, Barcelona was pre-eminent among his cities, its constitution being sought after far and wide:—

'Inter alias ditionis nostrae Civitates caput extulit, et jam pene omnes aliae ad instar illius sese gubernare et rempublicam exercere studeant<sup>4</sup>.'

In Germany, in strong contrast to England, the development was carried to its extreme logical conclusion. The whole country was

also borrowed much of its constitution from Florence. Hence the former's archives constitute a valuable supplement to the latter's. (Zdekauer, *Statutum Pict.*, p. lx; cf. *Hist. Review*, 1888, p. 555.)

<sup>1</sup> Lembke and Schäfer, *Spanien*, ii. 418-428; iii. 178-202, *et pass.*

<sup>2</sup> Moret, *Investigaciones*, 535.

<sup>3</sup> Lembke und Schäfer, iii. 390. A. D. 1283.

<sup>4</sup> *Ibid.*, iii. 382.



one great network of inter-dependent municipal courts in frequent communication with each other. Affiliation was so prevalent, and constituted so strong a bond of union between the towns, that eminent authorities regard it as one of the chief factors leading to the formation of the North German municipal confederations and the Hanseatic League<sup>1</sup>.

The parent community, to which the daughter towns appealed—i. e. to which they had their 'Rechtszug'—was called their superior court, their 'Oberhof'<sup>2</sup>. The oldest and most renowned of these 'Oberhöfe' were Cologne for the Rhine district; Soest and Lübeck for the northern provinces; Magdeburg for the east; and Frankfort-on-the-Main for the south-west. To these may be added Regensburg and Nüremberg for Bavaria, Dortmund for Westphalia<sup>3</sup>, Eisenach for Thuringia, Strasburg and Colmar for Alsace. Some of their daughter towns became almost equally renowned as 'Oberhöfe'; for example, Freiburg in Breisgau, which derived its constitution from Cologne, and became the 'Oberhof' of more than thirty other towns; Breslau and Halle, which disseminated the laws of Magdeburg through Silesia, Poland, and Bohemia; and Culm—another offspring of Magdeburg—which in turn was the chief model for the towns of Prussia ('inter iura municipalia civibus concessa ius culmense in prusya precipuum reputetur'<sup>4</sup>).

<sup>1</sup> Schäfer, *Hansastädte*, 78-81; Höhlbaum, *Urkundenbuch*, i. p. xiii; iii. 194, 198. In 1264 Lübeck and its affiliated towns formed a league for mutual defence. (*Ibid.*, i. p. xiii; cf. *ibid.*, iii. 194, 198).

<sup>2</sup> The 'Oberhof' of a town was generally, but not necessarily, the source of the latter's laws, i. e. its mother town. In some cases one community may have appealed to another without having been previously affiliated with it, the 'Oberhof' being perhaps the ancient seat of royal or palatine jurisdiction. See Michelsen, *Oberhof zu Lübeck*, 7-8; Von Maurer, *Städteverf.*, iii. 765. But this must be regarded as an exceptional phenomenon.

<sup>3</sup> 'Omnes sententiae de quibus dubitatur, requirendae sunt apud nos [i. e. Dortmund] intra Rhenum et Wiseram de omnibus civitatibus Teutoniae, quae sunt in romano imperio ex ista parte Alpium, in hunc modum: civitas illa, ubi talis sententia dubitativa vertitur et super illa ad nos Tremoniam appellatur, in scripto debet ad nos transmittere sententiam illam, ut ipsam definitivam feramus,' etc. (Michelsen, 5; Gengler, *Codex*, i. 875.) See also Frensdorff, *Dortmunder Statuten und Urtheile*.

<sup>4</sup> Gengler, *Stadtrechtsalterthümer*, 370; and *Codex*, i. 685. Cf. below, p. 277; und Steffenhagen, *Der Kulmer Oberhof*.

The following table by no means purports to be complete<sup>1</sup>:—

COLOGNE . . . . .	}	Bern	
		Ueberlingen	{ Ravensburg Buchhorn Kaufbeuren
		Aarberg	
		Reutlingen	
		Laupen	
		Tübingen <sup>2</sup>	{ Elbingen Sindelfingen, etc.
		Thun, etc., etc.	
		Altorf	
		Helmershausen	
		Colmar	{ Dattenried Kaiserberg Münster.
MAGDEBURG . . . . .	}	Breslau	{ Goldberg Hainau Liegnitz Strehlitz, etc.
		Leipzig	
		Brandenburg	{ Spandau { various towns
		Halle	{ Neumarkt { Brieg { Grottkau Sduny Festenberg Mstow, etc.
		Culm	{ many Prussian towns
		Quedlinburg	
		Stendal	{ various towns.

<sup>1</sup> These lists are based on materials furnished by Michelsen, *Oberhof, Vorrede*, and pp. 1-83; Von Maurer, *Städteverf.*, i. 189-197, iii. 760-782; Thomas, *Oberhof zu Frankfurt*, 49-68, 117-174; Gaupp, *Stadtrechte, passim*; Tschoppe und Stenzel, *Urkundensammlung*, 109-117; Harprecht, *Diss. de curiis superioribus*. See also Gengler, *Codex*, i. 28, 103, 155, 173, 190, 234, 375, 394, 404, 432, 610, 621, 649, 681-687, 712, 764, 875, 904, *et pass.*; Höhlbaum, *Urkundenbuch*, iii. 1, 194, 198, 513, *et pass.*; Gaupp, *Das alte Magdeburgische und Hallische Recht*; Hasse, *Das Schleswiger Stadtrecht*; Tomaschek, *Der Oberhof Iglau in Mähren*; Loersch,

*Ingelheimer Oberhof*; Nitzsch, *Uebersetzung des Soester Rechts auf Lübeck*; Franklin, *Magdeburger Weisthümer für Breslau*; Huber, *Das Köln. Recht in den Zehring. Städten*.

<sup>2</sup> 'Dis sint die Stette die iru recht nement hie zuo Friburg.' Thirty names follow. See Gaupp, *Stadtrechte*, i. p. xxvi; Gengler, *Codex*, i. 764. The document belongs to the beginning of the fifteenth century.

<sup>3</sup> 'Nota diss hernach geschriben stett, märcktt vnd dörrf hollentt ir urttel vnd recht allhie zu tüwingen.' About seventy-five names follow. ('*Stadtrecht*,' 1493; Von Maurer, *Städteverf.*, iii. 769.)

SOEST . . . . .	}	Lübeck	}	Lünen		
		Minden				
		Warburg				
		Lippstadt			Hamm	Unna
					Hagen	
					Rheda	
	Medebach					
	Siegen.					
LÜBECK <sup>1</sup> . . . . .	}	Hamburg	}			
		Ploen				
		Oldenburg				
		Elbing				
		Burg				
		Kiel				
		Rostock		Stralsund		
				Tribesees		
		Wismar				
		Wittenburg				
Greifswald	Treptow					
	Reval, and many others.					
FRANKFURT <sup>2</sup> . . . . .	}	Ansbach	}			
		Coblentz				
		Darmstadt				
		Gelnhausen		Hanau		
				Hünefeld		
				Schmalkalden, etc.		
		Giessen				
		Heilbronn				
		Hohe Mark <sup>3</sup>		Homburg, etc.		
		Homberg				
		Münster		Ahlen		
				Bielefeld		
				Bocholt, etc.		
Oppenheim						
Sulzbach						
Trier						
Wimpfen <sup>4</sup>	Rorbach, etc.					
Würzburg	Fürth					
	And many others.					

<sup>1</sup> Michelsen (pp. 47-82) enumerates more than a hundred towns affiliated with Lübeck. See also Dreyer, *Einleitung*, 260-270; Frensdorff, *Das Lübische Recht*, and *Verfassung Lubeck's*; Hasse, *Quellen des Ripener Stadtrechts*; Höhlbaum, *Urkundenbuch*, i. pp. xiii, xiv; iii. 513.

<sup>2</sup> Thomas (pp. 119-162) mentions some three hundred daughter towns of Frankfurt.

<sup>3</sup> There were thirty-three communities, many of them mere villages, in filial relation with Hohe Mark (Thomas, 141).

<sup>4</sup> *Diss Stett und Dorffer alter Fry-*

Sometimes the grant of affiliation is made in language not very unlike that which we find in the charters of England. In 1242 Count John confers upon Kiel the laws of Lübeck:—‘*ut tali jure, prout civitas Lubecensis utitur, ita civitas praesens libere et quiete perpetuo perfruatur*’.<sup>1</sup> Not many years later Northeim is endowed with the law and institutions of Göttingen:—‘*tale jus . . . quale burgenses nostri de Gotinge actenus habuerunt ut . . . fruuntur similibus institutis*’.<sup>2</sup> As in England so in Germany, after such a grant there may have been in some cases little or no intercourse with the mother community as such.

Generally, however, a clause is added indicating the relationship henceforth to subsist between them, a clause that very rarely occurs in the municipal charters of England.<sup>3</sup> In the year 1286 the laws of Lübeck are conferred upon the city of Massow:—

‘*Quemadmodum idem jus in aliis nostris civitatibus observatur, ubi si necesse fuerit propter causas decidendas exigent et requirant*’.<sup>4</sup>

In the year 1279 the burgesses of Limburg received a charter from their lord from which the following is extracted:—

‘*Si vero ipsi Scabini [of Limburg] super sententia hujusmodi ferenda inter se discordaverint, jus oppidi Fr. [i.e. Frankfort-on-the-Main] querent, et nos illo contenti esse debemus*’.<sup>5</sup>

The Landgrave of Thuringia, in one of the statutes which he conferred upon Eisenach in 1283, states:—

‘*Quod omnes aliae nostrae civitates et illa oppida quae pertinent ad dominium nostrum et principatum, ex antiquo jura sua requirant apud praefatos cives nostros de Ysenach, et recursum ad ipsos habeant, aliquas percipiendo sententias difficiles et obscuras*’.<sup>6</sup>

Breslau gives its laws to Goldberg, but the latter is enjoined to have recourse to the former in all pleas:—

‘*Omnia nostre civitatis jura, prout apud nos servantur, porrigimus et donamus, ita quoque, ut super omnibus causis, tam parvis quam magnis, civibus predictae civitatis incumbentibus in omni jure ad*

halt nach pflegen ir Urtel by Uns zu holen als vor dem Olernhouff.’ The names of four ‘*Städte*’ and thirty-two ‘*Dorfer*’ follow. (Wimpfener Oberhof-Urtheilsbuch, 1474-1608. Harprecht, *Dissert.*, 425.)

