

THE DEVELOPMENT OF THE JUDICIAL SYSTEM
AT THE GREAT FAIRS OF CHAMPAGNE AND BRIE
IN THE TWELFTH AND THIRTEENTH CENTURIES

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History 232
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May, 1959

The fairs of Champagne present a group of institutions, . . . juridic and economic, which are in their complexity and their importance something of a singular kind. It is generally conceded that European fairs of the Middle Ages grew from the special assemblages which gathered to honor a certain saint on his feast-day, at a church where that saint especially was venerated. Unlike the market, which met at short intervals because it was an institution for transactions in necessities, and which, as a result, was economic in origin, the fiar was at first a religious institution. The Latin word for fair - nundinae - can be connected to the nine days during which important feasts of the Church were celebrated. The nine week-days, the feriae, of the holiday indicate the origin of the French word, foire, and the English word, fair; while, the German word, Messen and the Flemish word, Kermessen, meaning masses and church-masses respectively, indicate the religious origin of the institution.¹

1. Summerfield Baldwin, Business in the middle ages, New York, Henry Holt and Company, 1932, pp. 89-90; Felix Bourquelot, Etudes sur les foires de Champagne, (Mémoires présentés par divers savants à l'académie des inscriptions et belles-lettres), Paris, L'Imprimerie Impériale, 1865, I, 90.

However, the presence of large numbers of people, an element which attracts economic development, caused economic considerations to become mixed with what was in origin a religious occasion. First, the monasteries or other religious establishments about which the feasts were held made the feasts an occasion for selling the surplus products of their fields and workshops. Certainly, the presentation of surplus crops for sale during a feast may have been an act of charity, as the extraordinary gatherings of people would tax the regular supply systems of the area, while the abbeys were the only local institutions with the ability to supply these abnormal demands.¹ Such concourses of people would naturally draw the itinerant merchants and peddlers of that early period to the fairs.²

But, at this point, the fair can be distinguished from the market only by its singularity, being held only on the occasion of a saint's feast, and by its extension in time, numbers, and trade. The fairs became economic institutions of a higher order only when, in the latter eleventh century and the early twelfth century, renewed European

1. H. Wescher, "The cloth trade and the fairs of Champagne," Ciba Review, No. 65, March, 1948, p. 2364.

2. Henri Pirenne, Medieval cities, Garden City, New York, Doubleday and Company, 1956, pp. 76, 111.

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trade in the Mediterranean made possible a commerce of a higher order than that of the peddler. Further, the privileges granted by princes and feudal lords to the clergy operating the fairs, especially those which exempted merchants traveling to fairs from duties, normalized market conditions and made it possible for the Italian merchants to profitably transact business in northern Europe.

One privilege was the general safe-conduct for merchants traveling to the fairs declared by the counts of Champagne, for example. This conduit des foires engaged the counts to protect the merchant and his merchandise not only in their own territories but also, by their influence and importance, in other lands on the way to the fairs. Three other very important privileges were conceded by the counts to merchants attending the fairs of Champagne. The merchants were immune from the feudal right of the lord to the escheat of all the property of the foreign merchant who died in his lands. They were immune also from legal actions which arose before the opening of the fair. Finally, the counts suppressed their right of reprisal by which all the merchants of the same city were treated legally as members of a single corporation and could be

injured in person or property for a conflict another merchant of that city may have had with the count.¹ These immunities recognizing the rights of the individual person were indicative of the twelfth and thirteenth centuries which Imbart de la Tour referred to as the epoch of emancipation. "To a regime of economic or political monopoly succeeded, imperfectly as yet, a regime of liberty," which was in great measure the result of the growth in international commerce.² Henry Morley has said that the fairs prospered because the privileges granted to the clergy were "equivalent to a concession of some channels for free trade, through the midst of a wilderness of taxes."³

The fairs of Champagne were not unlike other fairs at the beginning of the twelfth century, except, perhaps, that they may be distinguished already by a certain richness which resulted from their central and accessible location and from the natural wealth of the territories of Champagne and Brie. These fairs benefited from the good fortune of existing under a wise and indulgent political order for a period of over two hundred and fifty years spanning the eleventh,

1. Bourquelot, op. cit., I, 23-25, 77; P. Huvelin, Essai historique sur le droit des marches et des foires, Paris, 1897, pp. 384-87.
2. Imbart de la Tour, "La liberté commerciale en France aux XII^e et XIII^e siècles," La Reforme Sociale, series 3, IX, January-June, 1895, p. 49.
3. Henry Morley, Memoirs of Bartholomew fair, London, Chapman and Hall, 1859, p. 19.

twelfth, and thirteenth centuries. About 1019-20, Count Odo of Blois became the count of Champagne and his house ruled there until 1284-85 when the countship past to the crown of France through marriage. In that period, the counts of Champagne added to the importance of their name by acquiring the kingship of Jerusalem in 1192 by marriage and the kingship of Navarre in 1234 by inheritance.

