PREFACE.

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.

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. 30, 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 man- serit 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. 31, n. 3, for 'twenty-three' read 'thirty-three.'

P. 31, n. 4, l. 3, for 'coustumarii' read 'custumarii.'

P. 36, n. 1, l. 6 from the end, 'upon their oathe' means in conformity to their burgess 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 thelonii et quodam jure quod loth noncupatur.' (Wauters, Freuves, 64.)

821329 B
P. 79, n. 1. 1. 4, add ‘Prepositi Oxonie sint successores’ in the

P. 81, n. 2. There was a moot-hall also at Maldon and Daventry.


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, et 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. 89, n. 1. For some arguments against the theory of the Roman origin
of the Anglo-Saxon borough, see Green, Making of Eng., ch. iv.;
Scrubton, 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 com-

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, l. 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 red-
dund compotum de i. dolio vini pro habendo brevi quod Maior 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., l. 414.) Cf. ibid., l. 328–339. 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.; Höhl-
baum, 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
Additions and Corrections.

P. 118, n. 6. For a note concerning the Corpus Christi Play at Pontefract, P. 127, n. 1, add

P. 116, n. 1.

P. 110. An essay by C. W. Colby on the early history of the 'select

P. 115, n., 1.

P. 164, n. 3. The Company of Dredgers of Faversham and that of the

P. 126, n. 2. See also

P. 176, n. 2. Von Maurer, Städteverf., ii. 322, also regards these 'col-

P. 178, n. 3. Another collection of public laws was made in a similar

P. 180, l. 2. It is also worthy of remark that injunctions concerning

P. 181, l. 1. It should be noticed that in several passages of the 'Judicia'

P. 185, last line. In 1383 four men of Kilkenny were to be elected

P. 186, 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

P. 136, n. 1. For 'town ventures' of Rye, see Burrows, Cinque Ports,

P. 138, n. 1. For 'town ventures' of Rye, see Burrows, Cinque Ports,

P. 161, l. 1, et seq. The gild and borough were different aspects of

P. 164, n. 3. The Company of Dredgers of Faversham and that of the

P. 176, n. 2. Von Maurer, Städteverf., ii. 322, also regards these 'col-

P. 178, l. 7. Cf. 'gafol-gelda' Ine, c. 6 § 3, c. 23 § 3. (Schmid, Gesetze,

P. 178, l. 15, for 'friti' read 'frii.'

P. 179, n. 3. Another collection of public laws was made in a similar

P. 180, l. 2. It is also worthy of remark that injunctions concerning

P. 181, l. 1. It should be noticed that in several passages of the 'Judicia'

P. 188, n. 3. See also below, pp. 290–291.

P. 185, last line. In 1383 four men of Kilkenny were to be elected

P. 188, l. 3 from bottom, for 'cnictia' read 'cnialta.'

P. 189, n. 8. These laws of Henry I also repeat Alfred's enactments

P. 190, n. 4. For federations of monasteries in England, see also Annales

P. 199, n. 3. In 1475 Bruges was regarded as an exemplar by certain

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.'
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.
THE GILD MERCHANT.

CHAPTER I.

INCEPTION AND DISTRIBUTION.

The history of gilds appeals to a wide range of sympathies—to the political economist, investigating the annals of commerce and industry; to the jurist, seeking to penetrate the gloom enveloping the origin of the law of corporations; to the sociologist and historian, interested in the social structure and municipal institutions of the past. This is pre-eminently true of the English Gild Merchant, for a clear account of which we vainly seek in treatises devoted to the history of gilds and municipalities, or in works on the general development of the English constitution. The

1 See Appendix A.
2 Brady’s Treatise of Cities and Boroughs, which, Hallam (Hist., iii. 41) justly says, is ‘disgraced by a perverse sophistry and the suppression of truth,’ does not discuss the Gild Merchant in detail. Still he ascribes to it an enormous influence in the evolution of the burghal constitution (pp. 20, 47, 77, 84); but advances no proofs to support his assertions. Madox has very little to say concerning this fraternity (Firma Burgi, 27-30), but that little, by judicious elimination of his ‘peradventures,’ has been made the key-stone of some pregnant theories by such continental writers as Wilda, Fortuyn, Hullmann, and Brentano. In compiling their laborious History of Boroughs, Merewether and Stephens were actuated more by a desire to reform the present than to add to our knowledge of the past. Many of their general inferences regarding the Gild Merchant (pp. xiv., xvi., 117, 118, 138-146, 350, 366, 381, 390, 392, 416, 469, 488, 1049, 1244, et passim) and other medieval municipal institutions are untenable. The chief utility of the work lies in its valuable illustrative materials. Thompson’s Essay on English Municipal History is really a collection of excellent disconnected sketches of the history of a few particular towns, rather than a general treatise on boroughs. His data are too meagre to give general authority to his deductions concerning the Gild (pp. viii.-xli., 13-15, 36, 49-58, 80-86, 99-108, 119, 129, 143).
3 Gneist dismisses the subject with a few words (Verfassungs- und Verwaltungsrecht, ii. 496, 504; Gesch. des
The Gild Merchant.

little that has been written on the subject is replete with errors, whose wide prevalence renders it doubly difficult to give a lucid exposition of the nature and growth of this institution.

In the sources for the history of the Anglo-Saxon period there is no trace of the existence of the Gild Merchant, or of any gilds forming the nucleus of town government, or even participating in the latter. The history of the Gild Merchant begins with the Norman Conquest. The latter widened the horizon of the English merchant even more than that of the English annalist. The close union between England and Normandy led to an increase in foreign commerce, which in turn must have greatly stimulated internal trade and industry. Moreover, the greatly enhanced power of the English crown tempered feudal turbulence, affording a measure of security to traders in England that was as yet unknown on the continent. Among other things, says the Saxon chronicler, 'is not to be forgotten that agriculture still predominated and Thirteenth century could hardly claim to be a trading country at all' (Conq. of England, 335-436; Machperone, Commerce, i. 287-289). The law that made any merchant 'thegn-right worthy' who thrice crossed the sea by his own means (Thorpe, Laws, 81; Schmid, Gesetze, 109) indicates that such foreign ventures could not have been very frequent. It is plain, likewise, that internal trade and industry did not flourish. The needs of the powerful were satisfied by their dependents; indeed, most communities contented themselves with producing only enough to supply their own wants (Turner, Anglo-Saxons, iii. 105; Cunningham, Eng. Industry, 60, 84). From the frequent mention of theft in the Anglo-Saxon laws, and from the stringency with which it was punished (Thorpe, 47-54; Index; Schmid, 557), we may infer that it was widely prevalent and engendered a feeling of general insecurity. Hence all buying and selling was restricted to privileged towns; and no bargain could be made unless witnessed by the port-receve, the territorial lord, the priest, or some other trustworthy man (Thorpe, 68, 87, 106, 120, 212; Schmid, 111, 137, 181, 205, 325, 619). In these laws the merchant is very rarely mentioned. London had far outstripped the other Anglo-Saxon towns in commercial activity (Rede, Eccles. Hist., ii. c. iii.) but it is evident from the 'Judicia Civitatis' (Thorpe, 97; Schmid, 157) that agriculture still predominated in it in the tenth century. In most English boroughs during the greater part of the eleventh century agriculture was a more conspicuous element than trade and industry (Cunningham, Eng. Industry, 123; von Oechenowski, 51; English Hist. Rev., ii. 367).

The reign of Canute and Edward the Confessor also contributed to the development of English commerce and industry (Worsaae, Danes and Norwegians in Eng., 100, 106; Green, Conquest, 348, 440; De Fréville, Commerce de Rouen, i. 98, ii. 12; Hohbaum, Urkundenbuch, iii. 380; Thorpe, Anc. Laws, 211), but not in the same degree as that of William the Conqueror.

1 Gesta Willelmii (ed. Maseres), 149: 'Portus et quaelibet itinera negotiatoribus patere, et nullam injuriam fieri jusserit.' See also Ordinarius Vitalis in Duchiense's Norm. Scriptores, 520: 'Nemo praedarit audebat sed unusquisque sua rura tuto colebat.'

2 It is true that commercial relations existed between England and the continent in the Anglo-Saxon period. (Haddan and Stubbs, Councils, iii. 497; Monumenta Germaniae, iv. 718; Maseres, Hist. Angl., 157, 210; Cunningham, Engl. Industry, 82, 83; Giry, St. Omer, 276; Worsaae, Danes and Norwegians in Eng., 100-106; Turner, Anglo-Saxons, iii. 115; Raine, Historians of Church of York, i. 249, 355, 454; Lappenberg, England, i. 227, 624-626.) But Green is doubtless right in concluding that this intercourse did not assume large dimensions, that, in fact, in the tenth century England could hardly claim to be a trading country at all (Coro. of England, 335-436; Macpherson, Commerce, i. 287-289). The law that made any merchant 'thegn-right worthy' who thrice crossed the sea by his own means (Thorpe, Laws, 81; Schmid, Gesetze, 109) indicates that such foreign ventures could not have been very frequent. It is plain, likewise, that internal trade and industry did not flourish. The needs of the powerful were satisfied by their dependents; indeed, most communities contented themselves with producing only enough to supply their own wants (Turner, Anglo-Saxons, iii. 105; Cunningham, Eng. Industry, 60, 84). From the frequent mention of theft in the Anglo-Saxon laws, and from the stringency with which it was punished (Thorpe, 47-54; Index; Schmid, 557), we may infer that it was widely prevalent and engendered a feeling of general insecurity. Hence all buying and selling was restricted to privileged towns; and no bargain could be made unless witnessed by the port-receve, the territorial lord, the priest, or some other trustworthy man (Thorpe, 68, 87, 106, 120, 212; Schmid, 111, 137, 181, 205, 325, 619). In these laws the merchant is very rarely mentioned. London had far outstripped the other Anglo-Saxon towns in commercial activity (Rede, Eccles. Hist., i. iii. : but it is evident from the 'Judicia Civitatis' (Thorpe, 97; Schmid, 157) that agriculture still predominated in it in the tenth century. In most English boroughs during the greater part of the eleventh century agriculture was a more conspicuous element than trade and industry (Cunningham, Eng. Industry, 123; von Oechenowski, 51; English Hist. Rev., ii. 367).

The reign of Canute and Edward the Confessor also contributed to the development of English commerce and industry (Worsaae, Danes and Norwegians in Eng., 100, 106; Green, Conquest, 348, 440; De Fréville, Commerce de Rouen, i. 98, ii. 12; Hohbaum, Urkundenbuch, iii. 380; Thorpe, Anc. Laws, 211), but not in the same degree as that of William the Conqueror.
The Gild Merchant.

[CHAP. I.]

Inception and Distribution.

The earliest distinct references to the Gild Merchant occur in a charter granted by Robert Fitz-Hamon to the burgesses of Burford (1087–1107), and in a document drawn up while Anselm was Archbishop of Canterbury (1093–1109). According to the latter the Chapman Gild of Canterbury gave to the community of Christ Church eight houses in exchange for nine others. Soon afterwards, during the reign of Henry I, the Gild Merchant appears in various municipal charters; and, as the latter multiply under Henry II, Richard I, and John, it is mentioned more frequently among the burghal franchises. Its growth and propagation must have been greatly stimulated by the further extension of England's continental possessions under Henry II, and by the wise laws enacted during his reign for the preservation of internal peace and order.