<sup>1</sup> Michelsen, 51.

<sup>2</sup> Schmidt, *Urkundenbuch*, i. 11.

<sup>3</sup> I have found only three cases. See above, pp. 266, 267.

<sup>4</sup> Michelsen, 14.

<sup>5</sup> Thomas, 145.

<sup>6</sup> Gaupp, *Stadtrechte*, i. 201.

nostram civitatem Wratislaviam perpetualiter recursum habere debeant' (1292<sup>1</sup>).

In like manner the citizens of Liegnitz promise to submit doubtful cases to Breslau :—

'Illas sentencias, in quibus nobis est ambiguum scrupulus et erroris debemus ferre in Wratislavia, contradiccionem qualibet relegata' (1302<sup>2</sup>).

Breslau, on the other hand, looked to Magdeburg for help in difficult legal cases :—

'Nos scabini civitatis Magdeborch lucide protestamur, civitatem Wratislaviam longevo tempore, cujus memoria apud nunc viventes non exstat, jure opidano seu civili Magdeburgensi fuisse subjectam, ita videlicet, quod, quodocunque ambiguitatis quid super jure civili Magdeburgensi apud vel inter cives Wratislaviæ civitatis exortum fuerat, recurrendo ad nostram civitatem diffinitam sententiam ab antecessoribus nostris et a nobis hucusque obtinebant<sup>3</sup>.'

In 1345 Baldwin Bishop of Paderborn granted the townsmen of Driburg, among other privileges, that they should 'seek their law' at Paderborn whenever the magistrates of Driburg could not decide any legal dispute for them :—

'Voerdmer worden de borghere vor deme richte scelaftich vnder sich vmme recht eder vmme ordele, dat scolden se vor iren rath bringhen, dat se dat scededen; kunden se aver des nicht ghesceden, so scolden se dat bringhen an den rat to Paderborn, dar se ir recht soken scolen<sup>4</sup>.'

The magistrates of Magdeburg endow Schweidnitz with their burghal constitution, and then speak of their 'auctoritatem . . . ut aliis civitatibus juris sentencias valeamus amministare.' They also permit the 'scabini' of Schweidnitz to transmit to other towns the laws and judgments received from Magdeburg :—

'Si scabini civitatis Suidenicensis aliis civitatibus et villis, circa se situatis . . . possint et valeant jus Magdeburgense et sentencias juris a nobis datas ulterius distillare<sup>5</sup>.'

From such passages as those that precede, we can scarcely infer the existence of anything more than a higher court of consultation, its functions being to give advice *before* the subordinate tribunal had rendered judgment. Doubtless in some German towns, e. g.,

<sup>1</sup> Tzschoppe und Stenzel, 416.

<sup>4</sup> Ibid., i. 904.

<sup>2</sup> Ibid., 443.

<sup>5</sup> Tzschoppe und Stenzel, 586-587,

<sup>3</sup> Gengler, Codex, i. 375, A. D. 1369.

A. D. 1363.

the 'Oberhof' at Frankfort<sup>1</sup>, the development stopped at this point, though even in such cases the relationship was more intimate than in England.

But the language of many other documents is much stronger, and points to the transition into something that approximated real appellate jurisdiction; being, as an old writer would have expressed it, more 'in vim appellationis quam consultationis'.<sup>2</sup> Thus the citizens of Buchhorn are to appeal to Ueberlingen, whenever they are dissatisfied with a judicial decision at home:—

'Item statuimus . . . quod quicumque civium de Buchhorn ab aliqua appellat sententia, illam appellationem juxta jus et statuta civitatis de Uberlingen prosequetur, et quicquid sententiatum fuerit a civibus de Uberlingen, illud ratum a partibus est servandum'.<sup>3</sup>

The burghers of Freiburg may appeal to Cologne ('Coloniam appellabunt'), if either party in a suit rejects the judgment:—

'Si super aliqua sententia fuerit inter burgenses orta discordia ita quod una pars illam vult tenere sententiam, alia vero non,' etc.<sup>4</sup>

In like manner Hohenstein appeals to Osterode: 'Gescholden Ortheyl und alles recht sollen sy haben in der Stadt Osterode'.<sup>5</sup> Burg receives the laws of Lübeck. The 'Radlüde' of Burg are to pronounce judgment according to these laws. If any one is discontented with the decision he is to appeal to the mother town: 'und weme dat nicht behaget, de mag dat schelden vor den Rath tho Lübeck'.<sup>6</sup>

Speaking of Culm Gengler refers to:—

'Die anordnung eines regelmässigen Rechtszuges von den Ordensstädten an den culmer Rath, welchem die zweifache Befugniss, dunkle Rechtspunkte durch Weisstümer zu erläutern und angefochtene Urtheile oberichtlich zu bescheiden, eingeräumt wird . . . Diese jüngeren Städte wurden dann auch meistens in ihren Fundationsbriefen entweder indirect durch Bewidmung mit dem jus Culmense oder direct durch die Anweisung, "ire gestraften (gescholden) vrteil cru holen cru dem Colmen" mit letztgenannter Stadt in die fragliche communication gebracht'.<sup>7</sup>

<sup>1</sup> Michelsen, 16, 17.

<sup>2</sup> Harprecht, 437.

<sup>3</sup> Michelsen, 5; Gengler, Codex, I. 432. Charter of Rudolph I, 1275.

<sup>4</sup> Gaupp, Stadtrechte, ii. 33: 'Freiburger Stadtrodel,' A. D. 1200-1250.

<sup>5</sup> Michelsen, 5.

<sup>6</sup> Ibid., 14.

<sup>7</sup> Gengler, Codex, i. 686, 687. Later on (in the fifteenth century) Königsberg took the place of Culm as the chief 'Oberhof' of Prussia, 'dahin man alle gescholtene Vrtheill aus den andren Stedtes auff dieser Seitten hatt müssen appelliren vnd daselbst rechtfertigen lassen.' (Ibid., i. 687.) Concerning

A charter granted to Bromberg in 1346 contains this clause:—

‘Si contigerit, ut per aliquem querulantem aut respondentem sententia aliqua inventa per scabinos argueretur, non alias extunc quam per consules dicti oppidi ipsa sententia debet declarari; et nisi sufficerent, tunc ad consules Wladislavienses<sup>1</sup> pro sententiae hujusmodi declaratione recurratur<sup>2</sup>.’

In 1297 there was an appeal in a case of murder from the local court of Colberg to that of Greifswald, the magistrates of the former writing to those of the latter as follows:—

‘. . . cujus rei gracia dilectos nostros de concilio socios ad vestre discrecionis iudicium transmittimus, exorantes quatenus discussione diligenti inter vos habita, quid de hiis vobis justum visum fuerit, distinguatis, cum vos fontes nos vero justicie rivuli defluentes<sup>3</sup>.’

The Emperor Frederick I, in the year 1173, made the following general regulation for the benefit of Flemish merchants in Germany:—

‘Si quis mercator senserit se gravari contra justiciam in loco minori, licentiam habeat appellationem faciendi ad majorem locum, a quo minor locus justicie suae leges acceperat<sup>4</sup>.’

Thus there can be no doubt that Lübeck and many other German mother towns were real courts of appeal<sup>5</sup>, their functions being to revise judgments already passed,—the specific case being laid before them, and not, as in England, a general question as to what was law and custom on a given subject, on which the magistrates of the ‘locus minor’ wished to be enlightened before passing judgment.

In the town archives of Germany are still extant whole volumes of appeals of various kinds to the ‘locus major<sup>6</sup>.’ Some of these have been printed<sup>7</sup>. Though they are very interesting, and throw much additional light on the subject of affiliation, we cannot stop to discuss them. We must content ourselves with a single example, one that commends itself to us on account of its unusual brevity. The ‘scabini’ of Leitmeritz decide a case in Königgrätz. Hans von der

Danzig, one of Culm’s daughter towns, a record of 1378 has this passage: ‘Ir gestraften orteil sullen sy hollen czu dem Colmen.’ (Ibid., i. 712.)

<sup>1</sup> i. e. Leslau.

<sup>2</sup> Gengler, Codex, i. 404.

<sup>3</sup> Ibid., i. 610.

<sup>4</sup> Warnkönig, Fland., i. No. xiv.

<sup>5</sup> Michelsen, 9, 15, 17, 18; Thomas, 54; Von Maurer, Städteverf., iii. 771, 772; Tomaschek, Der Oberhof Iglau, 19.

<sup>6</sup> Michelsen, p. ix; Gengler, Codex, i. 690, *et pass.*

<sup>7</sup> The best collections in print that have come to my notice are those of Michelsen for Lübeck, those of Thomas for Frankfort, and those of Tomaschek for Iglau. See also Frensdorff, Dortmunder Statuten; Magdeburger Weisthümer aus dem Görlitzer Reichsarchive; Thomas, p. xvi; Behrend, Ein Stendaler Urtheilsbuch (Urtheile aus Magdeburg).