Geographically, Champagne lies almost mid-way between the thriving commercial ports of northern Italy and southern France on the Mediterranean and the active industrial towns of Flanders near the North Sea. The east-west route from France to the Rhineland was of lesser importance. From the point of view of ease of travel, Champagne is accessible by river from most parts of western Europe. The Seine, the Marne, and the Yonne lead to the English Channel, the Meuse to the North Sea, the Moselle to the Rhine River, the Loire to western France, and the Saône to the Rhone River which flows to the Mediterranean Sea and which is near the outlets for the Great and Little Saint Bernard and the Mont Cenis passes from Italy.

Henri Pirenne believes that Italian merchants were frequenting the fairs of Champagne during the second half of the eleventh century, and bases

this belief upon certain letters addressed by Pope Gregory VII to ecclesiastical and secular authorities in France, complaining of the bad conduct of King Philip I.¹ One letter to the Archbishops and Bishops of France on September 10, 1074 states:

From merchants returning recently from many parts of the world to a certain fair in France he seized vast quantities of money like a robber, a thing not hitherto told of any king, even in legend. He, who ought to be the guardian of law and justice, stands forth as the worst of plunderers and does this in such wise that his wrongdoings are not confined to the kingdom he rules but are spread throughout the world to the confusion of many peoples, and, as I believe, to his own destruction.

... Strive earnestly to persuade him to make good the plunder of the above mentioned merchants, knowing as you do that unless this is done he will rouse no end of discord and hostility among many peoples.²

Another letter, to Count William of Poitou, November 13, 1074, states:

Among other crimes in which he has gone beyond not only Christian but even pagan princes, ... he has so far forgotten all respect for his royal dignity as to plunder certain Italian merchants traveling in your country, driven thereto by avarice rather than by any reasonable motive.³

Another indication of the importance of the fairs of Champagne is a charter of King Louis le Gros in 1108 to the abbey of Saint-Pierre-Le-Vif of Sens which exempts that abbey from

1. Henri Pirenne, Economic and social history of medieval Europe, New York, Harcourt, Brace and Company, 1956, pp. 33-34.
2. The correspondence of Pope Gregory VII, (ed. Ephraim Emerton), New York, Columbia University Press, 1932, (Book II, 5, p. 130), pp. 40-41.
3. Ibid., (Book II, 18, p. 150), p. 50.

all secular authority. This charter to an abbey which was not only a neighbor of the fairs, but also, as it were, a share-holder in them, as will be indicated below, seems to imply that merchants and fair-goers were synonymous.

As yet we concede, attribute and confirm forever to this monastery that all merchants or fair-goers (*omnes negotiatores, sive nundinatores*) may pass through, whenever, coming, according to the customary right, by way of the city and by way of the very land of Saint-Piere-Le-Vif and the abbot of this holy church will grant hospitality at all times in the city itself, in whole or in part of the city.¹

Although the six fairs of Champagne which were to emerge as the great fairs of Champagne may not have been so singled out at the beginning of the twelfth century, it is necessary to indicate their locations and their dates. The great fairs of Champagne were held at the towns of Lagny, Bar-sur-Aube, Provins, and Troyes. A record in the Archives of Douai, dated May, 1248, gives the following summary answer to a question concerning the opening of trade at the fairs of Champagne.

It is known that the fair of Lagny is held on the morrow of New Year's Day, and that of Bar on the Tuesday before mid-Lent; and that of Provins in May, on the Tuesday before the Ascension, and that of Troyes on the first Tuesday in the fortnight of St. John, and that of Provins of St. Ayoul on the day of the Holy Cross, and that of Troyes on the day of the dead.²

1. Maximilian Quantin, ed., Cartulaire général de l'Yonne, recueil de documents authentiques, Auxerre, Perriquet, 1854, I, 213-14, No. CXII.
2. Gustave Fagniez, ed., Documents relatifs à l'histoire de industrie et du commerce en France, Paris, Alphonse Picard et Fils, 1898, I, 170-71, No. 177.

A more authoritative statement of the duration and importance of the fairs of Troyes, Provins, and Bar-sur-Aube is shown in the Extenta Terre Comitatus Companie, 1276-78.

I. Ballivia Trecensis.

The lord holds here the fair of St. John which begins on the first Tuesday after the fortnight of St. John the Baptist, and terminates about the Nativity of the Blessed Virgin. It is estimated that at this time it is worth a thousand pounds, besides the receivers' fee of thirteen pounds and they have the very same fee at other fairs. This is known as the 'hot fair';¹ Another fair which is called that of Saint-Remy or the 'cold fair'; begins on the morrow of All Saints Day and ends seven days before the Nativity of the Lord. It is estimated to be worth seven hundred pounds.¹

II. Ballivia Pruvinensis.

The lord holds here a fair called that of Saint-Ayoul, which begins on the day of the Exaltation of the Holy Cross and ends on the feast of All Saints. It is valued in a common year at one thousand pounds, and it is held in the valley of Saint-Ayoul. The lord holds a fair here called the fair of May, which begins on the Tuesday before the Ascension, whithersoever time it is the Ascension, and it lasts for forty-six days. It is valued at seven hundred pounds in an ordinary year, and it is held in the town.²

IV. Baillie de Chaumont

VI. Extenta de Barro super Albam

The lord holds here his fair beginning on the Tuesday before mid-Lent; it is estimated at the end with all parts at two thousand pounds.³

1. Auguste Longnon, ed., Documents relatifs au comté de Champagne et de Brie, 1172-1361, Paris, Imprimerie Nationale, 1904, II, 10 k-1.
2. Ibid., II, 69 j-1.
3. Ibid., II, 169 n.