It is necessary carefully to determine the place of the Gild among the privileges enumerated in the charters of the twelfth and thirteenth centuries. Pre- eminent among these immunities is the grant of a free borough ('liber burgus'), a term difficult to define, because it was a variable generic conception. It comprised a vague aggregate of franchises, whose number was

1 Even long after the Conquest the agricultural element prevailed in English boroughs far more than is commonly supposed. See Thompson, Musi. Hist., 45; Rot. Parl., i. 228–238; Rogers, Six Centuries, i. 112, 122; Owen and Blakeway, Shrewsb., i. 153, 154; Gomme in Archæologia, vol. 46, pp. 401–422; Ormerod, Cheshire, iii. 36; Gilbert, Account of National MSS. of Ire., 309; Stark, Gainsb., 73–75; Picton, Memorials, i. 30, ii. 27; Boldon, Duke, 7; Jeffery, Cumber., ii. 23; Ashley, Econ. Hist., 73.

2 Pagarn d'Hermansart, Les anciennes communautés de St. Omer, 11, 12; Giry, St. Omer, 276; Wauters, Libertés Communales, 29, 30, 278, 281, 768; Cellier, Recherches sur Valenciennes, 285.

3 During the reign of the Conqueror there were many 'francigenae burgenses' in Hereford, Shrewsbury, Norwich, Nottingham, London, and probably in other towns. See Domesday, i. 179, 252, 250, ii. 118; Engl. Hist. Review, ii. 356; Records of Nottingham, i. 58, 108, 174, 186; Bailey, Nottinghamshire, i. 27, 29; Morgan, Norman Occ., 153.

Inter Angliae municipia, vicis et civitates, Londinii melior et major habetur. Ad hanc, postquam facta est sub distine Normannorum, quamplures indigenarum Rotomagi et Cadomi, quae nobiliore Normanniae loca sunt, se transtulerunt, incloce civilitatis esse delegantes, eo quod meretricionis aprior et refertor erat quae (sic) frequentare consueverat. — (Vita S. Thomas, ed. Giles, ii. 73.) — Civiliiter Angli cum Normanniis cohabitabant in burgis, castris et urbisibus. — (Ordegress Vitalis in Duxenes's Norm. Script., 520.)

4 Prof. Hohlabain (Deutsche Lit.-Zeitung, Jan. 12, 1884) agrees with me in placing the inception of this fraternity after the Norman Conquest. Stow says, it 'must be at least as old as the Conquest.' (Const. Hist., i. 572–573.)

'The great institution of the 'gilda mercatoria' runs back, as we have seen, to the Norman Conquest and far beyond it' (Ibid., iii. 607). Green (Conquest, 439, 450) speaks of the Gild Merchant at Nottingham and Lincoln in the first half of the eleventh century, apparently basing his assertions on Domesday Book, which, however, nowhere mentions this institution. Thompson (Essay, 13, 14, 35, 36; Leic., 11; see also vol. ii. p. 252) and Wallfold (Insur. Cyclop., v. 347) assure us, without advancing any proofs, that it widely prevailed in Anglo-Saxon towns. Thompson (Leic., 11) and Pearson (Middle Ages, i. 44) refer its origin to Roman times. Nitsche (Berli. Akad. Monatsberichte, 27) thinks that it already existed among the Saxons before they settled in England.


6 That this is the proper definition of 'liber burgus' is evident from many records, especially town charters; see, for example, Madox, Exch., i. 423. 'All Boroughs that are styled Liferi Burgi have Liberties,' says Madox in Addit. MS., Mus. Brit., 4531, ff. 60, 61; and with this agrees the definition given by the burgesses of Macclesfield in 1350 (vol. ii. p. 171).
gradually increased in the thirteenth and fourteenth centuries. A community might lack some of them, possessed by more powerful towns, and yet be called a free borough; while, on the other hand, a simple village might enjoy certain of these liberties, without being able to arrogate to itself the title, independence, and dignity of a borough 1. Chief among the privileges thus comprehended in the notion of a free borough, and often granted side by side with the latter, were an independent judiciary, the burgesses being free from suits in county and hundred courts outside the town—doubtless the principal characteristic of a borough; the fee-farm rent (firma burgi) or commutation of tolls, court perquisites, and other town dues, belonging to the king or mesne lord, for a fixed sum of money; exemption from toll throughout the realm; the right to hold markets and fairs; the election of town officers by the burgesses; the gild merchant 2; the return of all writs; and, ultimately, the complete exclusion of the sheriffs and other royal bailiffs from all interference in the affairs of the borough 3. The following translation of a charter of King

1 Take, for example, the important privilege of firma burgi. Some powerful towns such as Winchester and Bristol do not appear to have been held by the burgesses in fee-farm till about the reign of Edward III. (Woodward, Hampshire, i. 278, 279; Taylor, Book about Bristol, 250; Hunt, Bristol, 56.) In Edward I, Winchester was still de corpore comitatus (Madox, Firma Burgi, 19). On the other hand, mere villages were frequently vested with this franchise (Madox, Firma Burgi, 54-55; Rot. Chart., 85, 186; Hartshorne, Northampton, 5).

2 In municipal records it is most commonly called 'gilda mercatoria' and 'gilda mercatoria' (vol. ii. pp. 3-8, 16, 20, 30, 33, 38, 45-47, et passim). The following forms of the name also occur: 'gilda mercanda' (below, p. 9, and ii. 172, 174, 202-204, 208, 211); 'gilda mercalis' (ii. 39, 43, 45; chapman. gild,' 'ceapmannegilde,' 'chefmenesild' (ii. 37, 135, 138, 142); 'gilde-mercatoria,' 'gylde mercemionalis,' 'gylde mercandizandi' (ii. 60, 127, 389); 'gelda mercatoria,' 'gelda mercandisa' (ii. 58); 'gilda mercaria' (ii. 279); 'gylde mercatoria,' 'gylde mercantoria,' 'gylde chaffare,' 'gylde markande' (ii. 136, 212, 255, 256). For various other forms ('gylde,' 'gylde,' 'yeld,' etc.), see ii. 132, 145, 150, 175, 176, 192, 212, 272, 347, 358.

3 To these may be added the right to hold lands and tenements by burgage tenure, which is generally mentioned only in the charters of small baronial towns, its existence being taken for granted in other cases. See below, Ch. v. The burgesses of Hereford thus defined their tenure:—And we do not use to do fealty or any other foreign service to the lord of the fees for our tenements, but only [pay] the rents arising out of the said tenements; because we say that we hold our tenements by the service of burgage, or as burgesses (Journal of Archaeol. Assoc., xviii. 471). Burgage tenure implied a fixed rent in lieu of all services and the right to devise one's lands and tenements. See Merewether and Stephens, 701; Bracton, De Legibus, iv. 263, 264; Britton, ii. 12; Year Books, 21, 22 Edw. I, p. 70, and 8 Edw. II, p. 255; Bracton's Note-Book, §§ 11, 73.
duly and peaceably have and hold the aforesaid liberties and free customs, as freely and fully as other burgesses of our free boroughs of England have had or have, saving in all things the liberties and free customs of our citizens of London. Moreover, we desire and grant that the same our burgesses may elect two of the more lawful and discreet men of their town, and present them to our chief justice at our Exchequer, who shall well and faithfully keep the provostship of the aforesaid borough of Ipswich; and that they shall not be removed, as long as they comport themselves well in that bailiwick, except by the common counsel of the aforesaid burgesses. We also desire that in the same borough there may be elected by the common counsel of the said burgesses four of the more lawful and discreet men of the borough to keep the pleas of the crown and other things pertaining to us and our crown in the same borough, and to see that the provosts of that borough justly and lawfully treat the poor as well as the rich. Given by the hand of G. . . . Archdeacon of Wells on the 25th of May in the second year of our reign 1.

In many charters we find a clause similar to the following: — 'We grant a Gild Merchant with a hanse and other customs belonging to the Gild, so that [or 'and that'] no one who is not of the Gild may merchandise in the said town, except with the consent of the burgesses.' The subjoined also frequently appears: — 'We likewise grant them and their heirs that if any person's villein remain in the town, and hold land in it, and be in the said Gild and hanse, and lot and scot, a year and a day without being claimed, then he can not be reclaimed by his lord, but may remain free in the said town.' Many important

1 Vol. ii. p. 115.
2 Vol. ii. pp. 16, 19, 58, 110, 191, 194, 210, 211, 273, 275, 355, 376, 586. See also Harland, Mamecestre, 168; Rotuli Chart., 211, 212; Placita de quo War., 17, 372, 817; Eyton, Shrop., i. 303, xi. 134; Record of Caern., 158-198; Taylor, Flint, 30; Charters of Ludlow, 11, 12; Sinclair, Wigan, i. 41.

Cf. vol. ii. pp. 33, 34, 40, 45, 62, 135, 193, 213, 250, 254. For the hanse, see App. C.
3 Vol. ii. pp. 16, 194, 326, 376, 386, 389, and App. C; Record of Caernarvon, 158-198. This clause is found most frequently in the municipal charters of Wales. In those of English towns the phrase 'and hold land in it,' is often replaced by 'and continue in it' ('et etiam in eo se tenuerit'). See below, p. 5, and vol. ii. pp. 191, 211, 275, 374.
4 The following came to my notice too late to insert in vol. ii.: — 'Henricus [II] dei gratia, etc., salutem. Sciatis ne concessisse hominibus de Andewra vt habeant gildam mercatorum in Andewra [et] quod sint quieti de Tholono, passaggio [et] consuetudine per totam terram meam, sicut Burgenses Wintonie qui sunt de Gilda mercatorum sunt quieti. Et super hoc nullus, eos disturbet inustie pro consuetudine super libras forisfacture. Testibus, etc. Apud Wytoniam.' The men of Andover received a similar royal charter in 5 Richard I. (Hist. MSS. Com., 1887, App. iii. p. 10.)