Dobruch, the guardian of Hertel's son, must allow his ward to do what he pleases with the money bequeathed to him, now that the latter is of age :—

'Prudentibus viris et honestis iudici ac juratis in Grecz magister civium, consules ac scabini in Lutmericz multum servicii et honoris. Noch alle der rede alz ir uns geschribyn habt in ewren bryfen under der stat ingesegil under dem grossen und dem cleynen, so teil vir in eym rechtyn urteil alz unz das recht weysyt und lert, daz der czu seynen jarn kummen ist seyn gelt daz ym vorburgit ist mak gebin wem her vil, daz ist um Hertels sun kegen Hannus von der Dobruch, der daz gelt inne hat (um) vurmundschaft <sup>1</sup>.'

The municipal 'Oberhöfe' of Germany were still flourishing in the first half of the sixteenth century. The Emperor Charles V speaks of them as of a recognized legal institution :—

'So sollen die Richter, wo ihnen zweifel zufile, bei den nächsten hohen Schulen, *Städten*, *Communen* . . . Rath zu suchun schuldig sein <sup>2</sup>.'

But they gradually vanished in this and in the following century, being superseded by the tribunals of the ruling princes as courts of appeal, and by the juridical faculties of the universities as courts of consultation <sup>3</sup>. In the year 1721, Lübeck, one of the most long-lived of the 'Oberhöfe,' exercised its functions for the last time <sup>4</sup>.

Many towns of Switzerland were affiliated with those of Germany, especially with Freiburg in Breisgau <sup>5</sup>. The laws of Magdeburg prevailed in the towns of Poland and Bohemia. Leitmeritz, of which I have already spoken, enjoyed all the 'jura, libertates et consuetudines Magdeburgenses,' and was the principal civic 'Oberhof' of Bohemia <sup>6</sup> :—

'Et ad eos per omnes et singulas civitates regni nostri Boemie, que eisdem utuntur iuribus, super dubiis sententiis definiendis debeat haberi recursus, sicut hactenus fieri est consuetum <sup>7</sup>.'

In England, affiliation involved only the interpretation of law

<sup>1</sup> Gaupp, *il.* 262.

<sup>2</sup> 'Feinliche Gerichtsordnung vom Jahre, 1532,' § 219; Thomas, 54.

<sup>3</sup> Von Maurer, *Städteverf.*, iii. 777-781; Michelsen, 30; Thomas, 202.

<sup>4</sup> Michelsen, 35.

<sup>5</sup> Gaupp, *il.* p. iv, *of pass.* See also Forel, *Chartes Com. de Vaud*, *Introd.*

<sup>6</sup> Gaupp, *i.* p. xxiii, and *il.* 256-274; Trschoppe und Stensel, 111; Röpell, *Verbreitung des Magd. Stadtrechts in Poland*; Kaluzniacki, *Die Pola. Recension der Magdeb. Urtheile.*

<sup>7</sup> Gengler, *Stadtrechtsalt.*, 371. Charter of King John of Bohemia granted to Leitmeritz in 1325.



and custom—advisory functions; on the Continent, and especially in Germany, it led to full appellate jurisdiction—revisory functions. The one was a judicial, the other only a ‘customal’ affiliation. In England the appeal, such as it was, was a right or privilege of the daughter town, to be exercised at her magistrates’ discretion; on the Continent it became a solemn obligation, which the latter could not evade. This divergence of development was due to a cause which made the whole course of continental municipal history different from that of England, a cause whose effects are still indelibly written in the rock and marble of castle, belfry, and *hôtel de ville*—I mean the weakness of royal authority on the Continent. If the English sovereign in the twelfth century was not ‘every inch a king,’ he was by several inches more a king than the other rulers of Western Europe. On the Continent, towns became small republics, even more independent than the feudal lords; in England they remained integral portions of the body politic over which the king ruled. The former frequently secured the privilege *de non appellando*, almost complete judicial autonomy; the latter were always, more or less, under the control of the king’s courts. Richard I’s jest, that he would sell London if he could find a buyer<sup>1</sup>, is not meaningless; the most potent of the English boroughs were at times abjectly humbled by the royal will. The crown would not have brooked anything so derogatory to the royal prerogative as judicial appeal from borough to borough; nor would the latter feel the need of civic ‘Oberhöfe’ in a country where royalty was strong enough to do them justice. But royalty on the Continent was still too weak to act as a competent court of appeal<sup>2</sup>; and the unchecked encroachments of feudal lords, who often attempted to arrogate to themselves this same superior jurisdiction, tended to bring the affiliated towns still nearer together. It was very natural for the magistrates of a town in their doubt and ignorance to turn for legal advice to the community whence their laws had been derived, as helpless children to a kind mother; it was even more natural, that under the stress of such circumstances as those just mentioned, they should gradually refer disputed cases

<sup>1</sup> Norton, London, 65.

<sup>2</sup> In the year 1377 Count Katzenelenbogen entered a plaint in the imperial court against the town of Limburg. His suit was rejected, and he was referred to the municipal council

of Frankfort on the ground that the latter was the ‘Oberhof’ of Limburg (Von Maurer, Städteverf., iii. 771). One can hardly conceive of such a thing happening in medieval England.

to the parent town, until the latter became a regular court of appeal. The security engendered by a strong royal judicature in England tended to evolve self-sufficient rival boroughs, with a gild merchant, rather than autonomous or judicially interdependent towns and municipal federations, such as we find in other countries of Europe.

This explanation of the peculiar development of affiliation on the Continent is confirmed by the fact that in Germany civic 'Oberhöfe' gradually lost their influence, as the central authority in the various principalities grew more powerful (in the sixteenth and seventeenth centuries)<sup>1</sup>. The same is doubtless true of France from the time of Philip the Fair, the towns becoming more and more dependent upon the royal courts<sup>2</sup>.

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Our inquiry shows how certain institutions may be common to all civilized nations, the simultaneous outgrowth of human nature and human thought, and yet be profoundly modified by a peculiar environment; hence that the deduction of historical truth by analogy, if not employed with caution, leads to error. But great as is the diversity between the ancient affiliation of English and that of continental towns, our attention is arrested still more by the similarity, by the mere fact of the independent co-existence of so peculiar an institution in many different countries. Is not the historian of to-day, with all his nice canons of criticism, too prone to derive one institution from another, to look for the germ in the distant past or in a distant country, when the mystery of the inception lies no farther and no deeper than in the ordinary, immutable laws that govern human action and the growth of all spontaneous, indigenous institutions?

<sup>1</sup> 'Seitdem die Landeshoheit fester begründet war, seitdem wurde das Zugrecht an die Oberhöfe beschränkt, oder auch gänzlich verboten, und statt dessen eine Berufung an die Landesherrn oder

an ihre Hofgerichte eingeführt.' (Von Maurer, iii. 776; cf. Michelsen, 29; Thomas, 202.)

<sup>2</sup> Giry, St. Omer, 201; Flammermont, Institut. de Senlis, 22, 23.

## APPENDIX F.

### THE CONTINENTAL GILD MERCHANT<sup>1</sup>.

MUNICIPAL development in England cannot be accurately measured by that of the Continent. The inverse proposition is equally true. In speaking of continental Gilds I do not wish to take refuge in the argument of analogy,—to substitute parallels for proofs. But the history of the English Gild Merchant ought to help correct erroneous views concerning the growth and development of the corresponding continental institution. For many writers who have regarded this Gild as the germ of the municipal constitution throughout Western Europe, have derived much of their data from Great Britain<sup>2</sup>. Moreover, the Gild Merchant occupies a more prominent place in town charters and in the municipal polity in England than on the Continent; hence continental writers have pointed to England as the country in which this Gild exerted its maximum influence<sup>3</sup>. Now if this fraternity was not the germ of the English municipality, but only a potent factor in its evolution, it may be fairly presumed that the Gild's influence on the Continent was not greater. This presumption is confirmed by much positive evidence.

The Gild Merchant of Western Europe is not mentioned before the middle of the eleventh century; and does not come into prominent notice before the twelfth century<sup>4</sup>. It doubtless origin-

<sup>1</sup> There is no good general account of this subject. I understand that Professor Höhlbaum of Cologne is preparing a treatise on 'Die älteren Kaufgilden von West-Europa.' He is eminently fitted to deal with the subject.

<sup>2</sup> Wilda, *Gildenwesen*, 239, 244-255; Thierry, *Recits*, 182. Cf. Raepsaet, *Ceuvres*, v. 342-344; Gierke, *Genoss.*, i. 230, 231, 243, 345; Brentano, p. xcviij, *et seq.*; De Vigne, p. xii.

<sup>3</sup> See the preceding note; and Drioux, *Assoc.*, 138; Sartorius, *Hanse*, p. xvi.

<sup>4</sup> Above, p. 4, n. 2; Pigeonneau, *Commerce*, i. 113, 114, 238; Ceuleneer, *Communes*, 161, 162; Nitzsch, *Kaufgilden*, 370, *et seq.*; Arnold, *Freistädte*, i. 252. In 953 a 'schola negotiatorum' with a head-man or 'capitularius' is mentioned in the records of Ravenna; this was probably a weak survival of the Roman 'collegia,' though in most

ated in the eleventh century when a renaissance of commerce began in the western countries of Europe<sup>1</sup>. This regeneration of trade made merchants feel the need of union and mutual support, a need which was satisfied by the creation of the 'Gilda Mercatoria.'

This fraternity as an official and constituent part of the municipality is met with much less frequently on the Continent than in England. It is rarely mentioned among the liberties granted in the municipal charters<sup>2</sup>; it more commonly received a separate charter of its own<sup>3</sup>, like the English craft fraternities. In some cases it seems to have exercised important civic functions as in England, regulating the whole trade monopoly of the town<sup>4</sup>. But, as a rule, this was not the case; the continental Gild Merchant generally corresponded to the later civic mercantile fraternities of England, established either for foreign commerce or to regulate a particular part of the local trade monopoly<sup>5</sup>. Its place in the civic government was in such cases similar to that of many later

towns of Italy the 'collegia' seem to have disappeared. See Hegel, *Städteverf.*, i. 256, ii. 261-265; Hüllmann, i. 323; Lattes, *Diritto*, 39; cf. *ibid.*, 36. Wauters speaks of a Gild Merchant at Thiel in 1020 (*Lib. Com.*, 256); but the sources mention only merchants, not a fraternity of merchants. The same is true of the Gild of Cambrai in 1001 mentioned by Giry (*St. Omer*, 279). The 'gildoniae de naufragio' of Charlemagne's Capitularies are called by Von Maurer 'Handelsgilden' (*Städteverf.*, ii. 358); it is not probable that they were perpetuated in the later Gild Merchant. The earliest distinct reference to a medieval Gild Merchant that I have met with is that of St. Omer (1072-1083. Below, p. 290). Valenciennes is cited as another early example, above, p. 4, n. 2; but there is some dispute as to the date of its origin, and it may not have been a Gild Merchant, though merchants belonged to it.