A definite organization of the time of each of the great fairs of Champagne grew-up as a result of custom and usage. Merchants were permitted to come to each fair eight days before the official opening in which time they could settle themselves and prepare their wares for the fair. The fair would be opened by a declaration of the peace of the fair, the daily exposition of wares would begin and end with the ringing of the bell. The first ten days were called the fair of woolens, during which textiles were the only commodity on sale and after which no further textiles could be sold. This faire de draps was closed by the customary cry of "Hare, Hare!" or "Haro, Haro!"¹ The next ten days were occupied by the fair of hides, pelts and furs, foire des cuirs, pelleteries et fourrures, which was likewise closed by the cry of "Hare, Hare!" The final period was that for the sale of things which were sold by weight and measure which were for the most part spices and goods from the Levant. This foire d'avoir-de-poids lasted twenty days and also was the period in which fees were paid for the use of the fair or of the booths and buildings. After that fair the cry "Hare, Hare!" was sounded to

¹ Bourquelot, op. cit., I, 90. Bourquelot explains that the word "Hare" or "Haro" was used either as an exclamation of as a cry for aid or for a ban to disorder, in various parts of France.

close the fair, and the money-changes ceased their business. Five days of grace were allowed that inventories might be completed, settlements made, and contracts which were intended to enjoy the privileges of the fair might have the seal of the fair placed upon them.¹

The record from the Archives of Douai, May, 1248, describes the manner of repayment at the benches of the bankers and merchants of the fairs.

The ban is declared that all the money that one owes for payment in that town is payed at the benches of the fair; what one owes to the benches at Lagny is payed on the day after mid-Lent, and that to the benches at Bar-on the day before Pentecost, and to the benches at Provins in May, three days before the feast of St. Cristofle, and to the benches at Troyes of St. John, eight days after the Holy Cross, and to the benches at Provins of St. Ayoul, three days before St. Martin, and to the benches at Troyes, three days before the twentieth day of the New Year, and if one does not pay what he owes to the benches at the end of these days, or what debts he made to his creditors, one is able to call upon the law of the city then that the payments can be made.²

But, where did the merchant go when he called upon the law to end some dispute? The single significant fact about the juridic structure of the fairs of Champagne is that there developed, through two centuries, more than a half dozen separate and independent courts and jurisdictions which generally

1. Bourquelot, op. cit., I, 85, 208; James Westfall Thompson, An economic history of the middle ages, New York, The Century Co., 1928, p. 593.

2. Fagniez, op. cit., I, 170-71, No. 177.

exercised judicial power at the fairs at the same time, upon the same types of cases and the same persons, and in competition with each other. This unusual phenomena of multi-jurisdictions or competing courts is not inconsistent with the institutional character of the Middle Ages where so many independent corporations or republics, especially religious and communal, flourished; rather, it appears to be an elaboration or application of that concept of independence to the less stable sphere of commercial activity. This complexity of jurisdiction must be approached on the basis of historical analysis, for an attempt to describe the situation in toto, as it existed at the end of the thirteenth century would not only be confusing, and probably inexact, but would miss the spirit in which this unique system thrived.

The primary juridic structure of the fairs of Champagne emerged from the judicial institutions of the monasteries around which the fairs sprang-up. However, it was only at Lagny-sur-Marne that the ecclesiastical court remained undisturbed by other courts. The abbots of Saint-Pierre in Lagny held and maintained their right to judge all disputes or crimes which

arose at the fair of Lagny.¹ But, at the other fairs, while the religious establishments often were able to gain a recognition of their primacy in the origins of the fairs, they had been unable to hold a monopoly of jurisdiction. For instance, the rights of justice in the fairs of Provins were confirmed to the monks of Saint-Ayoul of Provins and these rights were to run for the first seven days of each fair. Count Henry le Liberal (1152-1181), in a charter issued between April 19, 1153 and April 3, 1154, denied possessing sovereignty over the abbey of Saint-Ayoul and acknowledged to the Benedictines "during the first seven days of the fairs, in the whole town and district of Provins, great and small justice, high and low justice, justice for brigandage, for theft, for homicide, for duelling, for administration and of all other forfeits, fines and all things which proceed from justice"² Bourquelot indicates that during that seven day period, the prior and his assistants heard criminal and civil cases in the name of the monks. Also, because the monks had absolute possession of the rights of justice and income from the

1. Bourquelot, op. cit., II, 257.

2. H. D'Arbois de Jubainville, Histoire des ducs et des comtes de Champagne, Paris, Aug. Durand, 1860-61, III, 327, No. 9; Bourquelot, op. cit., II, 258.

administration of the fairs for that time, they insisted upon making the fairs more desirable by unencumbering the streets of dealers and their paraphernalia, and by providing inexpensive and swift justice in their court..

