

## THE ORIGIN OF THE BILL OF EXCHANGE

The existence of credit instruments in the Middle Ages has been well known for many years. Considerable masses of the actual papers have been found, and scattered documents have been published separately. Some careful studies have been made. But the results have been confused and lacking in perspective. In most instances the investigator has been too closely in touch with a single group of documents, and, because of the difficulties of research, has confined his attention to a single country and to a relatively short period. The time has not yet come for any final work upon so difficult a subject, but one may well ask if it is not possible to bring together the few facts we already have at hand and the more general features of the commercial life of the period to which the history of credit must needs be related. The mere association of material is at times helpful, and frequently presumptions can be created that can be verified by subsequent research.

The first difficulty in the study of mediaeval credit is the classification of the instruments. They can seldom be described by their modern names though the resemblances are often close. One type, the *lettre de foire*, has no modern relative, and there are no words that describe it with even approximate accuracy. A large number of such instruments were found at Ypres,<sup>1</sup> and there is important evidence as to their nature among the documents published by Bourquelot,<sup>2</sup> but the subject is hardly more than opened up. The solution of this problem is dependent upon the vexed questions about the organization of the fairs, and the studies of Huvelin and Goldschmidt leave many doubts and queries.<sup>3</sup> The

<sup>1</sup> G. Des Marez, *La lettre de foire à Ypres au XIII<sup>e</sup> siècle*. Bruxelles, 1901.

<sup>2</sup> F. Bourquelot, *Études historiques sur les foires de Champagne et de Brie* (Paris, 1865), "Mém. de l'Acad. des Ins. et des Belles Lettres," 2 Sér. V.

<sup>3</sup> P. Huvelin, *Essai historique sur les droits des marchés et des foires*. Paris, 1897; L. Goldschmidt, "Die Geschäftsoperationen auf den Messen der Champagne," *Zeitschrift für das gesamte Handelsrecht*, XL, 1.

other instruments of the time may be compared to promissory notes or letters of credit, but the resemblance is not very precise. Transfers of money were not confined to fair-towns or to fair-periods: consumptive expenditure, mercantile expenditures in towns that had no fairs, both required other instruments, and as this necessity was quite as pressing as the needs of interchange between the fairs, special instruments were developed. Indeed, it is not too much to say that in the transfers of specie the fairs of the twelfth, thirteenth, and fourteenth centuries by no means played a commanding part. It is fairly certain that many of the transfers of money by credit in this period were effected by devices other than *lettres de foire*.

An important form of credit transfer was a promissory note stipulating payment in a distant place, at some subsequent date indicated. Ordinarily, there were only two parties, the debtor and the creditor, and both were obliged to appear at the second place or send agents to complete the transaction. Thus, in the Genoese document of 1156:

We, Amigonus de Curia and the brothers Raimundus and Ribaldus, have received from you Ribaldus Boletus 115 livres for which we promise to give to you or to your certain agent, personally or through our agent, 460 *perperi* of just weight within one month after we reach the court of the Emperor at Constantinople, or such other place as the court may be. . . .<sup>1</sup>

At times, these notes were made payable to the order of the person named, and at other times, even to the bearer. The order clause, however, was of little importance, as the only order recognized was a notarial act of agency which could be used in any case. An example of such an instrument appears among the Marseilles documents:

I, Aubertus Acua, citizen of Marseilles, constitute you, Dodonus Baldissonus, as my present, certain, and special agent to demand, collect, and recover from Ricavus Pisanus, a citizen of Marseilles, 250 *byzants* of Acre which he is under obligation to pay unto me at Acre "ex causa permutacionis seu cambii," by reason of an instrument drawn by Giraud Amalric, notary. The said instrument I now entrust to you in the presence of the undersigned witnesses, herein mentioned, and I give you full authority and power to restore the said instru-

<sup>1</sup> Goldschmidt, *Universalgeschichte des Handelsrechts*, I, 420, 8 Juin 1156. Text of charter in Latin.

ment to the said Ricavus on payment to you of the aforesaid sum and to free him from further claim or to bring suit against him. . . .

And I, Dodonus, undertaking this procuration, do promise you the said Aubertus to discharge carefully and faithfully the commission entrusted to me, doing what is necessary, leaving undone whatever is unessential, and I also promise faithfully to restore to you whatever I shall acquire in the discharge of this commission; and to guarantee the performance of these duties, I pledge to you and your assigns, all my goods present and future.