<sup>1</sup> Pigeonneau, *Commerce*, i. 110, 117, 122; Hohlbaum, *Urkundenbuch*, iii. 379, 380; Lachaire, *Inst.*, ii. 160; Arnold, *Freistädte*, i. 140; Vanderkindere, *Artevelde*, 62.

<sup>2</sup> For some references to it in town charters, see Giry, *St. Omer*, 372; Wauters, *Preuves*, 67, 68; below, pp. 290-294.

<sup>3</sup> Below, pp. 294-299.

<sup>4</sup> Giry, *St. Omer*, 275, 281; Nitzsch, *Kaufgilden*, 372-374, 387-391, and *Genossenschaften*, 18-23, 26.

<sup>5</sup> Von Maurer, *Städteverf.*, ii. 254-279, 357; Götz, *Stendal*, 97-119; Hohlbaum, *Urk.*, ii. 25, 26, 168, 169, iii. 385, 414, 415, 464, 465, 477; Arnold, *Studien*, 203; Nitzsch, *Kaufgilden*, 384, 398, 401; Sartorius, *Hanse*, p. xviii; Gengler, *Codex*, i. 139, 220, 267, 472, 473, 680, 923, 968, and *Stadtrechtsalt.*, 460-463; Wilda, *Gildwesen*, 263-288; Pigeonneau, *Commerce*, 112-115, 118-123; Rambaud, *Civil. Franc.*, i. 409; Chérueil, *Rouen*, i. 245; Wauters, *Lib. Com.*, 265, 585, 586; Fortuyn, 221, 222, *af pass.*; Gierke, *Genoss.*, i. 344-349; Levasseur, *Classes Ouv.*, i. 285-296, 510; Schlez, *Urk.*, p. xxiv. In many of these towns the chief mercantile Gild was connected with the cloth trade ('Gewandschneider-Gilde,' 'Laken-gilde,' 'Pannicidae,' etc.).

craft associations. In Italy the Guild Merchant in some places dominated over or regulated the crafts; in a few towns it was merely on an equality with the latter; in many places it was a union of various mercantile and industrial fraternities, as was sometimes the case in England<sup>1</sup>.

The following are the most common names of the Guild Merchant and its officers:—in Germany, Koptude Gilde, Koptude Innung, Kopmanns-Gilde, Koptgilde, Hanse, Gildemeister, Aldermann, Decan<sup>2</sup>; in the Netherlands and parts of north France, Gilde Mercatoria, Fraternitas Mercatorum, Comansgilde, Comannen Gilde, Hanse, Oldermann, Decani<sup>3</sup>; in Denmark, Convivium, Holy Trinity Guild, St. Nicholas Guild, etc., Alderman<sup>4</sup>; in Italy, Mercanzia, Università (Società or Communità) de' Mercanti, Consoli (less frequently a Podestà) assisted by Notarā, Camerarā, Missi, Nuncī, etc.<sup>5</sup>. In some towns of Germany its meetings were called 'Morgensprachen'<sup>6</sup>.

As regards the relation of the crafts to the Guild Merchant, it is clear that in some places the craftsmen or artisans were freely admitted into this body in the twelfth century<sup>7</sup>. In many towns they were excluded from it in this and the following century, especially from mercantile fraternities engaged in foreign trade<sup>8</sup>. On the whole, this exclusion seems to have been more frequent

<sup>1</sup> Latte, *Dizionario Com.*, 23, 24, 38, *et pass.*; above, pp. 118-122.

<sup>2</sup> Hohlbaum, *Urk.*, i. 86, 87, 259, ii. 25, iii. 414; Schmidt, *Urkundenbuch*, i. 178, 184; *Hann. Geschichtsblatt*, 1878, p. 22; Nitzsch, *Kaufgilden*, 370, 372, 387; Sartorius, *Hanse*, p. xvi; below, pp. 294, 295, 299.

<sup>3</sup> Watters, *Lib. Com.*, 286-289, and *Prover.*, 68, 234, 235, 265, 266; *Miscell. Opera Dip.*, ii. 1025, 1027; *Warnkönig, Flund.*, i. 351; *ibid.*, ed. Gheldof, ii. 239; *Vanderkindere, Arteveldt*, 64; *Fortuna*, 197, 203, 220; Hohlbaum, i. 449, iii. 418, 477; *Sartorius, Hanse*, 74; below, pp. 290-298. For a bibliography of French guilds, see *London Liv. Comp.*, v. 390; this Report, v. 385-396, also gives a sketch of the modern history of continental guilds.

<sup>4</sup> Wilda, *Geldwesen*, 271-288.

<sup>5</sup> Latte, *Dizionario*, 23-51; *Rozzica, Dizionario*, 218, 219, 285, 286, 624;

Hegel, *Städteverf.*, ii. 257; Ficher, *Forsch.*, iv. 357.

<sup>6</sup> Götz, *Stadthal.*, 103, 109; Hohlbaum, ii. 25, 26; Nitzsch, *Gemeinschaften*, 26; *Schles. Urk.*, p. xxvii.

<sup>7</sup> Nitzsch, *Kaufgilden*, 372-374, 387-392, and *Genoss.*, 18-22, 26; *Gary, St. Omer*, 275, 281; *Bucanno*, p. cvii; cf. below, pp. 298, 299.

<sup>8</sup> Watters, *Lib. Com.*, 272, 279, and *Gilden*, 721; *Gary, St. Omer*, 283; *Van Miera, Charterboek*, i. 326; Hohlbaum, *Urk.*, i. 244, 245; Nitzsch, *Kaufgilden*, 373; *Götz, Stadthal.*, 103; *Gengler, Codex*, 472, 473; Wilda, *Geldwesen*, 274, 284; *Mohr, Muzen*, i. 192; below, p. 296. Cf. Pappenheim, *Schutzgilden*, 236-238; Watters, *Prover.*, 265, 266. A craftsman was generally admitted to a mercantile fraternity if he agreed to renounce his craft.

and more rigorously enforced than in England. The craft societies first appear on the Continent, as in England, early in the twelfth century<sup>1</sup>. As commerce developed they multiplied, and the craftsmen severed whatever connection they may once have had with the Merchant Gild. There was probably in some cities a process of elimination or disintegration of the Gild into craft fraternities similar to that which occurred in England. Nitzsch has traced out this 'Scheidungsprocess' in Germany<sup>2</sup>. The comprehensive character of the Gild Merchant was no longer necessary when each class of craftsmen had its own fraternity.

There is no exact parallel in England to the great continental revolution of the thirteenth and fourteenth centuries by which the crafts threw off the yoke of patrician government and secured more independence in the management of their own affairs and participation in the civic administration,—in some cases even a monopoly of the latter, the civic constitution being remodelled with the craft fraternities as a basis<sup>3</sup>. True there were popular uprisings in England; but they were generally class conflicts between the poor and the rich, the 'burgenses minores' and the 'majores,' 'potentes,' etc., the crafts as such seldom taking part in these tumults<sup>4</sup>. While the continental municipalities were drifting from an aristocratic to a more democratic regime in the fourteenth century, those of England were drifting in the reverse direction, toward oligarchy, toward government by a close 'select body'<sup>5</sup>. In

<sup>1</sup> Stieda, *Zunftwesen*, 22, 23; Von Maurer, *Städteverf.*, ii. 356; Von Below, *Stadtgemeinde*, 72; Arnold, *Freistädte*, i. 252; Fagnier, *Ind.*, 4; Fortuyn, 221; Wilda, *Gildenwesen*, 313. There are traces of a continuance of the Roman 'collegia' in some parts of Italy. For example, there was a 'schola piscatorum' in Ravenna in the tenth century. (Perrens, *Florence*, i. 190; Hüllman, *Städtewesen*, i. 321; Hegel, *Städteverf.*, i. 256, ii. 265.) Fagnier surmises that the Butchers' Fraternity and the Hanse of Paris had a continuous existence from Roman times (*Industrie*, 3). Cf. Pigeonneau, *Commerce*, i. 115, 118.

<sup>2</sup> Nitzsch, *Genossenschaften*, 23, *Kaufgilden*, 376, 383, *et pass.* Cf. Götz, *Stendal*, 97-119, 143; Wilda,

*Gildenwesen*, 266; Eanen, *Köln*, i. 536, 537.

<sup>3</sup> Von Maurer, ii. 540-723; Brentano, pp. cviii-cxiii; Gengler, *Codex*, 144, *et pass.*; Eanen, *Köln*, ii. 773-815; Schmoller, *Strassburg's Blüthe*, 33, 34; Arnold, *Freistädte*, ii. 291, *et seq.*; Giry, *St. Omer*, 160-164, 348, 349, and *Rouen*, i. 40-43, 440, 441; Luchaire, *Inst.*, ii. 161; Moke, *Mœurs*, i. 197, ii. 11-13, 155, 156; Waiters, *Lib. Com.*, 594-603; Hegel, *Städteverf. Italiens*, ii. 267-271; Leo, *Italien*, ii. 170; Fortuyn, 152-168, 187-194, 209-216, 234-238; Wenzelburger, *Niederlande*, i. 171-173; Perrens, *Florence*, i. 209-213; Schles. *Urkunden*, p. xxv.