This early situation in Champagne where the fairs and their institutions were the product of an historical development over a long period of years, may be compared with the situation in England in the early twelfth century, where the Norman Conquest interrupted many Anglo-Saxon institutions and re-placed them in the proprietary and juridic order with new institutions. A grant of a fair made before 1119 by King Henry I to the Bishop of Norwich indicates the general understanding that courts were an ordinary appertinence of fairs, and that this is a recent fair for the Bishop of Norwich would have acquired a charter earlier than the reign of Henry I. The fair was granted "with sac and soc and toll and team and infangenetheof and with all the customs which pertain to the right of fairs."¹ Thus, the Bishop of Norwich not only collected taxes for passage and for draught animals but exercised seignorial jurisdiction and judged thieves taken at the fair.²

1. Charles Gross, "The court of Piepowder," The Quarterly Journal of Economics, XX, February, 1906, pp. 232-34.
2. Julius Goebel, Cases and materials on the development of legal institutions, Brattleboro, Vermont, The Vermont Printing Company, 1946, p. 30; Henry Campbell Black, Black's law dictionary, St. Paul, Minn., West Publishing Co., 1951, pp. 917, 1500, 1561.

Thus, a fair consciously created by an important lord for purely economic reasons must be distinguished from the fairs of Champagne which were an unconscious growth of economic institutions from religious feasts.

At the fairs of Troyes, Provins, and Bar-sur-Aube, where the monastic establishments had not maintained the jurisdictional monopoly which the abbots of Saint-Pierre had preserved at the fair of Lagny, the prévôts of the counts of Champagne and Brie shared in the justice of the fairs.

These officials, of which there were approximately twenty-eight in the middle of the twelfth century, collected taxes and dues for the count, called up and led the local military forces, and rendered justice.¹ The courts of the prévôts of Troyes, Provins, and Bar-sur-Aube were the natural places of recourse for merchants who may have received some injury to person or property traveling to the fairs since such an injury was a violation of the safe-conduct of the counts, and since the costs of enforcing the safe-conduct were defrayed from the fair-fees collected by the prévôts.

In 1148, Count Theobald the Great, who was also count of Blois, wrote to Abbot Suger of St. Denis,

1. E. Glasson, Histoire du droit et des institutions de la France, Paris, F. Pichon, 1891, IV, 564; V, 464; Maurice Crubellier and Charles Juillard, Histoire de la Champagne, Paris, Presses Universitaires de France, 1952, pp. 31-32.

chief counsellor of the French king, denouncing the injury done on royal roads by the son of the viscount of Sens to money-changers of Vezelay going to the fair of Provins, and declaring that "it is not possible for this injury to remain unpunished which looks to the destruction of my fairs."¹ Another letter of complaint about similar attacks upon merchants was sent by Count Theobald to Suger in 1149.²

Although an important area of ordinary jurisdiction of the courts of the prévôts was that involving fiscal matters, the rights to revenues which the counts of Champagne had enjoyed at the fairs were granted away by the counts to various monasteries. In the year 1114, Count Hugh issued charters to two monasteries granting them rights in the revenues of certain fairs. One charter, to Moutier-la-Celle, granted fees from the fairs of Troyes.³ The other charter, to Montier-en-Der, was a grant of revenue from taxes upon the sale of domestic animals at the fair of Bar-sur-Aube.⁴ To the monks of Saint-Florentin, Count Henry le Liberal granted, in 1159, enjoyment of the rights of great and low justice, of taxation on measures,

1. Michael-Jean-Joseph Brial, ed., Recueil de historiens des Gaules et de la France, Paris, Victor Palmé, 1878, (Epist. 120, p. 531), xv, 5503.

2. Ibid., (Epist. 116, p. 530), p. 511; Fagniez, op. cit., I, p. 74, No. 108.

3. D'Arbois de Jubainville, op. cit., III, 415. A charter of 1154 of Count Henry le Liberal confirmed that of Count Hugh Champollion Figeac. Documents historiques inédits tirés des collections manuscrites de la bibliothèque royale, Paris, Typographie de Firmin Didot Frères, 1843, II, 35-36, No. XV.

4. D'Arbois de Jubainville, op. cit., II, 107.

and of tolls on the fair of Bar-sur-Aube for the second Monday of the Quadrageseme.¹ Other donations to religious houses were made from the general receipts of the counts at the fairs. In 1160, Count Henry le Liberal made the following gift to the abbey of Pommeray:

Besides this, thirty-five pounds each year is given to the holy church of Pommeray forever from my toll at Provins. It is established to pay five pounds from the fair of Saint-Martin; from the fair of May, fifteen pounds; from₂ the fair of Saint-Ayoul, fifteen pounds.