The charter of Richard I asserts that Bedford had the Gild in the time of Henry II. 3 The charter of Earl Richard of Cornwall to the Prior and Convent of Bodmin, which was confirmed by Edward I, contained these, among other, clauses: — Et [burgenses] habeant Gildam mercandam libaram, sicut habent et habere solent, per rebiditum quadraginta solidorum et quadraginta denariorum, quos annuatim reddent attornato nostro . . . Et si alicuis in eadem villa ad Gildam mercandam iuste presentatus fuerit, et ibidem per annum et diem sine contradiccione remanentur, per vim
of William the Conqueror. For this Gild, see also Dallaway, Sussex, 149, 150, 151. The following is taken from Patent Roll 14 Hen VI, p. 2, m. 2 — *De gilda sue fraternitate fundanda pro Cibus Civitatis Cieestrie — Rex Omnibus ad quos, et salute, Scatte quod cum nos considerante qualiter Dominus Henricus Scandus, quondam Rex Anglie, progenitor noster, per lit teras suas patentes per nos confirmatam concessit tunc Cibus Civitatis Civestrie qui tunc fuerunt de gilda mercatoria ibidem omnes libertates et liberas consequivae suas tam infra burgum et extra, et eas habere quoque uta plene, libere, quete et honorifico acut plebem et honorificam labori solverat tem pore Regis Henrici, aut su, proust in litteris et confirmacione predict plebus contemtur, Jamque ex parte Civium Civitatis predicte de gilda prehsta existente et aliam communiquat ipsa quandam fraternitatem sue gilda perpetuam de vo Magistro et quos Custodibus ac fratribus et sororibus eiusdem tam de ipsis quam de alius, qui eorum desocionis de eadem fraternitate sue gilda esse voverunt, quorum Major dico Civitatis semper pro tempore existens sit Magister fraternitatis predicte, nostra mediante licencia de uno enigere, includere, vinere, creare et stabile munent et in bona voluntate existent et ea occasione eorum esse intendunt in hac parte favorabiliter inclinati, de grauas nostra special ac ex mero motu nostro concessum, etc.*

Seven persons are named, who are given power to found such a fraternity, for themselves and others wishing to join it. The Mayor is always to be a master; there are to be four wardens. The Society is established in honore omnipotentis dei, beate Marie Virginis, matris eorum, Sancti Georgii et tocns Curi celestis, and is to be called the fraternity of St George. They are to constitute a body corporate, and can hold property of 10s. yearly value for the support of a chaplain and poor brethren and sisters.

1 Henry de Lacy granted the burgesys 'quod predicta villa sit libri burgus, et burgesys nostris ejusdem ville habeant propere libertates suae in perpetuum gildam mercatum, cum omnibus libertatibus, librissae consequitubibus ad hujusmodi gildam pertinente,' etc (Ormerod, iii 36). According to Head's Conleton, 34, this charter was granted before the close of 1272.

2 The Prior and Convent of Coventry held one half the town (Madox in Addit Ms., Mus Brit., 4530, ff. 18-24); hence the grant of the Gild to the former.

3 This Gild, according to A History of Devizes (1859), p. 399, was, in the middle of the 18th century, maintaining a flouckering kind meetings at the Antelope, and now and then an organised resistance to the intrudes of itinerant hawkers.
Doncaster ... 1467 ... Record Office, Conf. Roll 1 Eliz., p. 2, No. 5; Miller, Donc. App., p. vii; Tomlinson, Donc., 31; Smith, Old Yorkshire, i. 227.

Dunheved ... 1231-72 ... Vol. ii. pp. 85, 370.

Dunwich ... 1200 ... Rot. Chart., 51, 211; Gardener, Dunw., 100, 103; Stubbs, Charters, 311; Addit. MS., Mus. Brit., 23963, fol. 6.

Durham¹ ... Henry II ... Vol. ii. p. 41.

Fordwich ... Henry II ... Mun. Corp. Com. 1835, p. 987; Reliquary, xviii. 66-68.

Gainsborough ... Edw. III ... Vol. ii. p. 91.

Gloucester ... 1200 ... Vol. ii. p. 373.

Grampound ... 1332 ... Rec. Office, Pat. 1 Rich. II, p. 6, m. 7; Willis, Notitia Parli., ii. 97; Merew. and Stephens, 752.

Grantham ... 1462 ... Street, Grantham, 107; Merew. and Stephens, 970; Addit. MS., Mus. Brit., 4530, ff. 184-185.

Guildford ² ... 1256 ... Vol. ii. p. 91; Hist. of Guildford, 163, 191*-199*.

Hartlepool ... 1230 ... Vol. ii. p. 106; Surtees, Durham, iii. 386.

Hedon ... 1348³ ... Vol. ii. p. 107.

¹ Perhaps Dublin ('Dublinia') is written in the original instead of Durham ('Dunelmia,' 'Dunelmia').—'The corporate body, at a public meeting in 1728, made several bye-laws, whereby they imposed a fine on all intruders who should exercise their trades within the city, and ordained that the mayor should hold four guild days in the year, at three of which every person claiming title to his freedom should be called, before he should be admitted.' (MacKenzie and Ross, Durham, ii. 425; Fordyce, Durham, ii. 215.)

² At a Guild Merchant held Dec. 1, 1800, the mayor and approved men made regulations for the market (Hist. of Guildford, 308).

³ Merewether and Stephens (Hist. of Boroughs, 552) give an abstract of a royal charter of 1272 similar to that of Edward III, but I was unable to find any trace of the former at the Record Office.

1 The date 1154 (vol. ii. p. 109), though mentioned in the original, is probably an error of the scribe. See Archaeol. Assoc., Journal, vol. 27, p. 457. The component parts of the document probably belong to the period of the three Edwards. Cf. Ibid., vol. 27, p. 476, with Wotton, Leges, 517; and Duncumb, Heref., i. 300, with i. 323; and see Johnson, Customs of Hereford, 120, 177, 178.

2 The author of the Hist. of Horsham (p. 5) says: 'It appears that at some early period there was a merchants' guild in this town, founded on the same principles as that in Chichester, for the name of Horsham is in one of the ancient lists, still extant in that city, of the places which had guilds in connection with it.' I visited Chichester for the purpose of examining these lists, but I could not find them among those town records to which I had access.

3 The charter refers back to the reigns of William the Conqueror and William Rufus.
The Gild Merchant. [CHAP. I.

Ludlow . . . 1461 . . . Charters of Ludlow, 11-12, 294.
Lyne Regis . . 1284 . . . Willis, Notitia, ii. 427.
Newport . . . . 1292 . . . Eyton, Shropsh., ix. 134.

1 Edward I granted (1284): 'quod Villa nostra de Lime in Comitatu Dorset de cetero liber burgus sit, et quod Hominis cjsdem Villae sint liberi Burgenses. Ito quod Gildam habeant Mercatoriam, cum omnibus ad hujusmodi Gildam spectantibus in Burgo predicto, et alias Libertates et liberas Consuetudines per totam Angliam et Potestatem nostram quas Burgenses nostris de Melcombe per Cartam nostram nuper concessimus, etc.' (Willis, Notitia, ii. 427. Cf. Hutchins, Dorset, ii. 41; Roberts, Lyne R., 22, 23, 70; Luders, Elections, ii. 6, 7.

2 Idem Vicecomes reedit Comptum de C. pro hominibus de Mereberga, ut habeant Gildam suam. In thesaurum liberavit. Et Quietus est.' (Pipe Roll 9 Hen. II, p. 46.)

3 This is the correct date, not 1225; 'anno nono' stands in the MS., but 'decimo nono' is intended. See vol. ii. p. 181; Pitt, Staffordsh., 354; Cal. Rot. Chart., 51; Rep. Record Com. 1837, p. 471.


# The grant of Henry II alludes to the existence of the Gild in the time of Henry I. William de Cheney, mentioned in vol. ii. p. 192, is said to have held office under Stephen (Boase, Oxford, 45).

Pontefract . . . 1484 . . . Fraser, Elections, i. p. vii; Fox, Pontef., 21; Hist. MSS. Com., 1881, p. 271.
Poole . . . . 1568 . . . Sydenham, Poole, 182; Hutchins, Dorset, i. 75.
Portsmouth . . . 1256 . . . Allen, Portsm., p. 97, and App. xv.
Saffron-Walden (?) Henry IV . . . Braybrooke, Audley End, 250-51; Player, Sketches, 81.
Shrewsbury . . . . 1209 . . . Vol. ii. p. 211.


2 Edward IV granted: 'quod villa sue burgus illa sit deiniceps liber burgus corporata, . . . idem aldermannus et Burgenses . . . liberi Burgenses sint, et Gildam mercatariam habeant,' etc. (Record Office, Conf. Roll 2 Rich. III, p. 3, m. 16.)

3 The concession of Henry II speaks of the Gild as existing in the reigns of Edward the Confessor, the two Williams, and Henry I.
### Wigan
- 1246
- Sinclair, Wigan, 41, 101; Placita de q. W., 372; E. Baines, Lanc., ii. 171.

### Wilton
- Henry I

### Winchester
- Henry II

### Windsor
- 1277
- Vol. ii. p. 270; Willis, Notitia Parl., i. 38.

### Woodstock
- 1453

### Worcester
- 1226-7

### Wycombe
- 1316

### Yarmouth
- 1208
- Vol. ii. p. 277; Rymer, Foeder, i. 100.

### York
- 1130-1
- Vol. ii. pp. 21, 279; Bracton's Note-Book, § 16.

#### WALES.

### Aberystwyth
- 1277
- Placita de q. W., 817; Rec. Office, Pat. 20 Hen. VIII, p. 2, m. 2; Meyrick, Card., 503; Archaeologia Camb., 1873, 1879, iv. 171, x. p. xxxiv.

### Bala
- 1324

### Beaumaris
- 1296
- Vol. ii. p. 15; Record of Caern., 158-161.

### Builth
- 1278

### Caerwys
- 1290

### Cardiff
- 1341

### Cardigan
- 1249
- Vol. ii. p. 359; Merew. and Stephens, 778.

### Carnarvon
- 1284

### Conway
- 1284
- Vol. ii. p. 48; Williams, Aberconwy, 180.

### Inception and Distribution.

**Criccieth**
- 1284
- Vol. ii. p. 48; Record of Caern., 196-198.

**Denbigh**
- 1333
- Williams, Denbigh, 119.

**Flint**
- 1284
- Taylor, Flint, 30, 38, 40; Munic. Corp. Com. 1835, p. 2680.

**Harlech**
- 1284

**Haverfordwest**
- [Henry III]

**Hope**
- 1351
- Vol. ii. p. 375.

**Kenfig.**
- 1360
- Vol. ii. p. 132.

**Lampeter**
- 1332
- Bristol, Council-House, Little Red Book, fol. 204.

**Llanfyllin**
- Edw. II
- Powysland Club, Coll., iii. 60, 91-92.

**Llantrissaint**
- 1346
- Vol. ii. p. 150.

**Montgomery**
- 1227
- Powysland Club, Coll., xxi. 2-26; Eyton, Shrop., xi. 134, 137.

**Neath**
- 1359
- Vol. ii. p. 175.

**Nevin**
- 1343-76
- Lewis, Top. Dict. of Wales, ii. 252.

**Newborough**
- 1323

**Newport**
- 1385

**Newton**
- 1363

**Overton**
- 1291-2

**Pwllheli**
- 1355

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1 Henry III also confirmed a grant of Habert de Burgh, which contained inter alia these words: 'Concessimus etiam eisdem Burgensibus quod habeant merias et mercata cum Gilda Mercatoria et cum omnibus libertatibus et libera consuetudinibus ad dictas ferias et dieta mercata pertinentibus.' (Record Office, Charter Roll 13 Hen. III, p. 1, m. 7.)
The Gild Merchant.


IRELAND.

Armagh ...... 1613 ..... Stuart, Armagh, 645; Liber Munerum, Pt. i. p. 4.


Ballyshannon ...... 1613 ..... Munic. Corp. Com., Irel., 1005; Allington, Ballysh., 54.