<sup>4</sup> Above, p. 110.

<sup>5</sup> *Ibid.*

speaking of the continental revolution writers often err in calling the town government a Merchant Gild, in some cases where the patricians formed no real fraternity and had no organic connection with a Gild Merchant, in other cases where the civic aristocracy was a Gild but not a mercantile fraternity<sup>1</sup>.

Many eminent historians have contended that on the Continent Gild and borough, gildsmen and burgesses, were identical terms, and that the whole civic constitution was derived from the Gild<sup>2</sup>. The evidence presented to support this view is very unsatisfactory, often indeed a mere emanation of the writer's mind to support a preconceived theory.

According to one of the most recent authorities, this theory is now being gradually abandoned in Germany: 'Die Vorliebe für die Gildetheorie nimmt in demselben Grade ab, in welchem die Kenntniss der deutschen Verfassungsgeschichte vorschreitet<sup>3</sup>.' In Germany the gildsmen were not identical with the burgesses, nor the Gild administration with the civic administration<sup>4</sup>. The meetings of the municipal council sometimes took place in a gild-hall; but this circumstance may be as easily explained as the

<sup>1</sup> What Gervinus in 1835 said of Wilda applies to many modern writers: 'In der ganzen Zeit vor dem vierzehnten Jahrhundert, vor dem Aufkommen der Handwerks-gilden, wo ein Patriciat sich in allen Städten von Europa in den ausschliesslichen Besitz der Regierung setzt, sieht er unter diesen adeligen Geschlechtern Alles von Gilden und Genossenschaften wimmeln.' (Kleine Hist. Schriften, 482.) There is no mention of any patrician Altbürger-gilde in Germany before the thirteenth century (Arnold, Freistädte, i. 360). This old-burgher Gild—in the towns in which it really existed—was not necessarily identical with the Gild Merchant. See below, p. 287, n. 5.

<sup>2</sup> Waiters, Lib. Com., 19, 30, 265, 266, 281; Giry, St. Omer, 153, 275, 278, 281, 282; Brentano, English Gilds, pp. xciii, *et seq.*; Raepsaet, Œuvres, v. 342, 343; Gierke, Genoss. i. 243, 250; Vandenpeereboom, Ypriana, ii. 1-35, and Gildes, 244, 251-254; Götze, Stendal, 98, 101, 102, 114, 143; D'Hermansart, 12; De Lettenhove,

Flandre, i. 147; Frensdorff, Dortmunder Statuten, pp. lii-lv; Warnkönig und Stein, Franz., i. 280 (but cf. *ibid.*, i. 262, and Warnkönig, Fland., i. 332-335).

<sup>3</sup> Von Below, Stadtgemeinde, 56. Cf. what Heusler wrote in 1872: 'Mir scheint es . . . dass eigentlich diese Auffassung . . . jetzt als antiquiert zu betrachten sei' (Stadtverf., 11).

<sup>4</sup> 'Item decreverunt quod quicunque pro hoc delicto reacquiret a dominibus consulibus [i.e. civic council of Stendal] civilitatem, similiter a magistris gulde confraternitatem reacquirere deberet, ac si eam antea non habuisset.' (Höhlbaum, Urk., ii. 26, A.D. 1304.) See also Von Below, 29, 31, 33, 45, 56, 68; Von Maurer, Städteverf., i. 169, 170, 273; Gengler, Codex, 220; Ennen und Eckertz, Köln, i. 148, 149; Ennen, Köln, i. 533, 534; Hegel, Chroniken, xiv. pp. xlvi-lvi; Höhlbaum, Urk., iii. 414, 415; Nitzsch, Kaufgilden, 378, 379, 384, 386; Heusler, Basel, 116; Götze, Stendal, 102.

identity of gild-hall and town-hall in England<sup>1</sup>. Hegel, one of the best authorities on municipal history, holds that there is no basis to the hypothesis that the Merchant Gild originally ruled the town and was the germ of the municipal constitution. He argues very cogently that there are no facts to support this theory, and that, when the Gild Merchant first appears in towns, it clearly occupies a subsidiary place in the civic polity. Nothing short of a burghal revolution, he contends, could have changed the Gild from a dominant to a subordinate body. But neither the constitution of the towns nor the records in their archives bear any trace of such a revolution<sup>2</sup>. In like manner, Von Maurer<sup>3</sup> and Von Below<sup>4</sup> protest strongly against this theory; and it is wholly rejected by Heusler and Arnold. Wilda, who may be regarded as the originator of the theory, was obliged to admit that he could advance very little evidence to maintain it: 'Manches deutsche Stadtwesen hat sich wohl aus solcher kaufmännischen Altbürgergilde entwickelt, aber es lässt sich . . . nicht mit Gewissheit nachweisen<sup>5</sup>.' Gierke, who strongly inclines to exaggerate the influence

<sup>1</sup> Above, pp. 80-83. 'Die einfachste Erklärung für diese Thatsache ist doch gewiss auch hier wiederum die richtige. Man benutzte zu den Rathversammlungen das Gildehaus offenbar deshalb, weil man noch die Kosten der Erbauung eines besonderen Rathhauses scheute. Wir haben in modernen Verhältnissen zahlreiche Analogien dafür. Die Dorfgemeinden haben ja regelmässig kein eigenes Gemeindehaus, sondern benutzen für ihre Zwecke die Dorfschenke oder das Schulhaus . . . Auch im Mittelalter finde ich eine Analogie, welche jenes Argument entkräftet: in Worms benutzte man vor der Erbauung eines eigenen Rathhauses den Bischofshof zu Rathssitzungen.' (Von Below, 69.) Cf. Von Maurer, *Städteverf.*, i. 169; Giry, *St. Omer*, 275. In Germany the term 'gildhall' was rarely used as the designation of the town-hall (Gengler, *Stadtrechtsalt.*, 310).

<sup>2</sup> Sybel's *Hist. Zeitschrift*, xlix 335, 336. Throughout his argument Hegel has Dortmund particularly in mind.

<sup>3</sup> *Städteverf.*, i. 166, 169, ii. 273-277.

<sup>4</sup> *Stadtgemeinde*, 29-33, 45, 46, 56, 68, 69.

<sup>5</sup> *Gildenwesen*, 239. Wilda (*ibid.*, pp. 145-166) contends that an old 'Schutzgilde' or 'Altbürgergilde' was generally the germ of the municipal polity. He certainly does not prove this; nor do his followers, e.g. Gierke (*Genoss.*, i. 243-250) and Pappenheim (*Schutzgilden*, 54-67, 428-436). They fail to prove that any such guilds existed before the twelfth century, much less that the latter were the basis of the civic constitution. Two of the best authorities on German municipal history have been unable to find an 'Altbürgergilde' before the thirteenth century (Arnold, *Freistädte*, i. 360; Von Maurer, *Städteverf.*, i. 166. Cf. Gervinus, 481-485; Götz, 99; Brentano, xcvi). In fact, Von Maurer says: 'Altbürgergilden und Schutzgilden aber, wie dieses Wilda, Gierke, u. a. behaupten, haben sich in Deutschland nirgends gebildet . . . Es findet sich . . . in keiner deutschen Stadt von solchen Schutzgilden und Friedensgilden auch nur eine Spur'



of the Guild, makes a similar admission: 'Lässt sich auch in keiner deutschen Stadt ein unmittelbares Hervorgehen der Stadtverfassung aus einer alten Kaufmannsgilde nachweisen . . . so sind doch einzelne Elemente aus der Verfassung einer Handelsinnung auch in deutsche Städteverfassungen übergegangen<sup>1</sup>.' Nitzsch, whose essays<sup>2</sup> throw much light on the history of German Guilds, tried in vain to find such evidence; what he advances in support of this theory is conjecture not proof.

In France and Belgium recent authorities are adopting the view that the Guild was only one of various factors that aided in the development of the communal or civic constitution<sup>3</sup>. In Italy the 'consoli de' mercanti' and the 'consoli del comune' were distinct officers; the Guild Merchant was not co-extensive with the whole area of municipal administration or with the totality of the burgesses<sup>4</sup>. There is evidence to show that the same is true of the Netherlands<sup>5</sup> and Denmark<sup>6</sup>.

The omission of all mention of the Guild in most of the charters

(Städteverf., i. 166). Heusler also rightly observes: 'Sobald man den Begriff der Schutzgilde für die Frage der Entstehung der Stadtverfassung verwerten und bestimmt fassen will, zerfällt er unter den Händen' (Stadtverf., 13).—There is a tendency to identify this so-called 'Altbürgergilde' with the Guild Merchant (Gierke, i. 243; Nitzsch, Genossensch., 24; Brentano, ch. iii); but these two categories of Guilds are not to be confused.

<sup>1</sup> Genossensch., i. 345.

<sup>2</sup> Niederd. Genoss., and Niederd. Kaufgilden, *passim*.

<sup>3</sup> Luchaire, Inst., ii. 159-161; Drioux, Assoc., 256, 257, 260, 261. The following writers vigorously combat the theory that the Guild was the basis of the municipality: Vanderkindere, Magistrats, 6-7; Ceuleneer, Communes Belges, 158-163, 168; Semichon, Trêve de Dieu, ii. 114-117. In St. Omer the gild-officers and town-officers, gild-jurisdiction and town-jurisdiction, seem to me to have been distinct in the twelfth century; so too the 'homines de ghilda' and the 'cives' of Rouen. See Chéruel, Hist. de Rouen, i. 241-245; Pigeonneau, Commerce, i. 239.

<sup>4</sup> Lattes, Diritto, 23-56; Leo, Italien, ii. 166; Rezasco, Dizionario, 218; Giudici, Istoria Munic., iv. App.; Hegel, Städteverf., ii. 146, 257. Other material illustrating the subject may probably be found in Monumenta Historiae Patriae and in Lastig's Entwicklungswege und Quellen des Handelsrechts, to which I have not access. Lattes gives a long list of sources for the history of the Guild Merchant. See also Weber, Handelsgesellschaften, 168-170; and Manzoni, Bibliografia, cited by Supino, p. 514. For the later history of Italian trade fraternities, see Supino, Corporazioni.