Witnesses:

RISTONETUS DE COSALO  
 GUIGO LIZACOR  
 W. GARULA

Thereby the validity of the act was publicly attested.<sup>1</sup>

The relations between the parties mentioned in this instrument are not unlike the relations created by the modern bill of exchange, but there are important differences. This was a kind of power of attorney. It was not an order of the debtor to pay, but an authorization of the third party to collect the money. The closing formula certifies that the act was drawn by a public notary so that due compliance with forms was guaranteed.

But these notes were not necessarily mercantile papers. Many of these transfers of money were occasioned by consumptive, rather than mercantile, expenditures. The relative amounts of mercantile and non-mercantile transfers of money cannot be ascertained, but the life of the mediaeval community required much transference of money that could hardly be called mercantile. The most considerable items in such transfers were occasioned by pilgrimages, crusades, movements of clerical funds, and the transfers of money to meet the expenses of students studying in distant towns. The crusaders frequently negotiated loans in Northern Italy, promising repayment at the fair of Bar sur Aube, or at another of the fairs of Champagne.<sup>2</sup> Similar documents appear at Venice.<sup>3</sup> This form of note was used very frequently by students to avoid the danger of carrying their funds on their persons. Unfortunately, few of these papers have survived, but the wide

<sup>1</sup> Fagniez, *Documents sur l'histoire de l'industrie et du commerce*, I, 162 (from Blancard), 19 Mars 1248.

<sup>2</sup> Goldschmidt, *Universalgeschichte des Handelsrechts*, I, 421.

<sup>3</sup> *Ibid.*, I, 422.

use of credit for this purpose is attested by the forms for such documents given in the contemporary handbooks for notaries. Thus, the *Summa Artis Notarie* of Rolandinus (about 1250) contains the form of the "instrumentum debiti ex causa cambii a scholaribus et clericis contracti." Durantis, *Speculum Juris*, contains a similar form.<sup>1</sup> Besides being used for these extra-commercial purposes, the note originated frequently in mercantile transactions, but in almost all cases the value of the note was received by the maker in money, and not in goods.

Besides this formal promissory note, we find general letters of credit from the beginning of the thirteenth century. Popes, kings, and princes used this letter freely, and the Italian registers connected with the crusades, as well as the English Liberate Rolls, contain many cases. The earliest letter of credit among the papers of the crusades is of the year 1191; the earliest English letter is of 1199. The form was common throughout the European world after the middle of the thirteenth century.

A letter issued by King John in 1202 indicates the general form of this type of credit instrument:

John, by grace of God, etc. . . . . To all merchants who shall read these letters greeting. Be it known to all of you that we designate Hugh Ferris and Robert of Sablenc', the bearers of these letters, as agents for the transaction of our business at the court of Rome, and from whatsoever merchants they shall receive money on credit for the transaction of this our business, not exceeding 500 marks of silver, that money we shall hold ourselves under obligation to pay. . . .<sup>2</sup>

These were the principal credit instruments of the twelfth and early thirteenth centuries. In the latter half of the thirteenth century, however, a new form appeared, destined to undergo many transformations, and ultimately to become the modern draft or bill of exchange. This new instrument was the outcome of a development in commercial organization. The Italian merchants had long been engaged in trade with Levantine and European points, but up to the middle of the thirteenth century they had usually transacted their business through itinerant agents, sent out for specific purposes and seldom remaining long in any one place. In the course of the thirteenth century, there was an increase in the volume of trade which placed greater wealth in the hands of the

<sup>1</sup> Goldschmidt, *op. cit.*, I, 427.

<sup>2</sup> *Ibid.*, I, 399.

more important families. This increase in the scale of business operations was further accentuated by the extension of the trading partnership, or, as it is called in the sources, the company. It is necessary to bear in mind that these companies were essentially different from the limited liability companies of the present day. The essence of the early trading and banking company was complete community of goods. All members were on an equal footing: each placed all his property at the disposition of the company, and each was liable to the full extent of his property for any and every debt of the others.<sup>1</sup> Under these conditions it is not surprising that most of the companies were intimately connected with the family. The members of a company were generally, though not always, connected by blood.