While the rights of justice at the fair of Lagny were held exclusively by the abbot of Saint-Pierre, rights to certain fees were attributed to the counts. These rights, Count Henry le Liberal present to the abbey of Clairvaux in 1154.³ Again, although the count could make certain general regulations concerning attendance at the fair of Lagny, he was strongly influenced by the opinions of the abbots of Saint-Pierre in such matters. Count Henry le Liberal in 1154, after forbidding merchants and money-changers from remaining for more than ten days after the fair of Lagny, raised the prohibition upon the urgent request of the abbot and monks of Saint-Pierre of Lagny.⁴

1. Quantin, op. cit., II, 101-102, No. XCIII.

2. Ibid., II, 118-19, No. CX.

3. D'Arbois de Jubainville, op. cit., III, 329, No. 20.

4. Ibid., III, 329, No. 23.

Early in the twelfth century another judicial influence was present at the fairs of Champagne. This was the associations organized by the Italian merchants at the fairs, one of the functions of which was the adjudication of disputes between members of each association. Two English historians of merchant law, Wyndham Bewes and Sir Lynden Macassey, have made useful summary statements concerning these courts.

The consular courts were of two sorts, the one being ambulatory, each group of national merchants attending the fairs with their consuls, and the other fixed at different great commercial centers, where the appointed consuls had permanent jurisdiction over their nationals.¹

As traders made their way laboriously from one country to another with their merchandise for sale or barter, with them they carried not merely their goods but also their own law. ... It was enforced by consular courts held in any country by itinerant consuls who accompanied groups of their own national merchants to the great fairs in that country.²

The custom among the Pisan merchants, for instance, was that if five merchants from that city found themselves together, they would elect a consul. Such a consul, called a consul electi, was distinguished from the consules missi who were appointed by the municipal government as agents in judicial and diplomatic matters in the concession areas which had been granted in the Levant after the first crusade. The consul electi did not receive

1. Wyndham Anstis Bewes, The romance of the law merchant, London, Sweet and Maxwell, Ltd., 1923, p. 14.

2. Sir Lynden Macassey, "International commercial arbitration: its origin, development and importance," Transactions of the Grotius Society, Problems of Peace and War, 21, 1925, pp. 181-82.

his powers from the municipal government but from the associated merchants.¹ Glasson indicates that the problems of jurisdiction at the fairs was the source of the organization of consular courts of associated merchants.² Huvelin has emphasized that the judicial systems which the merchants agreed to among themselves for traveling together to fairs, as in caravans where the merchants bound themselves by oaths for peace and mutual protection, were the same jurisdictions that are discovered dispensing justice at the fairs.³ In the second part of the twelfth century there was a regular system of six major caravans which left Genoa every year for the Champagne fairs, and which were timed to arrive at the opening of each fair and to return at the end of each fair.⁴ Since the men of Asti were the largest single group in these caravans, being

joined by Genoese and Lombard merchants, the juridic organization would be based upon cooperation and agreement between the consuls of the major groups, which would be continued at the fairs.⁵ Such cooperation and agreement between the consuls of the Italian merchants at the fairs, derived from the numerous caravans from Italy, was the precursor of the Universitas of Italian merchants.

1. François Morel, Les juridictions commerciales au moyen age, Paris, Librairie Nouvelle de Droit et de Jurisprudence 1897, pp. 82-83; Huvelin, op. cit., pp. 384-87.
2. E. Glasson, "Les juges et consuls des marchands," Nouvelle Revue Historique de Droit Français et Etranger, XXI, 1897, pp. 6, 13.
3. Huvelin, op. cit., pp. 343, 396.
4. Robert L. Reynolds, "Genoese trade in the late twelfth century, particularly in clothe from the fairs of Champagne," Journal of Economic and Business History, III. No. 3. May. 1931. p. 380.

By the reign of Count Henry le Liberal, 1152-1181, the fairs of Champagne had become the great regular market for international European commerce. The pacific policies of the counts of Champagne were continued. But, the important active element which caused the transformation of the fairs into the great commercial, and then, the great money market of Europe, was the growth of the Flemish woolen cloth industry and the attempt by the Flemish merchants to market their heavy textiles production. As Henri Pirenne has said:

In the course of the twelfth century the whole of Flanders became a country of weavers and fullers. Cloth-making, which up till then had been carried on in the country, was concentrated in the merchant towns, which were founded on all sides and supplied an ever-growing commerce.¹

Instead of relying upon the irregular and limited trade to Mediterranean Europe carried on by a few Italian merchants who came to Flanders, the Flemish merchants began to carry their products to easily accessible Champagne, whose fairs were so much frequented by the merchants of the Italian cities. The result of this process was to raise the fairs of Champagne to a new commercial dimension. The fairs became primarily markets where merchant met merchant for the purpose of trade. The Flemish

1. Pirenne, Economic and social history, p. 36.

purchased at the fairs the alum and dyestuffs which were important raw materials for their industry, as well as other spices and leather, all of which had been carried north by Italians, seconded by merchants of Provence and Languedoc. These, in turn, returned to the south, often terminating their trips at Genoa where there was a ready market for northern textiles for export to the Levant and where goods from the east were available.¹

The fairs of Champagne also became a center for the banking business. Since all of the important moneys of Europe were in circulation at the fairs, a large business in changing money grew up. The large concourse of merchants required facilities to borrow money and obtain credit either to weather a business loss or to take advantage of an opportunity. Further, members of the nobility and clergy, who required loans, sought the bankers at the fairs. It is not difficult to understand, therefore, why the fairs of Champagne added a new dimension to the commerce of Europe.