<sup>5</sup> 'Si quis burgensis non confrater dicte gulde . . . persolvat hansam,' etc. (below, p. 297). This passage shows that in Mechlin in 1276 there were burgesses who were not in the Guild. See also Wanters, Lib. Com., Preuves, 234, 235, 268, 269; Van Mieris, i. 356; Feith, De Gildis Gron., 77, 78; Miraeus, Opera Dip., ii. 1025-1027; Wenzelburger, i. 171; Höhlbaum, Urk., i. 449; Forschungen, ix. 515, 516. Cf. also above, note 3, and below, pp. 296-298.

<sup>6</sup> Wilda, Gildenwesen, 271-288.

and other burghal muniments of the eleventh and twelfth centuries bears testimony against the theory that town and Gild, town-law and gild-law, were then identical. In the thirteenth and fourteenth centuries the merchant fraternities often became an integral part of the town constitution with political functions; but this position was shared with them by the craft gilds. Wherever we find any early Gild Merchant possessing political, in distinction from commercial, functions (for example, representation in the civic council, power to appoint certain civic judicial officers, etc.), this may be accounted for by the general social influence of the Gild, which usually comprised many of the leading burgesses of a town<sup>1</sup>; in later times this political power of the Gild was frequently a result of the 'Zunftrevolution.' The Gild Merchant was merely grafted on the municipal constitution; it was not the germ of the latter.

The current of investigation on the Continent seems to be setting against the old artificial theories of the origin of medieval municipal government. That drift is in the right direction. Why seek the germ of the burghal polity in remote ages or remote causes when the formation of the latter in most countries may be explained by a natural process of growth from the rural township? The Gild was only one of various elements that played a prominent part in this process of municipal development.

<sup>1</sup> The civic magistrates of Copenhagen in the fifteenth century were usually taken from the Holy Trinity Gild of Merchants; in Flensburg all the members of the civic council belonged to the Gild of St. Nicholas (Wilda, *Gildenwesen*, 283, 286). These are Gilds that came into existence after the municipal constitution of the Danish cities was fully formed; no one can

claim that, in these cases, the connection between the Gild and the town authorities was due to the derivation of the municipal polity from the Gild. By a parity of reasoning, we can claim that such a connection in earlier times does not in itself prove that the town constitution emanated from the Gild. Pappenheim, p. 431, admits that Wilda's arguments on this point are untenable.

## DOCUMENTS ILLUSTRATING APPENDIX F.

*Statutes of the Gild of St. Omer. [Twelfth century<sup>1</sup>.]*

Haec sunt consuetudines gilde mercatorie.

Si quis mercator manens in villa nostra vel in suburbio in gildam nostram intrare noluerit et pergens alicubi deturbatus fuerit vel res suas amiserit vel ad duellum fuerit provocatus, omnino nostro carebit auxilio.

Si quis gildam non habens aliquam waram vel corrigia vel aliud hujusmodi taxaverit et aliquis gildam habens supervenerit eo nolente mercator quod ipse taxaverat emet. Si quis vero gildam habens mercatum aliquod non ad victum pertinens valens V<sup>s</sup> s. et supra-taxaverit et alius gildam habens supervenerit si voluerit in mercato illo porcionem habebit, quod si forte taxator supervenienti porcionem contradixerit et coram decano testimonio duorum de gilda convinci poterit quod porcionem contradixerit duos solidos emendabit.

Advenienti tempore potacionis jus est ut decani capitulum suum submoneant ipso die adstari potacioni ibique precipiant ut hora nona ad sedem suam pacifice veniant, et quisque erga alium pacem habeat de veteri ac novo facto.

Statutum est autem si quis aliquem ad potandum secum adduxerit vel filium vel nepotem vel famulum de unoquoque xii. d. dabit; ab hac sententia magistros excludimus.

Si quis vero non habens gildam ad potacionem venerit et ibi latenter bibens deprehensus fuerit V<sup>s</sup> s. dabit, vel in momento gildam emat; inde clericos, milites et mercatores extraneos excipimus.

Si quis scacchas aut patinos in gildalla attulerit dimidiam unciam argenti dabit vel x. denarios.

<sup>1</sup> In 1127 the Count of Flanders granted St. Omer a charter which casually mentions the Gild:—'Omnes qui gildam eorum habent, et ad illam pertinent, et infra cingulam ville sue

manent, liberos omnes a teloneo facio ad portum Dichesmude et Graveningia,' etc. (Gi-y, St. Omer, 372.) For the Hanse of St. Omer, see above, p. 198.

Si quis stulte contra decanos locutus fuerit, duas uncias argenti dabit.

Si quis contra alium stulte locutus fuerit duobus audientibus, dimidiam unciam dabit.

Si quis aliquem pugno vel pane vel lapide percusserit, non enim intersunt alia arma, duas uncias dabit.

Si quis a sede sua iracundia contra alium surrexerit, unam unciam dabit.

Si quis audito tintinnabulo clamorem fecerit vel se erexerit, dimidiam unciam dabit.

Si quis cyfum cum potu extra gildallam absque licencia portaverit, dimidiam unciam dabit.

Si quis ad capitulum suum prima pulsante non venerit, xii. d. dabit; qui vero absque licentia recederit non infirmitate cogente xii. denarios dabit.

De omni stulticia que agitur infra duos dies potacionis in facto vel verbis coram decanis respondendum est nec coram alio iudice; sic enim definitum fuit tempore Gulurici Rabel castellani<sup>1</sup> ac divisum inter Guluricum et Burgenses.

Constitutum est ut decani vinum et ea que ad gildam necessaria sunt procurent quousque de acquisitis sua recipiant.

In potacione nostra custodes portarum portas levantes burgensibus ad potacionem vel ad capitulum existentibus quisque unum lotum, quisque propinatorum i. lotum singulis noctibus, quisque hostia custodientium unum lotum; si quis de gilda infirmatur et cognitus sit a vicinis suis singulis noctibus i. lotum. Si quis extra regionem fuerit, uxor ejus singulis noctibus i. lotum habebit. Si vero in nuptiis fuerit nulli de vino suo respondendum est. Sacerdotes vero omnes ad vespervas existentes quisque singulis noctibus unum lotum; ideo<sup>2</sup> omnes quorum diversorum parrochiani sumus. Custos sancti Audomari qui primam sonat per quam ad capitulum nostrum adunamur et nobis reliquias accommodat singulis noctibus unum lotum. Ideo quatuor plegii sumuntur ut si unus illorum vixerit integre persolvat unus [. . .] omnes plegii exstiterunt. Debitore vero mortuo omnes plegii liberi sunt.

Si quis gildam emerit juvenis vel senex priusquam in cartula ponatur ii. d. notario, decanis vero duos denarios.

Jus vero decanorum est ut duobus diebus ante primam cum notario su[o] comedant de communi in thalamo gildalle et vinum

<sup>1</sup> A. D. 1072-1083.

<sup>2</sup> † id est.

tunc habeant, aliquod si fieri non potest aliquo occupati negotio, quisque decanorum ad hospitium suum per capitulum dimidium sextarium habeat; notarius autem unum lotum pro matutinali prelibatione. Singulis vero noctibus prout justum est ordinatis ac distributis quisque decanus ad hospitium suum unum sextarium habeat, notarius vero dimidium sextarium habeat. Si quis cum armis portas intrare voluerit, a custodibus arma detineantur quousque redeat vel quousque ab hospite suo aut ab alio sibi noto pacificus esse testetur. Finita potatione et persolutis expensis omnibus si quid remanserit communi detur utilitati vel ad plateas vel ad portas vel ad ville municionem, postea autem omnes posteros in XPO monemus ut pauperum ac leprosum misereantur.—(*Mémoires de la Soc. des Antiquaires de la Morinie*, xvii. 5-10.)

*Extracts from a Charter of Rouen. Circa 1150<sup>1</sup>.*

Item, nulla navis de tota Normannia debet eschippare ad Hiberniam nisi de Rothomago, excepta una sola cui licet eschippare de Caesarisburgo semel in anno.

Item, homines Rothomagi qui de ghilda sunt mercatorum sint quieti de omni consuetudine apud Londonium, nisi de vino et de crasso pisce.

Item, ipsi cives Rothomagi habeant apud Londonium portum de Dunegate, sicut habuerunt a tempore Edwardi regis, tali consuetudine quod, si in portu illo aliquam navim invenerint, undecumque sit, praecipient eam auferri inde, et expectabunt unum fluctum et unam ebbam; et si navis inde ablata non fuerit, cives Rothomagi cordas navis illius rescindent, si voluerint, et eam sine clamore et forisfacto inde depellent, et, si navis periclitabitur ex illa depulsione, nemini inde respondebunt.—(*Chéruel, Hist. de Rouen*, i. 244, 245.)

*The Gilds of Arras. Twelfth Century.*

De caritatibus mercatorum et diversorum ministeriorum.—Verum sunt quedam in ecclesiis beneficia et consuetudines que proprie et specialiter caritatis nomen retinent, ut sunt ille que dicuntur ministerialium quibus de sua devotione obligant caritates, quia singulis debent annis sancto Vedasto de sua caritate et confraternitate, parmentarii quatuor solidos, sutores decem, qui utriusque suum debitum.

<sup>1</sup> Granted by Henry Plantagenet, Duke of Normandy.

solempniter ad altare sancti Vedasti deferunt. Porro guilda mercatorum debet viginti quatuor solidos, qui dicuntur de candela, quos scabini solvunt. Quando mercatores ad suam consistunt caritatem, si cellerarius vel thesaurarius illuc mittunt, uterque ex consuetudine debet habere dimidium vini sextarium, in caritate vero monetariorum thesaurarius dimidium vini sextarium.—Multe fuerunt hujusmodi caritates; sed quod in aliis refrixit in his viget.—(*Cartulaire de l'Abbaye de Saint-Vaast d'Arras*, 191.)