The increased power of the great families and trading companies led to the establishment of permanent agents in the principal towns with which the company was engaged in trade. The dates of the establishment of the first permanent branches cannot be ascertained with any certainty. In the Mediterranean countries, partnerships were frequently formed by merchants of different towns. The supposititious note, in Durantis, *Speculum Juris*, assumes a merchant in Montpellier with a partner in Bologna. This work was written about 1272, so that this situation must have been relatively common in Northern Italy and Southern France after the middle of the century. Definite references to permanent branches among the larger trading companies appear after 1290. In that year we have fragments of a correspondence between a London branch of the Cerchi and the principal house at Florence.<sup>2</sup> In 1290, several Italian companies had resident members in Paris, Bichio Guidi and Barthelemy Barbedor represented the Company of the Frescobaldi, and also the Frangesi; Odelin Enfegat, the Company of the Scala.<sup>3</sup> The lists of the *taille* for 1296 mention many Lombards who were members of the large Italian houses.

François, of the Company of the Escossais.

Gile, of the Company of the "Chapons."<sup>4</sup>

<sup>1</sup> Goldschmidt, *op. cit.*, I, 271.

<sup>2</sup> *Ibid.*, I, 439.

<sup>3</sup> Piton, *Les Lombards en France et à Paris* (Paris, 1892), pp. 104-5.

<sup>4</sup> *Ibid.*, pp. 125-26.

The exact meaning of such entries is not perfectly clear, as many of the names do not appear in the lists of the next few years. The Company of the Escossais alone had some representative in Paris continuously from 1296 to 1300; for the last three years "Johan de Niquetin represented the interests of the Company."<sup>1</sup> Other companies appear more than once, notably the "Borius,"<sup>2</sup> and the Company "de l'Espine," 1296, 1298, 1299, 1300.<sup>3</sup> In short, several companies had some member at Paris most of the time; the representative might be changed each year or he might remain in one place several years; at all events, a branch establishment was maintained. In 1301, the Escossais or Scotti of Piacenza had branches at Famagousta on the island of Cyprus and at Bruges in Flanders;<sup>4</sup> probably, too, the Parisian branch was maintained. The Spini, or l'Espine, also had an English branch.<sup>5</sup>

It is difficult to secure positive proof of companies maintaining regularly several branches, and many isolated references may be misleading, as the agent may not have remained. But it is fairly certain that the Scotti and the Spini had at least two branch houses between 1296 and 1300, and, in all probability, the same was true of the other important banking houses, the Bardi, the Frescobaldi, the Peruzzi, the Ricardi, and the Mozzi.<sup>6</sup>

The effect of this development upon credit instruments was important. These firms were solidary companies, and once permanent branches were established these banking houses could arrange transfers of money with great facility. The elaborate notarial form was no longer necessary, a simple letter of one member of the firm was sufficient to create an obligation on the other establishments. The unlimited liability of the company furnished adequate security. Consequently, simple mercantile paper began

<sup>1</sup> *Ibid.*, pp. 125, 131, 137, 142, 149.

<sup>2</sup> *Ibid.*, pp. 131, 137, 150.

<sup>3</sup> *Ibid.*, pp. 126, 128, 134, 135, 139, 143, 150.

<sup>4</sup> *Ibid.*, p. 45.

<sup>5</sup> *Ibid.*, p. 58.

<sup>6</sup> *Ibid.*, pp. 58 and ff.; see also Schulte, *Geschichte des mittelalterlichen Handels*, I, 309. He gives in tabular form the facts known about branch houses in Germany.

to play a large part in the cosmopolitan credit system. It was the beginning of modern commercial paper.

But the simplicity of this new system lay almost wholly in its informality. No notarial instrument entered into the transaction. This complete freedom from strict legal forms left the merchants to their own devices, and while a definite body of custom seems to have arisen by the beginning of the fourteenth century, there is really little possibility of tracing these early stages in the evolution of modern commercial paper. The instrument was of a private character, and did not find its way into the public archives. The usual fatalities have operated here as elsewhere, and, as yet at least, very few of these mercantile papers are known. Consequently, every phase of the history of this aspect of commercial development is overlaid with doubt and dilemma. According to Lastig, the transaction gave rise to three records: a book entry of the sum received by the member of the firm issuing the draft; a paper given the creditor of the firm acknowledging the obligation and mentioning the place where it was to be discharged; finally, a letter, called the "Avisa" letter, sent from the branch drawing the draft to the branch which was required to pay the money.<sup>1</sup> But it is at least certain that there was not always an essential distinction in form or content between the letter given the creditor and the letter sent to the other branch of the firm.