Such dynamic changes in the economic aspects of the fairs of Champagne caused changes in the juridic structure to met these challanging new

1. Reynolds, op. cit., pp. 364-67.

situations. Perhaps, the primary innovation which would find reflection in the system of jurisdictions was the presence in large numbers of Flemish merchants. Formerly, the Italians were the only important international merchants at the fairs of Champagne, and they solved most, if not all, of their disputes through the associations of merchants of the same town, or through improvised joint consular courts when the merchants were of different towns. Morel proposed that the guardians of the fairs - custodes nundinarum - and their court, which was the new institution arising from the altered conditions, were established because the Italians were no longer the only important merchants at the fairs, but that the methods of organizing justice adopted by the Italian merchants exercised a strong influence upon the form and spirit of the new court.¹

The earliest document which mentions the custodes nundinarum is a charter of 1174 issued by Count Henry le Liberal to the abbey of Saint-Pierre-Le-Vif of Sens. It states:

I, Henry, count palatine of Troyes, make known for the present and future, that the right of Provins and Troyes is held at the church of Saint-Pierre-Le-Vif of Sens, by the charters

1. Morel, op. cit., pp. 151-52.

of my ancestors and my self. Odo, abbot of the aforementioned church, points out with a strong complaint that a large part of the goods which are bound to be weighed have not come to his weight, as they had by ancient custom, but by-passing the custom of his weight, they have been carried down to another place. Whence, satisfying this complaint, I have determined that altogether nothing weighed by men as usual in another place may be weighed after that at this weight. And if anyone will have been seized for having weighed at another place after using the weight of said abbot, or will have been convicted of such weighing, he will be detained for proper punishment before me or my assistants; thereafter, he will loose money by a fine of the abbot. Certainly, the weights will be safeguarded by this custom. I anticipate, whithersoever, the present letters are carried to my officials and to the guardians of the fairs, that beyond following my determination signalized in the present paper, they will declare the ban at the opening of the fairs, and if any brake the ban, they will hold my court for me and for the abbot with the customary law; thus, wherein neither a free house, nor another free place, will confer a defense to anything which the aforementioned church claims it is accustomed to receive everywhere in this custom of its weight, and so all things, bound to the custom of this weight, must be carried to the weight of that church by binding law. Finally, that all the rates may be permanent and will be held unchanged,¹ my seal is firmly attached to these letters.

The charter was witnessed by six persons and given by the hand of the chancellor, William. The rights which the abbey of Saint-Pierre-Le-Vif held with regard to the weights for Provins and Troyes also held for Bar-sur-Aube and were held as early as the beginning of the twelfth century as the following

1. Quantin, op. cit., II, 257-58, No. CCXL.

part of a charter of privileges issued by Pope

Alexander III in January 23, 1170, indicates:

The engagement of the city of Troyes and of Bar-sur-Aube made by Count Hugh of illustrious memory, and afterwards by the truly noble Theobald, count of Blois, his nephew, is confirmed to this monastery and is strengthened by this writing. . . .

Each tithe that is held in peace, and which comes every year, we confirm to you by the apostolic authority, besides the gift of the pound weights of Bar and Troyes which the nobleman Henry, count of Troyes, and Hugh, his relative, for their souls and for those of their relatives, made and confirmed by their seals to the brothers, servants of God, of the holy church of Saint-Pierre-Le-Vif and Saint-Saminian.¹

The custodes nundinarum were the counts' special deputies for dealing with matters of the fairs. They protected the rights and privileges of the counts and of those who held rights and privileges in the fairs by grants from the counts rather than by original jurisdiction. The custodes nundinarum declared promulgations of the counts, judged cases brought before their court, and directed a force of guards. Their functions are indicated by three thirteenth century documents which follow. A charter of Count Thibault le Chansonnier, September, 1252, in regard to the respective rights of the count and of the commune of Provins; describes the custodes nundinarum as some of those who know the law and

1. Quantin, op. cit., II, 214-16, No. CXCVIII.

concerning merchants.

And it is known what the merchants who come to the fairs possess from us and from our people: This is known by the guardians of the fairs or by the bailli or by those whom he puts in his place, that each of the merchants has full rights as any one of the commune; he has his law from us and from that we have named before.¹

In 1277, the custodes nundinarum Johannes de Montigniaco and Guillermus d'Alemant had written to the bailli of Vermandois, an officer of the king of France, to send to their court the prévôt of Bétisy because he had allowed one of their prisoners to escape, "otherwise, they would banish all of the district of Vermandois from the fairs of Champagne." On the complaint of the bailli, the two custodes nundinarum are seized while in Paris and detained at the Châtelet. The Parlement of Paris declared that they had exceeded their powers and fined them.² Certainly, there was a threat to violate the immunity of the individual merchant from involvement in disputes involving another merchant of the same town, or the political authorities. Finally, a statement in the Register of the grand jury of Troyes, 1280, describes powers of the custodes nundinarum in questions of debt.