*Charter of Dordrecht. Feb., 1201.*

Ego Th[eodericus] Dei gratia Hollandie comes et A[leidis] Hollandie comitissa uxor mea tam presentibus quam futuris notum volumus fieri, quod oppidanos nostros de Durdreth in eorum jure tali decrevimus libertate in predicto oppido gaudere, videlicet quod nullis infra Durdreth liceat pannos ad venditionem incidere nisi illis qui ab hoc officio denominati sunt, eo quod pannorum incisores appellati sunt, et nisi in fraternitate et ansa sint oppidanorum ad Durdreth attinentium. Et ut hec pagina nostre institutionis rata et inconvulsa permaneat, eam sigillorum nostrorum appensionibus et testium subscriptionibus corroboravimus. Testes vero sunt hii: Boudinus de Haltena, Hugo de Vorne, Gerardus de Hurst, Gillis de Lecke, Siigerus Buth, Egidius de Wendelnesse, et scabini de Durdreth. Datum apud Durdreth per Willelmum not[arium] anno dominice incarnationis 1200, mense Febuario.—(*Höhlbaum, Hans. Urkundenbuch*, i. 31.)

*Charter of Calais. August, 1210.*

Ego Reginaldus, comes Bolonie, et Ida, uxor mea, Bolonie comitissa, notum fieri volumus tam presentibus quam futuris quod nos scabinos de villa nostra de Kaleis et probos homines nostros de eadem villa et omnes infra banleucam de Kaleis habitantes, a communitate aliorum hominum nostrorum de terra de Merc separavimus, ita quod jura sua et libertates suas, sicut eas habebant ante quam a predicta communitate separati essent, possidebunt. Si autem scabini vel queremanni super se judicium habuerint quod dicere nesciant et diffinire, apud Merc de judicio illo suam facient inquisitionem; et si apud Merc super hoc docti esse non poterunt, judicium illud inquirent apud Brebore. Concessimus etiam predictis burgensibus quod quando assisiam suam facient, quod de omnibus

catallis que infra banleucam suam erunt que per aspectum (?) scabinorum debebunt assederi, assisiam suam faciant. Dedimus igitur et concessimus sepedictis burgensibus quod infra banleucam suam habeant gueldam mercatoriam, adeo libere et quiete ut illam habent illi de Merc. Actum apud Kaleis anno ab incarnatione Domini M<sup>o</sup>CC<sup>o</sup> decimo mense augusto.—(*Wauters, Lib. Com., Preuves, 67, 68.*)

*The Hanse or Gild of Utrecht. Dec., 1251.*

Nos scultetus, scabini, consules ac jurati civitatis Trajectensis pro communi utilitate statuimus, ne quis deinceps vendat vas vini vel amplius alicui qui illud velit vendere ad tappum in Trajecto, nisi emptor illius vini sit civis Trajectensis, solvens precarias [sive] exactiones, et ad alia onera civitatis sit astrictus. Statuimus etiam, ne aliquis nomine alicujus qui non est civis Trajectensis, vel ad opus ejusdem, vinum ad tappum vendere presumat. Si quis autem contra haec statuta nostra venerit, ipse tenebitur solvere pro pena decem libras, vel civitatem exhibit, non mercaturus per annum unum. Insuper reus erit erga nos juramenti nostri lesi. Insuper mercatores Reni, cives nostri, istud factum nostrum approbantes, inter se compromiserunt, quod, quicumque ex eis hoc statutum nostrum infregerit, hansa sua sit versus Renum privatus, et numquam eam recuperet, nisi pro pena solvat marcam, et nullus infra annum unum commercationem cum eo faciet. Quod si quis fecerit, ipse similiter erit hansa sua privatus, non recuperaturus eam, nisi marca data; et si ipse solus emerit vinum Colonie<sup>1</sup>, hoc nullus fratrum hanse potabit Trajecti; et si quis potaverit et de hoc convictus fuerit per duos aldermannos, hansa sua carebit. Actum anno Domini 1251 in die Lucie virginis<sup>2</sup>.—(*Forschungen zur Deutschen Gesch., ix. 524.*)

*Charter of the Gild of Goslar. May, 1252.*

Willelhelmus, Dei gracia Romanorum rex semper augustus, universis sacri imperii fidelibus, presentem paginam inspecturis gratiam suam

<sup>1</sup> This seems to refer to a retail wine-dealer who buys the wine directly from Cologne, and not from or through a member of the Gild. (*Forschungen, ix. 516.*)

<sup>2</sup> These regulations were first made in 1233. The Hanse or Gild referred

to in this document consisted of merchants of Utrecht who exercised the privilege of trading along the Rhine, i.e. 'hansa versus Renum.' (*Ibid., 515, 516; Höhlbaum, Urkundenbuch, i. 86.*)

et omne bonum. Cupientes ex affectu benigno et benignitate regia fidelium nostrorum providere comodis et quieti, notum facimus universis quod nos mercatoribus Goslariensibus dilectis fidelibus nostris conservabimus omnem libertatem et jura, que juste ab antiquis imperatoribus hactenus habuerunt, et volumus quod fraternitas ipsorum, que theutonice gelde vocatur, in ipsa civitate Goslarie in statu tali permaneat, videlicet, quod nullus sine consensu ipsorum pannos incidere presumat. Si vero aliquis contra id facere presumpserit, quocienscumque fecerit, in ultionem sue temeritatis duas marcas argenti componat, unam advocato civitatis solvendam, aliam ad muros civitatis resarciendos. Datum Goslarie, anno Domini 1252, sabbato post diem pasce.—(*Forschungen zur Deutschen Gesch.*, xi. 145<sup>1</sup>.)

*Statutes of the Gild of Middelburg. June, 1271.*

In nomine patris et filii et spiritus sancti, amen. Nos Florencius comes Hollandie concessimus hec instituta, que subscripta sunt, confraternitati mercatorum Middelburgensium in perpetuum duratura. Hec igitur, que jam dicti mercatores provida deliberatione et communi studio ad universorum qui in dicta confraternitate sunt utilitatem et honorem statuerunt, volumus rata et firma permanere statuentes, ut nulli quicquam de subscriptis institutionibus propria auctoritate [absque] communi consilio addere vel minuere sive etiam immutare licebit.

In hac ergo nullus earum artium, que mechanicè dicuntur, esse conceditur officialis ut sunt fullo, sutor calciatorum, pellifex, tinctor, textor, faber, carpentarius, piscium carniunque venditor vel ille qui pisces sive carnes assat vel coquit venales; illi etiam qui caseum, butyrum, adipem vel unguentem aut sepum vel hiis similia venalia habent, ab hac fraternitate removentur; mercator etiam, qui vulgo mercenarius dicitur, sartor vel sutor vestium, conductivus braxator, qui in propria persona braxat vel proprio collo in domum suam vel ex ea aquam portavit, auriga, nauta, qui scuteman dicitur, venditor veterum vestium ex consuetudine, percussor lane, caldari-

<sup>1</sup> In 1290 King Radolf restored to Goslar its old privileges including the Gild Merchant:—'honorabiles viri, mercatores videlicet civitatis Goslarie quandam fraternitatem habuerunt, que innunge seu gelde appellatur . . . nullus

prefatos mercatores hactenus aliqua temeritate in juribus ipsorum et in incisione pannorum impedire presumat.' (*Hobituum, Urkundenbuch*, i. 259, iii. 414.)



orum compositor vel emendator simili modo a dicta fraternitate excluduntur. Quicumque eciam huic confraternitati adjungere se voluerit, nec spoelen nec sceren debet nec barbam alicujus pro precio ut barbitonsor conductivus radere. Nullus eciam mercatorum confraternitatis debet naves inferius quam ad instrumentum, quod scamnum mali dicitur, frangere nec eciam proprio collo ligna ad sepem bajulare; nullus quoque ex dictis fratribus debet ligna pro conductiva mercede incidere vel secare, insuper nec oves tondere nec lanam manutenus ad forum vendere nec pisces cujusquam generis per manum ad forum vendere poterunt. Molendinarius vero et illi qui poma vel pira vel alterius cujusquam generis fructus in foro vendunt, modo excluduntur supradicto. Sutoribus licebit tamen ad nundinas ea ferre et referre que ad officium suum spectant et eis competunt, nec tamen prius talia vendere poterunt quam ea suo officio fuerint adaptata et signata, ut si pelles emerint cujusquam generis, priusquam ab eis vendantur, cornua cum caudis dictis pellibus amputentur. Pellifices et venditores veterum vestium, emendatores caldariorum et carpentarii eadem licentia donantur.

Quicumque duas uncias Hollandie vel amplius valens de foro ad forum attulit ex parte orientali de Mase vel ex parte occidentali de Zwene comitate Flandrie excepta debet hansare.

Quicumque paterna successione liber confraternitatem istam acquirere voluerit in hoc oppido, sexaginta denarios usualis et legalis monete in Middelburg dabit comiti, hanse duos denarios.

Quicumque vloccatos pannos fieri fecerit et a tribus mercatoribus convictus fuerit, tres libras emendabit et ipse ad emendam pannos portabit. Nulli licet ut vinum . . . [lacuna in MS.] faciat venale, nisi fuerit confrater, et hoc sub positione predicta; hujus emende terciam partem confraternitati [dabit], aliam terciam formatores, ultimam terciam accusatores habebunt. Nulli licet pannos, qui vulgo ghewand dicuntur, incidere venales in halla de Middelburg, nisi ibidem confraternitatem mercatorum habuerit, [quod] qui infregerit, tres libras emendabit, que in antedictos usus similiter convertentur.