In discussing the development of this form of instrument, it is essential to remember the significance of the solidary company.<sup>2</sup> There is good reason to suppose that these early drafts originated between houses that were directly connected. So long as the affair was kept within these limits there was no difficulty. If the Florentine house of the Cerchi created an obligation on the house, the obligation existed *ipso facto* against any branch of that house or any one of the members of the company. The only necessity was to prove the fact of an obligation created by the Florentine house. This was done by two letters, one given to the creditor, the other conveyed to the branch establishment by other means. These letters differed in no essential respect. The letter sent by

<sup>1</sup> Goldschmidt, *Universalgeschichte des Handelsrechts*, I, 432, n. 113.

<sup>2</sup> The consequences of solidary liability were not immediately recognized. See Mitchell, *Early History of the Law Merchant*, pp. 129-34.

the firm could not create any obligations that were not created by the other letter. Both derived their legal effect from the solidary liability of the company.<sup>1</sup>

The essential identity of the first and second letters does not appear very clearly in Goldschmidt's documents, but fortunately Blancard has published the (Provençal) text of two letters arising in connection with a single transaction, so that the first and second letters can be readily compared:

[First] [To Signor Don Johan Eries, at Marseilles]

Signor, on receipt of this first letter of change, you will please pay, within the accustomed time, seventy scuti "del Rey" or the value thereof, to Jacme Favas. They are for seventy others which Don Johan Ermengau, and I, P. Sola, have received from Don Raymond Gali, for which, at the appointed time you will make proper payment.

AT AVIGNON. 10 April 1388.

[Second] To Signor Don Johan Eries, near the changer at Marseilles]

Jesus, Signor if you have not paid on receipt of the first letter, on receiving the second you will pay, according to custom, to Signor Jacme de Favas, seventy scuti, or the value. They are for seventy others which I have received from R. Gali, for which, sir, make him proper payment once and no more.

AVIGNON. 10 April 1388.

P. SOLA and JOHAN ERMENGAU<sup>2</sup>

This second letter could have no distinct legal effect, and while it is unsafe to say that the second letter never differed essentially from the first, there is no evidence of an "Avisa" letter of the type assumed by Goldschmidt and Lastig. It is difficult to see, in the second letter, anything more than an additional precaution, a device for conveying to the distant house the same facts as were stated in the letter given the creditor.<sup>3</sup> A comparison of the two

<sup>1</sup> Goldschmidt and Lastig confuse with the second letter a general act sometimes used to authorize one partner to make contracts binding on the others. They also assume connections between the notarial forms and the mercantile letters which can hardly have existed in fact. (Mitchell, *op cit.*, p. 133; Blancard, *Doc. inédits sur le commerce de Marseille au moyen age*, No. 115.)

<sup>2</sup> Blancard, "Extrait du *Sémaphore* du 18 Sept., 1883," p. 5. See, also, two other letters published by him. The translation of the Provençal text is by Dr. R. H. Keniston.

<sup>3</sup> See Van Severen, *Cartulaire de l'ancien consulat d'Espagne à Bruges* (Bruges, 1901), I, 438 and 272; *Coutume de Bruges*, I, 460. These cases are indeed from a later period, in which Goldschmidt evidently assumes that the use of the second letter had been discontinued; but even then the second, and at times a third letter was customary in Holland, and the letters are explicitly stated to be duplicates in every respect. Neither created any obligation different in any respect from the obligation created by the other. They are copies of the same instrument.

letters would be the simplest mode of proving that the first letter was not a forgery and had not been altered. The frequency of duplicate documents, and the universality of the chirograph tended to make this the most natural mode of securing safety against forged letters. Unless new evidence is produced, the elaborate legal puzzles woven about the "Avisa" letter must be dismissed as a false interpretation of a simple means of protection against fraud.

The difficulties occasioned by the introduction of this instrument did not grow out of the differences between the first and second letters, but out of the attempt to apply this device where the makers of the draft were not partners of the persons on whom they drew. The ease with which such operations could be conducted and the profits accruing from the business were a constant temptation to extend the use of this device. Furthermore, possibilities of fraud were not inconsiderable. The letters were unquestionably good if the houses were in the same company, but how was an outsider to know whether the bankers were partners or not? If an Italian firm could sell a draft payable in Northern France or England, they could at least enjoy the use of the money for a considerable time, if the draft was not honored, and there were legal difficulties involved in bringing suit, even against a person who had sold such a draft.