1. Bourquelot, op. cit., II, 215-16.

2. Jacques Claude, Comte Beugnot, ed., Les olim ou registres des arrêts rendus par la cour du roi, Paris, Imprimerie, Royale, 1842, II, 100-101, No. XI.

On account of their office and of the direction which belongs to them, conforming to the customs and usages, the guardians of these fairs, having placed or having been made to place some debtor of the body of the fairs in prison, at the request of a merchant, they must hold him, in the same way as the count of Champagne, the person of whom they represent; in the case where the debtor attempts to escape from repayment and recompense without the consent of the creditor, or from making repayment and recompense to the said merchant the amount of his debt, for which some people frequenting the said fairs will be and have been confined.¹

During the latter part of the thirteenth century the custodes nundinarum were assisted by clerks of the fairs, sometimes called lieutenants of the guardians of the fairs. When either of the custodes nundinarum was absent, one of the clerks would be associated with the remaining one to hear cases. The fair jurisdiction of the custodes nundinarum was provided with a particular seal to authenticate acts and contracts made at the fairs. The seal was an indication of the independent nature of this jurisdiction. The seal was in the possession of a chancellor in the fourteenth century, but during the period under consideration, the custodes nundinarum had possession of the seal. The seal issued by Count Thibault le Jeune in the middle of the thirteenth century is the

1. Carolo du Fresne du Cange, Glossarium mediae et infirmæ latinitatis, Paris, Librairie des Sciences et des Arts, 1937, II, 682; Bourquelot, op. cit., II, 219.

arms of Champagne surrounded by the inscription - "Seal of the Fairs of Thibault, by the Grace of God, King of Navarre, Count Palatine of Champagne and Brie."¹ The sergeants of the fairs were chosen to police and maintain the peace of the fairs, to watch the safety of the roads, to carry in the name of the custodes nundinarum the summons and restraints, to execute the sentences of the custodes nundinarum and to perform attachments and arrests. Although a public notary system was established at the fairs in the fourteenth century by the French crown, during the twelfth and thirteenth centuries, it was the professional scrivener who prepared contracts for the merchants at the fairs of Champagne. The presentation and attestation of such documents in the various courts was regulated by voluntary agreements.²

The following portion of the Compte des recettes et dépenses du comté de Champagne for six months and a half beginning January 1, 1285 and ending on July 15, 1285, which was prepared by Renier Acarre, shows that the competence of the custodes nundinarum was judicial, notarial and fiscal in character.

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1. Bourquelot, op. cit., II, 233-34.
 2. Ibid., II, 230-32, 247-52.

General Receipts

By the maîtres des foires, M^e Guillaume de Villercel and M. Jehan de Breine, May, 1285.

Forfeits and fines of the fair of Lagny - 1284,
XLV libras, V solidi.

The value of the duty from the seal,
XXXIX l, XIX s, VIII d.

Forfeits and fines of the fair of Bar - 1285,
LX l.

From the loge of the prevôt of Bar, XII l, X s.
Value LXXXVI l, X s.

Forfeits and fines of the May fair - 1285,
LXIX l, XV s.

Value XLII l, XX d.

Procèdes from the public scrivener of Troyes -
May, 1285, XIIII l, X s.

Commune of the Jews of Champagne at XXV libras
a year, V^m l.

Sum of the general receipts V^m, VI^c, IIII l, XIX s, VI d.

Expenditure for the mestres des foires.

Monseigneur Guillaume de Villercel and
Monseigneur Jehan de Breine, mestres des
foires, May, 1285,

For their expenses at the fair of Lagny, 1284,
for going and coming, thirty-four days,
LXIIII l, IX s, IIII d.

Bar, 1285, for twenty-six days,
XLVII l, IX s, VI d.

May fair twenty-eight days, XLVI l, XIII s, X d.

Jehan Sezille and Master Robert, their clerks,
one hundred and five days, X l, X s.

Salary for Jehan, XV l.
for Robert, VI l.

Sum XII^{xx}, V l, XII s, VIII d.

Watchmen of the roads

IIII sergeants on horse, IIII on foot to guard
the roads from Troyes to the Bar fair for fifty-
nine days. For their equipement, XVI s. per day.
XLVII l, IIII s.

Eight squires on horse and eight sergeants on
foot. For their equipement in guarding for 1
sixty-three days. IIII^{xx}, XIX l, IIII s.