Belfast ...... 1613 ..... Liber Munerum, Pt. i. p. 2; Hist. of Belf., 13; Munic. Corp. Com., Irel., 698; Merew. and Stephens, 1621.

Boyle ...... 1613 ..... Munic. Corp. Com., Irel., 1009.

Carlow ...... [1296] ..... Ibid., 165; Ryan, Carlow, 60–62; Chartae Hibern., 37; Vol. ii. p. 134.

Carrickfergus ...... 1612 ..... Munic. Corp. Com., Irel., 748.

Cashel ...... 1638 ..... Ibid., 464.

Charlemont ...... 1613 ..... Ibid., 791.


Donegal ...... 1612 ..... Munic. Corp. Com., Irel., 1056.

Drogheda* ...... 1229 ..... Vol. ii. p. 58; Chartae Hibern., 25, 46, 49, 54.

1 This charter of 6 Edw. I is similar to that granted to Builth in the same year; see vol. ii. pp. 355, 356.

2 Drogheda originally included two distinct boroughs, separated by the Boyne—Drogheda in Louth ('versus Uriel') and Drogheda in Meath ('versus Midiam'). The Gild was conferred upon the former in 1229; and upon the latter in 1247. See Gilbert, Documents, 108; Munic. Corp. Com., Irel., 808.


Dundalk ...... 1379 ..... Liber Munerum, Pt. i. p. 30; Munic. Corp. Com., Irel., 891; Merew. and Stephens, 176.

Dungannon ...... 1612 ..... Liber Munerum, Pt. i. p. 38; Gale, Inquiry, p. cxxviii.; Merew. and Stephens, 1610.

Dungarvan ...... 1609 ..... Liber Munerum, Pt. i. p. 40.

Dunleer ...... 1678 ..... Munic. Corp. Com., Irel., 917.

Enniskillen ...... 1612 ..... Liber Munerum, Pt. i. p. 16.


Lanesborough ...... 1665 ..... Munic. Corp. Com., Irel., 337.

Lifford ...... 1613 ..... Ibid., 1106.

Limerick ...... 1292* ..... Ibid., 344–345; Chartae Hibern., 36; Vol. ii. p. 59.

Mallow ...... 1612 ..... Liber Munerum, Pt. i. p. 8.

Newry ...... 1612 ..... Liber Munerum, Pt. i. p. 12.


1 The patent refers back to a grant of England. See also Liber Munerum, made by John before he became king of England. See also Liber Munerum, Pt. i. p. 24; Merew. and Stephens, 1460.
have been equivalent to a confirmation of the Gild Merchant. London, pre-eminent above the other boroughs of England as a franchised community, would not have been obliged to contend for the possession of that which was freely conferred upon many of its neighbours. In speaking of the erection of the London commune in 1191, Richard of Devizes says: 'Neither King Richard nor his father, Henry II, would have granted it (the 'communa' or 'conjuratio') for a thousand thousand marks of silver;' again, 'Communia est tumor plebis, timor regni, tepor sacramentorum.' There was nothing in the nature of the Gild Merchant to warrant such language. — The highly-privileged Cinque Ports seem also to have dispensed with this institution, though their federation is spoken of as one great brotherhood — a 'guilda fratrenitatis,' a 'brotcheryeld.' Nevertheless, London, and probably some of the Cinque Ports, virtually exercised all the rights attached to this franchise, though the name and formal organization were unknown in these towns. An analogy is found in the frank-pledge,

2 For a translation of the grant of 7 Jac. I, see Gale, Inquiry, App. No. 17.
3 Besides the towns mentioned in this list, others may be added which had charters conferring on them all the privileges of certain boroughs having a Gild Merchant. See the tables in Appendix E. But it is not certain that in every such case all the privileges of the mother-town were actually adopted. The Gild Merchant of a town was sometimes modelled after that of another. See vol. ii. pp. 3, 21, 22, 28, 93, 94, 139, 259, 379, 378; Jewitt, Plymouth, 249.
4 Stubbs, Const. Hist., i. 451, 476, 706 (but see also iii. 609); Brentano, Gilds, p. xciii.; Madox, Firma Burgi, 50; Loffie, London, i. 128, 165; Green, Conquest of Eng., 461; Thompson, Essay, 119; Wilds, Gildenswes, 244, 248.
5 Norton, Commentaries, 25, 26; see also Riley, Memorials, p. 1.
6 Stubbs, Const. Hist., i. 461, 475, 476, 481; Loffie, London, i. 128, 166, 167.
7 Stubbs, Const. Hist., i. 476, 705.
which, in some places, did not exist in name, although in reality mutual responsibility was enforced. It is almost impossible by means of the charters to determine the exact date of the foundation of the gilds mentioned in the list. Such expressions as 'sicut tempore Edwardi' and 'a tempore quo non extat memoria' are to be regarded with distrust; while, on the other hand, privileges long in existence are often granted as though they were new additions to the town constitution.

These and other circumstances render it difficult to ascertain the extent to which the Gild Merchant prevailed among the boroughs of England. During the reign of Edward I, 166 towns were summoned to send representatives to parliament; in theory, this comprehended the whole number of boroughs then in existence. Making allowance, on the one hand, for those boroughs which, in reality, received no summons, and, on the other hand, for the incompleteness of our list, due to the paucity of the materials at our disposal, it may safely be stated that at least one-third—and probably a much greater proportion—of the boroughs of England were endowed with this gild in the thirteenth century; that, in fact, it was not an adventitious institution, but one of the most prevalent and characteristic features of English municipalities. Several other prominent towns, such as Exeter, Norwich, Northampton, whose constitutions were modelled after that of London, no Gild Merchant appears to have existed. There is likewise no trace of this fraternity in Colchester.

In Chapter vii. I shall attempt more fully to explain the absence of the term Gild Merchant in the above-mentioned towns.

CHAPTER II.

Organization and Constitution.

Fortunately a document is still extant which informs us what the burgesses of Ipswich did after receiving the charter given at large in the last chapter (pp. 7, 8), furnishing us with a vivid outline of the general machinery of town government during the reign of King John, and showing us how the burgesses proceeded to establish and organize their Gild Merchant.

The charter was granted May 25, 1200. On Thursday, June 29, the whole community of the borough, having assembled in the church-yard of St. Mary at the Tower, elect two bailiffs to take charge of the provostship of the borough, and four coroners to take charge of the pleas of the crown, and to see that the bailiffs treat rich and poor justly. On the same day it is ordered by the common counsel of the town that there shall be in the said town twelve sworn capital portmen, just as there are in other boroughs of England, who are to have full power to govern and uphold the said borough with all its liberties, to render the judgments of its courts, and to ordain and do all things necessary for the maintenance of its honour.

On Sunday, July 2, the bailiffs and coroners, with the assent of the community, appoint four approved and lawful men of each parish, who elect the twelve capital portmen. The latter having been sworn faithfully to govern the borough and maintain its liberties, and justly to render the judgments of its courts, cause all the townsmen to stretch forth their
hands toward the Book (the Gospels), and with one voice solemnly to swear to obey and assist the bailiffs, coroners, and every one of the twelve portmen in safeguarding the borough, its new charter, its liberties and customs, in all places against all persons, the royal prerogative excepted. On the same day the new charter is placed in charge of two approved and lawful men, who are sworn faithfully to preserve it, and to produce it at the request of the community.

On Thursday, July 13, the bailiffs, coroners, and other capital portmen assemble and ordain that, in the future, all customs of the town shall be collected by the bailiffs and four approved and lawful men of the borough; and that they shall yearly pay at the king’s Exchequer the accustomed ferm of the town. They also ordain that there shall be two beadles to make attachments and to execute the commands of the bailiffs, coroners, and capital portmen. One of the beadles is to be keeper of the prisoners arrested by order of the bailiffs. A common seal is to be made to serve in important matters touching the community of the borough; and it is to be placed in charge of three or four approved and lawful men of the borough.

Likewise they ordain that in the said borough there shall be elected by the common counsel of their town one approved, lawful, and fit man to be alderman of the Gild Merchant in the same borough; that four approved and lawful men shall be associated with him; and that the alderman together with his four assistants shall be sworn well and faithfully to maintain the said Gild and all things appertaining to it.

The new charter is to be sent to the full county courts of Suffolk and Norfolk, there to be read and made public. No burgess, if he is a merchant, shall be quit of custom on his wares in the town, unless he is in lot and scot in the common taxes and businesses of the town.

On Sunday, September 10, the whole community assemble in the presence of the bailiffs, coroners, and other capital portmen to hear all the new ordinances, to which, having been read before the people of the town in the church-yard of St. Mary at the Tower, the whole community unanimously assent. Two bailiffs are then elected for the next year, and four men to help them collect the customs. Two beadles are likewise chosen on the same day.

On Thursday, October 12, the bailiffs, coroners, and other capital portmen, and the whole community having come together in the church of St. Mary at the Tower, the bailiffs show the common seal, which has been newly made. Three men are appointed to take charge of it and are duly sworn. The common charter is likewise to remain in their custody.

On the same day an alderman is elected, and four persons who are to be associated with him. All five are sworn that they will govern the Gild Merchant of the borough of Ipswich well and faithfully, and all the articles relating to it. Afterwards the alderman and his four colleagues declare, in the presence of all the people of the town, that all who are of the freedom of the town shall come before the alderman and his associates on a certain day—when and where to be hereafter made known—to constitute a Gild, and to give their hanse to the said Gild. The bailiffs, coroners, and other portmen, and the whole community then discuss how better to maintain the said Gild. They ordain that the alderman, and all future aldermen, ought to have for the profit of the Gild the monopoly of buying and selling certain kinds of stone and marble; that the alderman on oath shall make due return, annually before the bailiffs and coroners, of all profits arising during the year from the purchase and sale of the above-mentioned wares; and that no inhabitant of Ipswich shall buy or sell,
The Gild Merchant.

[CHAP. II.]

Organization and Constitution.

keepers 1 occupied the place of the alderman. Among other functionaries, with whom we occasionally meet, are ferthing-men 2 , levelookers 3 , gildans 4 , heyners 5 , tasters ('gustatores') 6 ,

1 This document will be found in extenso in vol II pp 116-123. The translation in Wodrow's Memorials of Ipswich, 77-84, is imperfect.
3 Vols II pp 72, 214-225.
4 Vols II pp 152-166, 214-225, 380; cf English Guilds, 45, 48, 54, 64, 72-75, etc., Madox, Ex. Burgi, 27. In 1443 the Gild of Wasbeech had two 'clerks of the market or skyvenes' (Watson, Wisbech, 147, cf Rep Mss Com., 1883, pp 294-296) For the ancient judicial 'seahans' of the continent, see Stubbs, Const Hist., 1, 211, 235, 264, Du Cange, Gloss., Spelman, Gloss. For their administrative and judicial functions in continental towns, see Gury, St Quentin, 23-57, von Maurer, Stadtkever, I, 241, 558.
5 Vol II p 380.
The revenues consisted mainly of entrance-fees, fines, and assessments, to which in a few cases were added certain tolls and the profits derived from the monopoly of dealing in certain commodities.