These difficulties appear in a letter of 1359, between Venice and Avignon. The frequency of exchange dealings with this town was, of course, an outgrowth of the exile of the popes. The papal curia, as in the preceding century, was intimately connected with the history of credit transfers.

*To Giovanni Spiafami and Company of Lucca, at Avignon.*

*In the name of God, Amen.*

7 March 1359

*To Giovanni and Company, Paolo Paruti and Company, greeting from Venice.*

Eight days from sight of this letter, *or of the second which is one with it*, pay to Amadio, notary of the Great Court of Venice, or to Napoleon Puntrioli, or to anyone who shall present this letter by their orders, 2,000 gold florins of full weight, which sum we pay in exchange for 2,000 ducats, which we have received from the city of Venice, one-half in specie, and the other half to be paid before April 1. Please pay promptly and set it down to our account. The payment should be made in florins of Florence.<sup>1</sup>

<sup>1</sup> Goldschmidt, *Universalgeschichte des Handelsrechts*, I, 442. The italics are mine.

This letter was presented by Napoleon Puntrioli, in the name of Venice and in his own name, but Johannes Spiafami refused to honor the draft on the ground that Paolo Paruti was not his partner, and that there were no special relations between the companies.<sup>1</sup>

It was this situation that created trouble throughout the fourteenth century. The new system of transferring money was constantly tending to spread to dealings between firms that were not legally allied. If a house trusted its own credit and drew upon a house with which it had frequently had commercial dealings, it was always open to the disappointment of having its draft dishonored. The question then arose of the client's possibility of recovery from the maker of the draft. On this point the civilians were long divided. The draft did not contain an explicit guaranty, and the literalness of much of the Roman law, combined with the narrow formalism of the period, tended to create an unwillingness to recognize an obligation that was not formally expressed. Some, however, insisted that there was an implied obligation, and that the maker of the draft could properly be required to reimburse the creditor if the draft were dishonored. The uncertainty of recovery necessarily checked the development of any wide use of these informal instruments, except between branches of the same house. Goldschmidt is not clear on this, but it seems scarcely possible that there should be any question of dishonoring a draft from a different branch of the same company.

These letters merchant were merely the basis upon which a negotiable credit instrument could be built. The perfection of the device required many additions and changes. It was necessary to emphasize the idea of a bill for goods; the maker of the bill should stand in the relation of creditor to his correspondent. Then, the obligation of the maker to pay dishonored notes must be enforced by the courts. Lastly, the use of order clauses and indorsement could alone give the instrument the flexibility of the modern bill. The history of these transformations of the letter merchant is as yet incomplete. A decision of Baldus, late in the fourteenth century, established the liability of the maker for dishonored bills, but the letter seems to have been very remotely

<sup>1</sup> *Ibid.*

connected with the movement of goods. That phase of the history of the instrument is still obscure. The protests of correspondents were apparently due in many cases to the absence of any obligation to the maker of the bill.

The adoption of indorsement is difficult to trace. It was an important step but only the barest outline of the story is clear.<sup>1</sup> The practice began in Italy in the second half of the sixteenth century, probably with regard to checks. The idea was applied to drafts and bills of exchange. From Italy the new idea spread northward along the commercial routes. In the early seventeenth century the indorsement was common in France, and the *Ordonnance sur le commerce*, of 1673, contains all the essential provisions of the modern commercial code.<sup>2</sup> Lyons did not accept the new device, and in this as in other respects was not required to conform to the general provisions of the ordinance. Some of the merchants complained, but the system of "Payments" probably justified this refusal to adopt the new practice.<sup>3</sup>

Whatever may be the details of the history of the bill in the sixteenth century, there can be little doubt of the essential perfection of the bill by 1650. The informal letter merchant of the late thirteenth century had become the modern bill of exchange.

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<sup>1</sup> Goldschmidt, *op. cit.*, I, 450-51; Huvelin, *op. cit.*, 575; Schaps, *Zur Geschichte des Wechselsindossements*, 1892.

<sup>2</sup> Art. XXIII, tit. V.

<sup>3</sup> Vigne, *Le banque à Lyon*; *Bib. Nat.*, Fr. 8093, 529, "Mémoire sur les Payements de Lyon, envoyée par Ravat, 1714."