1. D'Arbois de Jubainville, op. cit., II, LXXII - LXXVIII.

At the end of the twelfth century and at the beginning of the thirteenth century, a new officer was introduced by the feudal rulers of France. This was the bailli. There were from ten to a dozen bailliages in the country of Champagne and their functions included supervision of the prévôts and certain high judicial functions. The baillis, whose competences included areas where fairs were held, had rights to justice in the fairs on the same level and in competition with the custodes nundinarum.¹

Another jurisdiction which became important in the late twelfth century was the courts of the municipalities of Troyes, Provins and Bar-sur-Aube. As the commune or town government became an important institution, it was able to gain recognition as a legitimate court involving fair business, especially since the town officials were themselves merchants. At the Provins fairs, for instance, the mayor held his court in a loge beside that of the prévôt.¹ Finally, the custodes nundinarum were chosen from the notables of the communal courts.²

1. Glasson, Histoire du droit, IV, 550; V, 472-73; Bourquelot, op. cit., II, 252-53.

2. Elizabeth Chapin, Les villes des foires de Champagne des origines au début du XIV^e siècle, (Bibliothèque de l'École des hautes études, Sciences Historique et Philologiques, École pratique des hautes études, No. 268.), Paris, Librairie Ancienne Honore Champion, 1937, p. 140; Bourquelot, op. cit., II, 255.

The procedure of the courts of the fairs of Champagne, like all merchant courts, were characterized by two features - good faith and dispatch. Since such an equity jurisdiction is not based upon a complex code of statutes or of customs, a plaintiff must prove certain simple facts by a rational system of evidence, including witnesses openly examined in court, which, posited with universal concepts of right and wrong, formed the foundation for a judgment in these courts.¹

The final organizations which had some concern with the administration of justice at the fairs of Champagne were formed during the thirteenth century and were three in number. They were the general associations of merchants from Italy, southern France, and Flanders. The Universitas et Societas mercatorum et Cambitorum Lombardorum, Italiorum et Ultramontanorum Omnium Nundinas Campaniae ac Regnum Franciae frequentantium under the leadership of a rector was the agency which handled problems of Italian merchants, judicial or otherwise, which ^{were} too complex for the consular courts.²

1. Gross, op. cit., pp. 242, 246; A. T. Carter, "The early history of the law merchant in England," The Law Quarterly Review, XVII, No. 69, July, 1901, pp. 237-38.

2. Charles Alengry, Les foires de Champagne, Paris, Librairie Arthur Rousseau, 1915, p. 135.

The merchants of Provence and Languedoc formed a Societas et Communitas mercatorum in Francia in which the merchants of Montpellier took the lead. Through the consulate of Montpellier, these merchants elected the director of the association - the Capitaneus in Francia et in Nundinis Campanie. Its functions paralleled that of the Italian Universitas.¹

The most interesting of the three general associations of merchants was that of Flanders - the Hanse of the XVII towns. Although by the middle of the thirteenth century there were over twenty-two towns in the associations, it maintained that name through-out. Ten of the original towns were Flemish - Arras, Saint-Omer, Tournai, Ghent, Bruges, Ypres, Dixmuid, Lille, Douai and Bailleul. Four were from Picardy and Vermandois - Amiens, Saint-Quentin, Beauvais, and Péronne. Three non-fair towns of the Champagne region were members - Aubenton, Châlons-sur-Marne, and Rheims. The purposes of the federation included the organization of the economic relations between the cloth-producing cities of the north and the other merchants dealing at the fairs, and the mutual-protection of the merchants of those

1. Bourquelot, op. cit., I, 151; Huvelin, op. cit., p. 398; Fagniez, op. cit., I, 155-57, No. 163.

cities in relation to the other juridic and administrative units present at the fairs of Champagne. This Hanse is first mentioned in 1230 in a processes settling a dispute between merchants of Cambrai and of Bologna at the fairs of Champagne. The merchants of the Hanse of the XVII towns acted as experts and arbitrators.¹ A document quoted by Laurent indicates the importance of the Hanse in thirteenth century commerce at the fairs. In October, 1258, merchants of Rouen agreed to rent space in a building of Provins from the prior of Saint-Ayoul, for a period of sixteen years. But, the agreement was contingent upon the absence of war between the kings of France and of Navarre (the counts of Champagne), and on the attendance at the fairs of merchants of the Hanse of the XVII towns and of the merchants of Italy and Provence.²

Much has been written in the general works upon the economic history of the Middle Ages about the decline of the fairs of Champagne after they passed to the crown of France, and, certainly, the long wars waged by Philip the Fair, especially against Flanders, were the major cause of the

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1. H. Laurent, "Nouvelles recherches sur la hanse de XVII villes," Le Moyen Age, series 3, VI, No. 2, April-June, 1935, pp. 83, 89, 91; Wescher, op. cit., p. 2371.
 2. Laurent, op. cit., p. 89, n. 3.

disappearance not only of the Flemish merchants, but also of the merchants of Italy, from the fairs of Champagne. However, what is not indicated, and what is abundantly evident in the comprehensive work of Bourquelot, is the influence of the bureacratization of the fair courts and the extensive regulation of the economic activities at the fairs upon the decline of the fairs. Certainly, there is very much more material relating to the fairs of Champagne issued by the kings and the royal officials in the century which follows 1285 than there is for the two centuries which precede it. After 1285, the multi-jurisdictional system of the fairs disappears along with the flourishing economic conditions. Thus, while the unusual court system in use at the fairs was not the only causal influence upon the prosperity of the fairs of Champagne, it may be said that this system provided a framework which all of the people who were concerned with the fairs found more than satisfactory.

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