To become a gildsman ('gildanus,' 'congildanus,' 'frater'), or to obtain the gildship ('gilda,' 'societas'), it was necessary to pay certain initiation-fees, in some places called the 'rights' ('jura') of the house. This payment was probably proportioned to the means of the new member, or to the extent to which it was likely that he would use the privileges of the society, much discrimination being shown in favour of the relatives of gildsmen. At Leicester one of the entrance-fees was called the 'hanse'; at Launceston, the 'bika'; at Totnes, the 'fordele' or 'fordele.' The new comer was also required to produce sureties, who were responsible for the fulfilment of his obligations to the Gild—answering for his good conduct and for the payment of his dues. He then took an oath of fealty to the fraternity, swearing to observe its laws, to uphold its privileges, not to divulge its counsels, to tender its homage, and to look after the possessions of the Gild.

In these duties he was assisted by his colleagues, who in some boroughs had charge of the goods and chattels of the brotherhood. The revenues consisted mainly of entrance-fees, fines, tolls, and gifts.

1 Vol. ii. pp. 44, 43.
2 For these monopolies, see below, p. 49.
3 Vol. ii. pp. 4-8, 121, 152, 157, 204, 206, 208, 215-230, 246, 289-346. I find 'congildanus' in only one record (ii. 290).
6 Vol. ii. pp. 4-6, 293-317. At King's Lynn a fine and the 'jura' were paid, the latter being fees to the officers of the Gild (ii. 153, 154, 160). For the English form 'rytes,' 'ryghtes,' etc., see English Gilds, 54, 58, 60, 86, 357.
8 Generally speaking, entrance to the Gild was by purchase, inheritance, and gift, but the last-mentioned was rare, and even those who inherited the right to membership had to pay certain fees.
9 Vol. ii. pp. 127, 138; cf. ii. 292. See also Appendix C.
10 Vol. ii. p. 85; cf. also ii. 370. 'Bika' evidently means a measure of some sort. Probably persons entering gave a 'bika' of ale. Cf. Du Cange, Gloss., 'bicha.'
13 See below, Chapter v.
were women excluded from the latter. Notwithstanding the clause contained in many borough charters in favour of villeins, they were debarred from enjoying the privileges of the Gild in some towns.

1 Vol ii pp 4-8, 14, 49, 50, 125, 127, 128, 197, 212, 240, 289-340. For the connection of women with brewing and other trades in the middle ages, see Liber Albus, lx, Rot Parl, ii 278, 281, Statutes of the Realm, 15 Hen VII, c 21, Bickerdyke, 124-134, Davies, Southamp, 279, ef vol ii p 304.

2 The clause given above on p 8 is the one that prevails in town charters of the thirteenth and fourteenth centuries. In the same category, though the wording is different, are to be included the passages in Glanvill, in the laws of Winchester (Temp Hen I), and in the charters of Lincoln and York, see below, p 59, Stubbs, Charters, 162, 166, Brand, Newc, ii 130, Serutes, Durham, 1 297. The laws ascribed to William the Conqueror, and charters granted to Nottingham, Haverfordwest, Eignport, and West Looe, in the thirteenth century, mention simply residence in the borough a day or a year as the condition of emanicipation from villeinage, see Thorpe, Anc Laws, 213, Stubbs, Charters, 167, 299, Archaeologia Cambrensis, 1879, vol x p xxxiv, Jefferson, Cumberland, ii, 25, Rot Chart 138; Mowbray, Case of West Looe, 32.

3 The law writers of this same period state the condition to be residence in a demesne town of the king. Bracton, 1 48, 292, Britton, 1 200, 209, Flota, 111, see also Coke on Littleton, 1 137 b, Madox, Firma Burgi, 138. For other notices concerning the status of villeins in boroughs, see Welfitt, Minutes, No 24, Statutes of the Realm, 9 Rich II, c 2; Liber Albus, 610, Eyton, Shotps, x 133, Rot Chart, 206, Record of Cenris, 223, Rot Parl, ii 212, 294, 296, 448, 499, Noorhouten, London, 91, Riley, Memorials, 25, 58, Oliver, Laeter, 318; Eden, Poor, i 50, Bracton’s Note Book, § 1388, Madox, Firma Burgi, 42; and see the next note.

4 Vol ii pp 164, 317. Neither the German medieval maxim as regards privileged towns ‘die Luf nicht macht frei,’ nor the acrimonious aspersion of Guibert de Nogent against the ‘execrable’ villein freeing ‘communes’ of France — ‘de execrabilibus communibus illis in quibus contra jus et fas violenter serva domonorum jure se subtrahit’ — applied to English towns of the twelfth and thirteenth centuries (Arnold, Studen, 196-201, von Maurer, Stadtverf, i, 379-389, Guibert de Nogent, De Vita Sua, in Bouquet, x 257, Wauters, Libertes communales, 36-37, Wamba, Fland Rechtsgez, i, 350, 358, Gengler, Codex, 763, 831, 835, Stubbs, Const History, i 478.) This privilege seems to have been more highly prized by the municipalities of the continent than by the boroughs of England, owing perhaps, to the former’s greater autonomy. The burghe of Speyers had it gravitated in letters of gold over the main portals of the cathedral (Arnold, Studen, 198.) The enfranchisement from villeinage on the continent was not conditional either on the possession of land or ability to contribute to the pecuniary needs of the community, as was frequently the case in England and Wales (see below, p 59.) English burghees seem to have regarded ‘native’ and ‘villan’ with less favour than is commonly supposed. The townsfolk of Hereford looked down on commoners as equals ‘coven-ant men,’ being derived from the Anglo-Saxon ‘forword = covenant (Schmidt, Gesetz, Gloss, ‘forword’) Hence the word is not to be confused with the borough ‘wardmen,’ whom we find at Axbridge, Winem, and Sandwich (Somer.)


6 Vol ii pp 4-8, 292-297. There is only one other borough in connection with which I have met this term At Hereford, in 1248, the witnesses of debts contracted were called ‘forwardsmen’; ‘habeant talis suam papas, et tales testes qui vocantur Forwardsmen, qui contractass talibus sunt, vel esse debent’ (Wotton, Leges Wallicar, 517.) Here ‘forwardsmen’ evidently equals ‘coven-ant men,’ being derived from the Anglo-Saxon ‘forword = covenant (Schmidt, Gesetz, Gloss, ‘forword’) Hence the word is not to be confused with the borough ‘wardmen,’ whom we find at Axbridge, Winem, and Sandwich (Somer.)

The constitution of the Andover fraternity is particularly interesting. It was divided into two houses, the superior and the inferior. There were two classes of brethren, those possessing the ‘free gild’ and those having the ‘villen’ or ‘hanse gild.’ The ‘forwardmen’ constituted a higher rank of gildsmen, while the rights of the ‘customarii’ were evidently restricted. There were dues at Andover called ‘scot-pennies,’ ‘hanse-pennies,’ and ‘sige-pennies.’ With the permission of the brethren, the gildship could be transferred, in return for a payment by the recipient. In 1296 it was ordained by the stewards and brethren of Andover that no one in the future shall sell or give away his gild except to a relative excluded from becoming burgesses and holding office in some towns, and from entering the Gild Merchant and craft gilds in others. See vol ii pp 82, 164, 317, Rep MSS Com, 1879, p 109. Jones, Brackn, ii 12, Liber Albus, 23, 424, 441; Blomefield, Norf, ii 139; Izacke, Exeter, 60; Welfitt, Minutes, No 37, Merew and Stephens, 29, 723, 769, 847, 972, Statutes of the Realm, 8 Hen VI, c 11, cf also vol ii p 300.

1 Vol ii pp 293, 324, 329, 332-335.

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1 Vol ii pp 10, 11, 297, 308, 312, 320, 324. I venture the conjecture, that the ‘customarii’ were identical with the ‘hanse’ gildsmen, and that they differed from the ‘free’ gildsmen in being subjected to periodic payments called ‘hanse,’ and ‘customs’ ‘Homme coustumer,’ in vol ii p 227, means anyone subject to the payment of customs (i.e. tolls). At Göttingen there used to be both a Gild of Merchants and a Hanse. The latter seems to have been subordinate to the former, consisting apparently of smaller tradesmen and artisans See Schmidt, Gottin. Urkundenbuch, i 178, Hans, Geschichtblatter, 1878, p 23; Nitzsch, Geschichte der deutschen Genossenschaf, 19. 21. ‘Hence, is een besondere abge- schieden denk van der Kopgilden’ (Nitzsch, 21.)

1 Vol ii pp 328, 329, 333, 335. For scot-pennies, see also vol ii pp 13, 14.
tive within the third degree; and those thus admitted shall pay a half of a mark to the Gild; but if the father gives it to his son, the payment shall be only two shillings. Others generally paid sixty shillings. The gildsmen of Andover fulminated a decree of excommunication against the erring brother—commanding 'that no one receive him, nor buy and sell with him, nor give him fire or water, nor hold communication with him, under penalty of the loss of one's freedom.'

The meetings of the Gild Merchant were generally called 'gilds,' or 'morhgespeche,' 'morspeche,' 'maneloquium.' The number held yearly varied in different places and in different periods; annual, semi-annual, and quarterly meetings seem to be the most common. At these assemblies new members were admitted; punishment was inflicted for breaches of the statutes; and new ordinances were made. Each Gild had its own peculiar enactments, defining its privileges and prescribing rules of conduct for its brethren.

At the regular meetings, or on days specially appointed, there was much eating, drinking, and merry-making; 'drying knees with spiced cakebrede and sondry wynes, the cuppes merily servyng about the hous.' At Ipswich the brethren came together once a year 'familiarly to feast and to refresh their bodies with food and dainties.' At Yarmouth they regaled themselves with 'fromete, rost byffe, grene gese, weale, spycy cake, good bere, and ale.' Which feast was, for the most part, yearly [on Trinity Sunday], at the cost of four of the brotherhood successively... The hall itself being at that time richly hanged and adorned with cloth of Arras Tapestry, and other costly furniture; not sparing any dainty fare which might be had for money. At which feast all private quarrels and emulations were heard and ended to the glory of God and mutual love amongst neighbours.

At Andover and King's Lynn this gathering was called the 'potacon' or 'drinking' ('potacio'). Among the bibulous brethren of Winchester 'to drink the Gild Merchant' meant to hold a meeting of the fraternity. The officers who super-intended the preparation of the feast were called 'pincernae' at Barnstaple, Guildford, and Andover; and 'heyners' at Yarmouth.

Among the fines and entrance-fees we sometimes find a collation, a bull, beer, and wine, which were doubtless...
generally consumed at the festive gatherings of the Gild. At Guildford, bull-baiting was a favourite amusement of the brethren; new members being generally obliged to promise to feast the Gild and to provide a bull. While the Andover comptionation (which was generally held on Sunday) lasted, each steward received daily four gallons of beer; each cup-bearer, three gallons; each clerk, two gallons; each taster, one gallon. At Southampton the alderman and steward were each allowed two gallons of wine every evening during the festivities; the chaplain, the usher, and each of the skevins, one gallon.