De omni autem emenda, que in confraternitate acciderit et que per formatores sive per comitem hanse ad satisfactionem in dicta fraternitate non poterit coherceri, debet ad pretorium de Middelburg requiri et dupliciter emendari; quidquid tunc de emenda ad confraternitatem [precipienda]<sup>1</sup> super [extra manet], nos duas partes et oppidum terciam partem illius emende optinebit.

<sup>1</sup> MS. 'p'caute' or 'p'cante.' The correct reading seems to be 'precavente.'

Preterea decrevimus et volumus quidquid formatores per scabinos et juratos electi vel eligendi ad promocionem et utilitatem dicte confraternitatis ad falsitatem reprimendam sub suo juramento statuunt vel duxerint statuendum, ratum erit et firmitatem optinebit inconcussam, ac si in presenti scripto lucide exprimeretur, hoc salvo si per formatores, quos scabini et jurati predicti communi consilio ad hoc elegerint, aliquid in hiis presentibus litteris nostris ad promocionem dicte fraternitatis ordinata existant seu in posterum aliquid ab eis ordinentur in dicto negotio et ea nobis corrigenda videantur, dum factum suum et processum examinaverimus, illa omni dolo et fraude exclusis mutabimus et corrigemus bono modo.

In cujus rei testimonium presens scriptum sigillo nostro communiri fecimus et signari. Datum apud Thelinghe, anno Domino millesimo ducesimo septuagesimo primo, feria secunda post octavas penthecostes<sup>1</sup>.—(*Höhlbaum, Urkundenbuch*, i. 244, 245.)

*Statutes of the Guild of Mechlin. August, 1276.*

Nos Walterus Berthaut, dominus Machlinie, notum facimus universis presentes litteras inspecturis, quod nos ad petitionem burgensium nostrorum Machlinie tale jus eis dedimus in gulda Machlinie quam a nobis tenent, et super hoc decanos ipsius gulde iudices constituimus, quod quicumque burgensis Machliniensis vellet facere communionem ad detrimentum dicte gulde, si sit confrater dicte gulde et convictus fuerit per simplicem assertionem duorum burgensium, jus perdet predicte gulde, et si se voluerit excusare, non potest nisi cum quatuor burgensibus, factis sacrosanctis. Si vero extraneus fuerit, jus perdet et sustentationem civitatis. Burgensis vero qui tali presumptori communicaverit, si confrater gulde fuerit, perdet eam et libram unam denariorum. Si vero confrater predicte gulde non fuerit, perdet libram tantum et sustentationem civitatis.

Dedimus etiam eidem gulde Machlinie talem libertatem in perpetuum quod infra dominium nostrum et terram nostram et subditorum nostrorum nulla gulda seu confraria a nobis aut successoribus nostris vel ab aliquibus possit de novo constitui aut elevari per quam dicta gulda Machlinie dampnum valeat incurrere vel gravamen.

Statuimus etiam si quis burgensis, non confrater dicte gulde, tamquam mercator ultra Mosam perrexerit, persolvat hansam, videlicet sex solidos et quatuor denarios Colonienses. Si vero fuerit

<sup>1</sup> The paragraphing is mine, not that of the MS.

de officio fullonum aut textor[um] aut ceteri fullonis officio, solvat dupliciter hansam antedictam. Et qui ultra Scaldam perrex[er]it tamquam mercator, solvet sex solidos et octo denarios sterlingorum, si non fuerit confrater sepedicte gulde. Si vero fuerit de officio textorum aut fullonum vel ceteri fullonis officio, solvet similiter in duplo dictam hansam.

Statuimus insuper quod custodes, qui dicuntur *wardiers* prefate gulde, custodiant ac precaveant, quod dicitur *warderen*, omnibus stantes ad pressorium Mechliniensem.

Volumus etiam firmiter precipientes judiciario nostro Mechliniensi quotiens a decanis prenominate gulde fuerit requisitus, quando-cumque ipsi decani impotentes fuerint ad justiciam faciendam de presumptoribus dicte gulde, quod ipse justiciarius ex parte nostra concedat ipsis decanis potestatem judicandi de dictis presumptoribus et de omnibus que spectant ad guldam memoratam. De omnibus autem forefactis que inde provenient, excepta dicta hansa que specialiter spectat ad dictam guldam, nos desuper Walterus Berthaut et nostri successores habebimus medietatem et dicta gulda reliquam medietatem, supra Novam terram, et in Machlinia capiemus quartam partem, dominus episcopus Leodiensis quartam partem, dicta gulda quartam partem, et dicti decani quartam partem.

In cujus rei testimonium et ne quis posset in posterum a nobis aut a nostris successoribus super permissis oriri materia questionis, presentes litteras sigilli nostri munimine, una cum sigillis dilecti filii nostri primogeniti et gulde Machliniensis contulimus supradicte gulde sigillatas. Actum et datum anno Domini M.CC.LXX sexto, quinto kalendas septembris.—(*Wauters, Lib. Com., Preuves, 234, 235.*)

*The Gild of Halberstadt. Jan., 1291.*

Nos Vulradus Dei gratia Halberstadensis ecclesie episcopus tenore presentium recognoscimus et publice protestamur, litteras honorabilium civium Goslariensis civitatis; immo consulum et rectorum civitatis ejusdem recepisse, per quas discordia jamdudum habita inter burgenses nostre civitatis Halb' ex una et cives Quedeligburgenses ex altera [parte] est sopita, in quibus videlicet litteris expresse continebatur, quod nullus textor potest vel debet in aliqua civitate nullo etiam tempore, ubi non habet consortium mercatorum, quod vulgari-ter inninge appellatur, pannos incidere, nisi docere possit quod id ex antiqua consuetudine et sine contradictione fecerit. Unde cum in

nostra civitate consuetudo fuerit actenus observata et a nobis approbata, ut nullus textor carens consortio mercatorum possit incidere pannos in eadem, predictam consuetudinem in nostra civitate Halb' presentibus roboramus et volumus tam in nundinis quam extra in sepedicta nostra civitate inviolabiliter observari. In cujus rei testimonium sigillum nostrum duximus presentibus apponendum. Datum anno Domini MCCXCI, in die beatorum Fabiani et Sebastiani.— (*Urkundenbuch der Stadt Halberstadt*, i. 193.)

*Charter of the Guild of Brakele. March, 1309.*

Nos Burchardus miles dictus de Asseborg et Hermannus de Brakele famulus presentium serie literarum ad noticiam presentium quam futurorum cupimus pervenire, quod maturo consilio prehabito et ob petitiones mercatorum in Brakele jus inferius annotatum mercatorum societati, que vulgariter *hanse* dicitur, damus et dedimus in his scriptis,—scilicet ut quicumque de novo societatem eorum intrare voluerit, is dabit societati quindecim solidos denariorum in Brakele legalium, de quibus nobis sive dominis oppidi Brakele tres solidi cedunt tantum. Insuper dabit decanis dicte societatis sex denarios et talentum cere, et per hoc solutus est ratione ingressionis hujus societatis a qualibet pensione dominorum. Pueri autem horum qui in societati sunt, si prefatam societatem intrare voluerint, in antiquo jure ipsorum permanebunt. Ceterum cum dicti mercatores fuerint congregati, si in sedibus et congregatione ipsorum aliquis excessus inter ipsos ex furore vel iracundia, qui dicitur vulgariter *en uplop* aut *en hest mot*, ex casu evenerit, hunc excessum corrigere poterunt, ut per hoc in nostram jurisdictionem sive dominorum oppidi Brakele non excedant. Si etiam aliqui forenses aut de ipsorum societate dictos mercatores in eorum arbitriis et statutis niterentur impedire, hos corrigere possunt, absque gravamine nostre jurisdictionis, cum mulctis ab ipsis super hoc positis et statutis. Hec omnia et singula ratificamus pariter et probamus, dantes super eo presens scriptum perpetue valiturum, nostris sigillis roboratum. Actum et datum dominica, qua cantatur Oculi mei semper ad dominum, anno ejusdem MCCC. nono.—(*Gengler, Codex*, 267.)

*The Guilds of Florence. A. D. 1378.*

Perchè quando ne' tempi di Carlo I la città si divise in Arti, si dette capo e governo a ciascuna, e si provide che i sudditi di

ciascuna Arte dai capi suoi nelle cose civili fossero giudicati. Queste Arti, come già dicemmo, furono nel principio dodici; dipoi col tempo tante se ne accrebbero, che elle aggiunsero a ventuna, e furono de tanta potenza, que le presero in pochi anni tutto il governo della città. E perchè tra quelle delle più e delle meno onorate si trovano, in maggiori e minori si divisero; e sette ne furono chiamate maggiori, e quattordici minori. Da questa divisione e dall' altre cagioni, che di sopra abbiamo narrate, nacque l' arroganza de' Capitani di Parte; perchè quelli cittadini, che erano anticamente stati Guelfi, sotto il governo de' quali sempre quel magistrato girava, i popolani delle maggiori Arti favorivano, e quelli delle minori coi loro difensori perseguitavano. Donde contra di loro tanti tumulti, quanti abbiamo narrati, nacquero . . . E di tutte le Arti che aveva ed ha più di questi sottoposti, era ed è quella dellà lana, la quale, per essere potentissima e la prima per autorità di tutte, coll' industria sua la maggior parte della plebe e popolo minuto pasceva e pasce.—(*Machiavelli, Delle Istorie Fiorentine*, lib. iii, anno 1378.)<sup>1</sup>

<sup>1</sup> The following were the seven Greater Gilds: judges and notaries; merchants or cloth-dealers ('Mercantanti o Arte di Calimala'); money-changers; wool-dealers; silk-dealers; physicians and apothecaries; and pelters or furriers. The heads of these seven bodies are referred to in a docu-

ment of 1193. The fourteen Minor Gilds existed at least as early as 1236. For the whole subject, see Peruzzi, *Storia del Com. de Firenze*, i. 58, 59, *et pass.*; Perrens, *Florence*, i. ch. iv; and the documents printed in *Giudici, Istoria Munic.*, iv. App.

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