Good works and devotional exercises, though not wholly neglected, constitute a less prominent element in the Gild Merchant than in most other gilds. In many towns the fraternity bore the name of some patron saint, a preference being shown for the tutelage of the Holy Trinity. Chaplains and priests of the Gild are often mentioned. 'If laudable and praiseworthy,' says the Yarmouth Chronicler, 'is the bond of amity and friendship among mere natural men, then how much more especially is that which is amongst Christians, who be tied by the strongest bond of faith and religion; but, above all, by those Christians which be of one fraternity, bound and linked together by solemn oath.' Attendance at the funeral of deceased members, prayers for the dead, assistance to brethren in sickness, poverty and distress, 'alms-deeds and works of charity,' the settlement of quarrels, without litigation, by the Gild officers, and


abstinence from slander and malicious imputations against the brethren, are some of the precepts inculcated by the statutes.

What the ordinances of the Gild Merchant laid most stress upon, what distinguished it from other gilds, will be elucidated by a discussion of its aim and functions, for which the way is now cleared.

CHAPTER III.

FUNCTIONS OF THE GILD. PRIVILEGES OF GILDSMEN.

If, in viewing the past, one's vision is not impaired by the rose-hued glasses of sentimentality, one must perceive that the medieval gildsmen were not always animated by lofty motives of brotherly love and self-abnegation in their behaviour toward their fellow-men. Indeed, the desire for gain or self-advantage, which from the outset was the raison d'être of the Gild Merchant and many other gilds, degenerated at times into the most reprehensible forms of selfishness. The gildsman may have been kind and loving toward those of his own fraternity, but he was too often harsh and oppressive toward non-gildsmen.

What then was the aim of the Gild Merchant? To this fundamental question two very diverse answers have hitherto been given, both of which are very evasive. Some assert

1 See vol. ii. pp. 32-35, 51-53, 147, 155, 156, 154, 189, 232, 379. During the two centuries preceding the Reformation we frequently meet with strong condemnation of the conduct of the gilds. Their exactions ‘after their own sinister mind and pleasure,’ the ‘outrageous hardships’ to which they subject the public, the unreasonable ordinances for their own single profit and to the cemen hurt and damage of the people, etc. See Statutes of the Realm, 9 Edw. III, i. c. 1; 25 Edw. III, iii. c. 2; 37 Edw. III, c. 5; 2 Rich. II, i. c. 1; Gilds, pp. xiii, 15 Hen. VI, c. 6; 12 Hen. VII, c. 6; 19 Hen. VII, c. 7; 22 Hen. VIII, c. 4; 28 Hen. VIII, c. 5; Rot. Parl., ii. 277, 280, iv. 75, 507, vi. 230.—Ficketing is not a modern invention. In 1614 the Company of Mercers and Ironmongers of Chester ordered T. Aldersey (who had married the niece of an ironmonger) to shut up his shop. He refused. ‘Soc daie by daie two others [of their Company] walked all daie before the said shop and did forbidd and inhibit all that came to the said shop for buyyng any wares there, and stopped such as came to buy wares there.’ The mayor ordered them to depart, ‘upon their oathe’; they answered that they were sworn to their Company; and so ‘they walked and remayned and plaied their wilfull parte.’ (Harl. MS., Mus. Brit., 2054, ff. 89, 90.)

that it was merely a private society of merchants, having nothing at all to do with the administration of town affairs. Most writers, on the other hand, regard ‘Gilda Mercatoria’ merely as another name for borough or city, ignoring the word ‘Mercatoria’ as if it never had any specific meaning. Some authors who have made very pregnant general statements concerning this brotherhood, do not even trouble themselves to inquire what its constitution and functions were. Untrammelled by any views now prevalent, or by any preconceived hypothesis, we will let the sources tell their own story.

The proceedings at Ipswich on receipt of King John’s charter 4, have already given us some intimation of the object of the society. At least, they plainly show that the Gild had lifted itself above the plane of an ordinary private fraternity; that important functions of some sort were intrusted to it by the burghal community. These functions are expressly expounded in the following records.

In 1330 the mayor and community of the town of Bedford were summoned to answer to the king by what warrant they claim to have a Gild Merchant, with all its liberties and customs in lands, islands, and pastures, and all its other appurtenances, so that anyone who is not of that Gild may not merchandise with them in city, borough, town, or sokes; and that they may be quit of toll, etc. [Other privileges are enumerated. The burgesses show a charter of Richard I, granting a Gild Merchant and other liberties.] And the same mayor and community are questioned by Richard of Aldborough, the prosecuting crown-attorney, concerning the

1 For example, Merewether and Stephens, Hist. of Boroughs, pp. xiii, xvi, 117, 383, 487, etc. 2 Thompson, Gentleman’s Mag. 1851, vol. 35, p. 595: ‘The gild was not a mere adjunct of a town community but the only formal embodiment of the population into a civic fraternity.’ See also vol. ii. p. 142; Thompson, Munic. Hist., pp. ix-xl; 49, 100, 119; Wilda, Gildenwesen, 153; Brentano, English Gilds, pp. xiii, cv; Hüllmann, Städteswesen, iii. 73. 3 Brady, Treatise, 47, 84. 4 Above, pp. 25-26.
nature of the said Gild, and who the persons are that belong to it, and what profit they levy by reason of the same Gild. They say that both burgesses of the town and any others dwelling in the same, from the time that they take the oath to preserve the liberties of the town and the king’s peace and to maintain all other privileges touching the aforesaid town and Gild, are admitted into this Gild, so that they can then sell all kinds of merchandise by retail, and everywhere enjoy the aforesaid immunities and liberties, just as the burgesses themselves by reason of their liberties aforesaid.

In a quo warranto suit, during the reign of Edward III, the burgesses of Beaumaris were called upon to explain the meaning of the various clauses of the charter granted to them in 1296: ‘And by the clause, that they may have Gild Merchant, etc., they claim that all who remain in the aforesaid town, and desire to enjoy the aforesaid liberties, and have been sworn in the presence of the aforesaid burgesses, and have paid hanse (i.e. a certain payment called hanse) and lot and scot with them, shall be in the aforesaid Gild; and then they can freely merchandise in the aforesaid town without paying toll there or elsewhere; and that no one who is not sworn and admitted into the aforesaid Gild can merchandise in the said town without the licence and consent of the said burgesses.’

A similar declaration was made by the burgesses of Conway, Bala, Newborough, Carnarvon, Harlech, and Criccieth, during the same reign.

In 1372 the mayor and bailiffs of Bristol thus interpreted the Gild: ‘And as to the profits arising from fines levied for having the freedom within the town of Bristol, the aforesaid mayor and bailiffs say that the town of Bristol is an ancient borough, and a mayor, bailiffs, and a community have existed in the same borough beyond the memory of man; in which borough the said mayor, bailiffs, and community, and their antecessors and predecessors, have had a free Gild Merchant, in the said town and suburbs, and all things that pertain to a Gild Merchant, namely, to buy and sell in the same town free and exempt from customs and toll, and to have various other privileges such as pertain to the Gild Merchant. By virtue of the said Gild and freedom the said mayor and bailiffs and their predecessors have been accustomed all this time to levy, for their own use, a certain payment from all who were admitted to the freedom and society of the Gild, for having the freedom of the aforesaid Gild, according to what could be reasonably agreed upon between them.’

In 1280 several burgesses of Newcastle-under-Lyme were summoned by the king for seizing ten fleeces of wool belonging to Richard the Baker of Stafford. In their defence, they say that King Henry III granted the burgesses of Newcastle ‘that the burgesses of the said town might have a Gild Merchant in the said borough with all liberties and free customs belonging to such a Gild; and that by the liberty of this Gild the custom of the borough is such that no one is allowed to sell or buy any wool in the aforesaid borough, except those who are in the aforesaid Gild, save by sacks or some other great weight.’ They say that they seized Richard’s wool because he bought it contrary to the liberty of the Gild; and they show a charter of 19 Henry III, granting them a Gild.

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The Gild Merchant.  

Merchant with all the liberties and free customs pertaining to such a Gild. 'Being asked what liberties they claim to have pertaining to the aforesaid Gild, they say that no one, unless he should be of the liberty of the Gild, can cut cloth to sell in the town, nor cut up meat and fish, nor buy fresh leather, nor purchase wool by the fleece, except by great weight, i.e. by the stone, sack, or half sack. . . . This privilege that no one may buy wool by retail in the said town of Newcastle, unless be be of the liberty of the said Gild, pertains to that Gild.' In another suit of the same year the burgesses of Newcastle-under-Lyme again state that Henry III gave them a Gild Merchant with all liberties and free customs belonging to such a Gild; 'and that the custom pertaining to the said Gild in the said borough is such that no one, except burgesses of the said borough, is allowed to cut cloth, nor sell by the ell, nor to keep a shop within the said borough, unless he be in the said Gild of the said borough.'

In 1235 or 1236 the abbot of Buckfastleigh and the burgesses of Totnes entered into this agreement, 'that the said burgesses received the said abbot and monks into the Gild Merchant, i.e. that they should be allowed to make all their purchases just like other burgesses, excepting all sales in the name of trade.' For this privilege the abbot and monks were to give the Gild Merchant 22d. yearly for all tallage.

In 1255 a jury of the men of Totnes declared, 'that the said burgesses and others dwelling in the said borough have among themselves a certain liberty which is called the Gild Merchant, by which they can make foreign merchants free, so that they need not pay toll on their things or wares bought and sold; [but], just as the said burgesses, they are exempt and free. And this they use, and have used from a time beyond the memory of man.'

In 1330 the burgesses of Derby were summoned to answer to the king by what warrant they claim certain liberties. The prosecuting attorney of the crown questions their right to several of these, including the Gild. He says 'that the Gild Merchant is granted to the burgesses of the said town, as is evident from the charter of the said Henry III'; and he says 'that individual burgesses of the said borough are jointly united; and they assert that they are fellows of the said Gild, and that others are not. And under cover of this Gild Merchant they have been accustomed to oppress the people coming to the said town with vendible wares, so that no one can sell his wares in the said town to anyone except to a member of the said society, and this at the pleasure of the said buyer.' He likewise says 'that these persons do not permit foreign merchants—whatsoever wares they may deal in—to vend their merchandise in the said town except only by wholesale, and this to one of the brethren; and the profit arising therefrom does not accrue to the advantage of the community of the said town, but only to the advantage of those who are of the said society; which usages redound to the injury, oppression, and pauperization of the people. Concerning these things he seeks judgment,' etc. And he says 'that, by reason of the said Gild Merchant, no foreign merchant can purchase by wholesale wine, wool, wool-fells, leather, or lead from any foreigner, except only from those who are of the said Gild; nor can foreign merchants sell any wares except only by wholesale, and this to one of the said society.'

The twelve jurors state that certain individuals are jointly united, who assert that they are of the Gild Merchant, and do not permit others to be of the said Gild, unless they satisfy them beforehand, in order that they may be in the said Gild. And by reason of this Gild the custom has prevailed among them, that if anyone brings neat's leather, wool, or wool-fells into the said town to sell, and one of the said Gild places his foot upon the thing brought, and sets a price

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1 Vol. ii. pp. 177-181.  
3 Vol. ii. p. 236.
for which he would like to buy it, no one but a member of the said society will dare buy it, nor will he to whom it belongs dare sell it to anyone save a member of the said society, nor for a higher price than that which the member of the said society offers. And they [the jurors] say that the profit arising therefrom does not accrue to the advantage of the community of the borough, but only to the advantage of those who are of the said society.

The following is a declaration of the mayor and citizens of Chester:—

And as to these words, "Gild Merchant with all liberties and free customs which they ever freely and quietly have had" [in the said Gild], they claim that yearly, on the Friday next following the festival of St. Dionysius, they can elect from among themselves two stewards of the said Gild, who are of the fraternity of the said Gild; who then shall swear, before the mayor and sheriffs and other citizens of the said city, that they will truly and faithfully render their account of all monies levied by them upon persons entering the Gild, and of all other customs of the said Gild, which have been collected time out of mind and pertain to the said Gild; and that every man who shall be in that Gild, shall be in the freedom and franchise of the said city, and can buy, within the liberty of the said city, all kinds of wares coming to that city by sea or land, without paying any fine; and that no one who is not admitted into the said Gild can buy anything within the liberty of the said city without the licence and assent of the said stewards. And by reason of the said Gild and for the maintenance of the same, they collect, and their predecessors time out of mind have collected, the customs underwritten. The tolls for various articles follow, concluding with the words, 'and for any other species of merchandise according to what can be agreed upon for granting indulgence to strangers.'

2 I. e. toll.
3 I. e. from among those who are of the fraternity.
4 I. e. according to what can be agreed upon with strangers to allow them to expose the merchandise for sale. For the original of this document, see vol. ii. pp. 43, 44.
5 Vol. ii. p. 41.
6 See above, p. 8.
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when this was not the case, they usually enjoyed discriminating rates of toll in their favour. That this was regarded as the pre-eminent privilege of the gild-brethren, is manifest from the records cited above (pp. 37-43), and from other passages in the sources. At Totnes, especially, this was evidently the principal idea associated with the fraternity. He is expelled from the Gild (or 'he leaves the Gild,' and henceforth he must pay toll,' is the substance of several entries in the gild-rolls. And no one shall be free of custom,' the Southampton statutes enact, 'unless he provide that he be in the Gild or franchise; and this from year to year.' In many cases this immunity extended beyond the limits of the town with which the Gild was connected; for if the borough had a charter granting freedom from toll throughout the realm, all the members of the Gild were generally allowed to participate in this exemption.

Functions of the Gild.

Non-gildsmen were forbidden to keep shops or sell merchandise by retail. In many cases this applied only to certain specified wares, cloth, leather, wool, fish, meat, etc., doubtless the staple commodities of the place. We frequently meet with the injunction, that strangers are not to keep wine-taverns, but they were sometimes allowed to retail wine from ships. Here are some regulations that were made at Reading, probably in the fourteenth century:

Also, no foreigner shall buy corn on the market-day before three o'clock, unless he be a person of distinction; and if he buys, he shall lose his corn and remain at the mercy of the provost.

Also, no foreigner shall bring tanned leather to sell into the town of Reading at any time of the year, except only during the fairs; and, if anyone does otherwise, let his goods be seized by the hand of the stewards, and he shall be at their mercy; and when he shall have satisfied them, he shall have his goods again.

Also, no foreigner shall retail, in the market, linen or woollen cloth, except only at the [accustomed] time; and if anyone acts contrary to this ordinance and is found guilty, his goods shall remain in the hands of the stewards, until he makes amends to them.

Also, no foreign fish-monger who brings fish to the market to sell, shall cut up his fish to sell, except with the permission of the stewards or bailiffs; and no foreigner can have licence to do this, if any gildsman has any fish to sell.


1 Vol. ii. pp. 51, 52, 219; Black Book of Admir., ii. 179; English Gilds, 352-356.

2 Merewether and Stephens look over the fact that, with these privileges outside the town, the stranger gildsman received important commercial immunities within the same, which would be a safeguard against undue extension of the list of 'foro seclis' brethren. Notwithstanding the general words of the charters 'free of toll, etc. throughout England' the exercise of this exemption depended upon priority of grant. If borough A received this privilege before borough B, then A was free from toll in B, but not B in A. See vol. ii. p. 181; Bracton, i. 450; Plac. de quo War, 217; Black Book of Admirality, ii. pp. 65-67; Liber Albus, 534-538; Rep. MSS. Com., 1887, App. iii., 7, 10; Palmer, Yarmouth, 6; Swinder, Yarmouth, 26-39; Harthorne, Northamton, 26; Peshall, Oxford, 243.

3 Vol. ii. pp. 24, 46, 47, 58, 59, 73; 134, 135, 172, 176, 178, 180-182, 189, 191, 206, 218, 241, 250, 370, 372; Chartae Hibern., 22, 25, 37, 39, 60, 84; Musc. Corp. Com., Ireland, 891; Gale, Inquiry, p. xii. and see below, p. 46, n. 3.

Also, no stranger shall bring herring to the market to sell on any day of the week excepting only on one market-day; and if he wishes to stay in the town and sell his fish in the market a second day, he must sell two herrings more than he did the day before, or he must go away; and who does otherwise, shall be at the mercy of the stewards.

Also, if a stranger who brings herring or fish to sell in the market, has a remnant, and wishes to sell it, no one of the town shall buy it, if the market cannot provide for his neighbours, just as the stranger sold it the day before, and if no one buys it before three o'clock; and who does otherwise shall be at the mercy of the stewards.

Also, no regrater who is not of the law shall sell by retail old cheese, oil, suet, nor wax; and whoever does it shall be at the mercy of the stewards.

In many places the unfurnished ‘forinsecti’ were not permitted to buy certain things, wool, hides, grain, untaught leather, unfulled cloth, etc., probably, for the most part, scarce articles of consumption and raw materials necessary for the production of the chief manufactures of the town. At times this enactment is particularly directed against buying for resale; hence provisions for one’s own use, the ‘parva mercimonia,’ were often expressly excepted. The following is extracted from the ordinances of Southampton (presumably of the fourteenth century):

And no one shall buy anything in the town of Southampton to sell again in the same town, unless he be of the Gild Merchant

1 I.e. of the franchise.


1 Vol. ii. p. 218.
3 Vol. ii. pp. 24, 37, 40, 41, 54, 56, 110, 111, 124, 175, 177, 185, 199, 205, 218, 263, 284, 273, 357, 358; Harland, Manucript, 191.
4 Vol. ii. pp. 15, 63, 77, 148, 204, 272, 274; Johnson, Customs, 121; Green, Worc., App. ivii.; Hutchins, Dorset, ii. 46.

Functions of the Gild.

or of the franchise; and if any one does it and is found guilty, all that he has thus bought shall be forfeited to the king. . . . And no one, except a gildsman, shall buy honey, suet, salt herring, nor any kind of oil, nor mill-stones, nor fresh leather, nor any kind of fresh skins; nor keep a wine-tavern, nor sell cloth by retail, except on market and fair day; nor keep more than five quarters of corn in his granary to sell by retail, if he is not a gildsman; and if anyone shall do it and be found guilty, all shall be forfeited to the king.

The two regulations, that non-gildsmen could not buy certain articles, nor sell by retail, sometimes applied only to strangers trading with each other. The same two prohibitions were also generally suspended during fairs and, in some places, on market days. The gildsmen were enlightened enough to perceive that more complete freedom of trade on those days attracted a greater multitude of people to their mart, and thus conduced to their commercial prosperity.

Various other enactments were frequently directed against merchant strangers. They were to bring their wares to the Common Hall or other specified public place, and there expose them for sale, in order that their goods could be more easily examined, and their mercantile transactions more readily supervised. They were not to remain in the borough, for the purpose of selling their commodities, longer than forty days.


4 ‘But wolde God that without longer delayes these galeis were not wasted in forty dayes.
5 And in the forty dayes charged again.’

Libell of Engl. Policye, 33, 41.
During this time they were carefully watched, lest they should sell or buy under colour or cover of a faithless gild-brother’s freedom, the latter being expelled from the fraternity or otherwise severely punished, if found guilty of this offence.  

No one of the Gild nor of the franchise shall avow anything belonging to another as his own, by which the customs of the town may be diminished; and if anyone does it and is found guilty, he shall lose his Gild and his franchise, and the merchandise thus avowed shall be forfeited to the king.  

No one of the town under colour of purchase, nor under any other kind of colour, shall sell the merchandise of a merchant stranger, by which that merchandise may be sold for more than the merchant can sell it by his own hand, the men of the town thus losing their profit; but merchants who bring their goods to sell, shall sell them by their own hand; etc.  

Hence a non-gildsman could not enter into partnership with a member of the brotherhood. At Leicester the former was not even allowed to share profits with the latter in return for capital lent.  

The brethren’s right of pre-emption is occasionally mentioned. Here is an example from the Southampton ordinances:—

And no simple inhabitant nor stranger shall bargain for nor buy any kind of merchandise coming to the town before burgesses of the Gild Merchant, so long as a gildsman is wise severely punished, if found guilty of this offence.  

We shall return to this subject in Chapter viii.

It is probable that already in the thirteenth and fourteenth centuries, as in later times, the officers of the Gild, in some sea-port towns, had the exclusive privilege of making the first offer for the purchase of newly arrived cargoes. The wares thus bought were then disposed of to the brethren at a small profit.  

At Ipswich the alderman of the Gild had the monopoly of dealing in mill-stones and various other kinds of stone, the profits being devoted to the maintenance of the fraternity. At King’s Lynn also the skevins traded in mill-stones for the common good of the society.

The gildsman was generally under obligation to share all purchases with his brethren, that is to say, if he bought a quantity of a given commodity, any other gildsman could claim a portion of it at the same price at which he purchased it. The aim of this law was manifestly to do away with middlemen and keep down prices; it counteracted ‘regrating’ and ‘forestalling’ offences which were regarded as especially heinous when the culprit was not in the Gild.

Ungilded merchants could purchase temporary or partial exemption from the many restrictions that harassed their movements. These impositions (‘gildagium,’ ‘gildwite,’ etc.) often...
assumed the form of arbitrary extortions, just as the machinery of the Gild as a whole easily degenerated into an engine of oppression.

Such were the fetters with which the English Gild Merchant of the middle ages, under the guise of a so-called 'freedom,' completely shackled free commercial intercourse. Whatever may be said in extenuation of its shortcomings owing to the exigencies of the times, it must be condemned as an institution that blindly aimed to reduce free competition.
most partie of all the Cities, Bourouges, and Townes corporate within this realme,' says the Statute of 3 Henry VIII, c. 8, 'be fallen in ruyn and decaye.'

'The grete mysorder of everi cytee
Cawyshe gret derth & povertee.
& Englishe hand craft gothe to nowght.
Halfe this Realme, it is vnwrought!
Alas, for pure pitty!'

FURNIVALL, Ballads from MSS., i. 96, 99.

There can be no doubt that the Gild Merchant was one of the most potent factors that led to this revolution. The tyranny of the gilds, which the public statutes of that period so strongly condemn (see above, p. 36), drove commerce and industry to rural districts and to smaller 'free-trade' towns, such as Birmingham, Manchester, and Leeds, where their natural, spontaneous expansion was not hampered by ancient privileges. Thus the rigid protection of the older chartered boroughs sapped their commercial prosperity, silencing the once busy looms of Norwich and Exeter, and sweeping away the cloth-halls of York and Winchester.

CHAPTER IV.
DUTIES OF GILDSMEN.

The right to trade freely has been characterised in the preceding chapter as the essence of the Gild Merchant. But to complete the latter conception it is necessary to define the duties of the gildsman. In return for the enjoyment of the privileges of membership, the principal obligation imposed upon him was 'to scot and lot,' or 'to be in scot and lot,' with the burgesses.

Some writers divide this expression into two component parts, asserting that 'scot' signified to contribute to assessments—to 'rates and taxes'; while the word 'lot' embraced the active duties of a burgess, especially holding office. This view is certainly untenable for the middle ages, though one example of the factitious distinction between 'paying scot' and 'bearing lot' may be found in a document of the eighteenth century. There is abundant evidence in medie-
val records to show that to be in 'scot and lot' meant merely to participate in assessments or pecuniary charges; in other words, the gildsman was expected to render the authorities of the borough assistance, according to his means, whenever they needed money.

Before demonstrating this we must premise what we shall prove in the next chapter, namely, that there were many non-resident stranger merchants in the Gild, as well as some neighbouring abbeys, knights, and other men of distinction. This fact alone would lead us to presume that 'scot and lot,' to which they as brethren were subject, had the signification that we have assigned to it; for these persons would not be expected actively to participate in the administration of the town.

Again, the sources frequently emphasise the fact, that the right of trading in the town was wholly conditional on the payment of one's quota of the pecuniary burdens (tallages, aids, etc.). The words 'tallagia,' 'auxilia,' etc. in these documents are, we may safely surmise, equivalent to 'scot and lot' in just as 'gelds,' 'tallagia,' 'aids,' etc. came to be employed. A peculiar use of 'lot and scot' will be found in vol. ii. p. 46, where it seems to mean 'to share,' in the sense of the Scotch 'lot and cavil.' See Jamieson, Dict., i. 398; Acta Parl. Scot., i. 435, 437; Ancient Laws of Burghs, 26, 74, 86, 157.

1 I agree with Mr. Fry who says (p. 168): 'I do not find that the phrase 'scot and lot' ever refers to any burdens besides pecuniary ones.' He also rightly calls the notion that 'bearing lot' is something different from 'paying scot,' 'a modern and erroneous interpretation' (p. 179). Riley (White Book, 114) says that the term 'scot and lot' signifies 'all taxes levied rateably for purposes of state; 'scot' meaning the money paid, and 'lot' the proportion in which the assessment was made,' i.e. its allotment. This distinction is plausible, though difficult to prove. (Cf. Madox's use of the word 'lot' for 'quota' or share in Firma Burgi, 280; also our expression 'part and lot' and 'lot' as used in auction sales.) From the passages which I shall cite hereafter, we must infer that the term 'scot and lot' was used vaguely to indicate in a general way pecuniary charges of all kinds or, in modern language, all rates and taxes; for these persons would not be expected actively to participate in the administration of the town.

2 Quia in Curia Regis coram Baronebus de Scaccario suo consideratum fuit, quod quicumque vellet mercandizare in Civitate sua Norwicium cum Civibus ejusdem Civitatis, contribuent cum eisdem in tallagiosis et aliis auxiliis, sicut ipsi Cives ('4-5 Edward I; Madox, Firma Burgi, 272). See also ibid., 270-273; Hist. of Exch. i. 725-728; Drake, Eboracum, 205; Rymer, Foedera, i. 41; Rot. Parl. i. 168; Iackete, Exeter, 12; Poulson, Beverlæc. i. 111; Chartae Hiberniæ, 63; Abbrev. Placitorum, 174; Blomefeld, Norf., iii. 62; Ryley, Placita, 259. See also vol. ii. pp. 274, 378.

3 I agree with Mr. Fry who says (p. 168): 'I do not find that the phrase 'scot and lot' ever refers to any burdens besides pecuniary ones.' He also rightly calls the notion that 'bearing lot' is something different from 'paying scot,' 'a modern and erroneous interpretation' (p. 179). Riley (White Book, 114) says that the term 'scot and lot' signifies 'all taxes levied rateably for purposes of state; 'scot' meaning the money paid, and 'lot' the proportion in which the assessment was made,' i.e. its allotment. This distinction is plausible, though difficult to prove. (Cf. Madox's use of the word 'lot' for 'quota' or share in Firma Burgi, 280; also our expression 'part and lot' and 'lot' as used in auction sales.) From the passages which I shall cite hereafter, we must infer that the term 'scot and lot' was used vaguely to indicate in a general way pecuniary charges of all kinds or, in modern language, all rates and taxes; for these persons would not be expected actively to participate in the administration of the town.

Moreover, the context in many passages plainly reveals the general signification of the term 'scot and lot.' For example, in such combinations as 'lottans et scottans ad communia tallagia ville' and 'lot et scot ad communia auxilia regis,' the reference can only be to payments. At Hastings persons on becoming freemen swore 'to scot and lot if there should be any taxes for the common good'; at Pevensey the freeman's oath contained the words 'I will lot and scot with my goods and chattels to the community, in the quantity that I shall be assessed, according to my power.'

1 Vol. ii. pp. 175, 176. 'Give and yeald with my mayor and my neighbours after my saving' also occurs in the oath of the Chester freemen (Ormerod, Cheshire, i. 219); and 'geve and yele in other freemen doth,' in that of Waterford (Rep. MSS. Com., 1858, App. v., p. 285). In the same connections in the oaths of other towns we often find 'scot and lot.' See below, notes 5, 6. We also meet with 'scotte and lotte, yeve and yeld' in English Gilds, 239.

2 Vol. ii. 108, 146, 191, 192, 211, 378. In a petition to the King from the men of Hull in 16 Edward I, 'lot et escot' occurs; in the corresponding clause of the charter granted in answer to this petition we find 'ad geldam et scotum' (Madox, Firma Burgi, 273, 274, and Hist. of Exch., i. 424). See also Rep. MSS. Com., 1858, App. v., pp. 438, 486.


4 Addit. MSS., Mus. Brit., 5834, fol. 32.

5 Ad scottandum et lottandum si quae taxata pro communi utilitate fuerint' (State Trials, xvii. 860).

6 Et seray lottant et escottant de
As at Leicester so at Ipswich and Totnes we meet with persons in the Gild whose obligations are stated to be limited to money contributions.

Thus the pre-eminent duty of the gildsman was to be in 'geld' ('ad geldam') with the burgesses; or, as an old record well expresses it, 'reddere debet simul cum burgensibus talliagia, et defectus burgi adimplere.' In the thirteenth and fourteenth centuries, even more than at the present day, money was to be found in greatest abundance among those engaged in trade. Upon them the municipal authorities depended when called upon to raise a large sum of money. Such emergencies were by no means rare. The king tallaged his boroughs whenever he pleased. 'Our goods and chattels,' said a jury of the townspeople of Hereford, 'are to be taken and taxed at his pleasure, saving unto ourselves a competent quantity for our sustentation and the tuition of our city.' Then, too, the 'firma burgi' had to be paid into the royal Exchequer. 'The very existence of their corporation,' Madox rightly observes, 'depended upon the payment of their yearly fermes reserved to the crown in their charter.' If the burgesses could not pay the tallages and fermes demanded by the king, their dearly-bought and highly-prized charters were of little avail to safeguard their franchises; the latter being mercilessly confiscated, unless rescued by the purse of the merchant. It was well for the borough, in emergencies like this, that there were gildsmen without as well as within the borough who could be called upon to render assistance.

'In the very existence of their corporation,' Madox rightly observes, 'depended upon the payment of their yearly fermes reserved to the crown in their charter.'


2. Rymer, Foedera, i. 43.


5. Madox, Firma Burgi, 161, 175; Hist. of Exch., ii. 244-247; Davies, Southampton, 37; Drake, Eboracum, p. 457, 473; Davies, Southamp., 32; Hunt, Bristol, 56.
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For the purpose of assessing, or imposing ‘gelds’ upon, those participating in the mercantile franchises, and further suggests the possibility that in some towns this immunity may have been enforced by the ordinary machinery of town administration, without the aid of a formal brotherhood established for that specific purpose. A similar construction may be placed upon the clause of town charters concerning villeins, spoken of above on p. 8, to be ‘in gilda et hansa, lot et scot’ being regarded merely as a tautological expression for ‘in scot and lot’.

1 In a charter of Henry II to Lincoln the corresponding words of a similar clause reads: ‘si aliquis manserit ... et de dentibus consuetudinis’ (Rymers, Focha- dera, 140). In a charter of King John to Hereford we find: ‘in gilda et hansa, lot et scot’, but in another Hereford record ‘scot and lot’ occurs to indicate the same thing (Rot. Chart., 212, Archaque Anon., Journal, vol. 27 pp. 469–70). In Appendix C it will be shown that ‘hanse,’ like both scot and lot, often meant a payment, tax, or assessment. As for ‘gild,’ its use in this sense was very common. In 1 Henry III we hear of men ‘qui Geldables sunt in Burgo Wrepen’ helping the burgesses pay the exchequer’s tax of forty marks. (Madox, Firma Burgi, 271; see also Plac. de quo War., 251). In 1328 the ‘comyn geldys’ gathered by the bailiffs of the town of Preston are spoken of (Abram, Memorials, 8, see also Dobson and Harland, 22). Such expressions as ‘to be and geld,’ ‘to be gildable and contributory,’ ‘to give and geld (or yield),’ ‘geld and pay,’ were often used in boroughs. See above pp. 55, 56, Barnstable, n. 252, Isacell, Exeter, n. 59, Noake, Worc., n. 18, Spelman, Gloss., ‘geldum,’ Abbrev. Placent., 174, Cf. also Rot. Chart., 38, Chartae Hibem., 25, Rymers, Focha-deira, 14, Mere- wether and Stephens, 294, 320, 323, 523, 599, 786, etc., Palmer’s Man- ship, 243, Memorials of Ripon, n. 35, 91, Memorials of Fountains, n. 17, Larking, Domesday of Kent, App. xxxv., Rot. Parli., v. 220, Madox, Firma Burgi, 270–73. The frequent use of ‘geld’ and ‘scot’ in Domesday Book is well known. ‘ Ipsa quoque burgenses habebant de rege xxx acras terrae in gilda suum,’ (i. 2), ‘reddidit aliquid consuetudinis vel scot’ (ibid.), ‘commune geldum’ (i. 301), ‘in gilda civitatis sunt ... terrae, et unaquaeque geldabat (i. 298),’ ‘manessum, quod in burgo quae ... scottabat ad geltum regis’ (i. 290), see also Domesday, i, 5, 11, et passim. —The word ‘geldables’ mentioned in the first part of this note is not to be confounded with ‘the gildable’ in the technical sense of the term, meaning unfranchised parts of the county, that is, the ‘corpus comitatus’ that were directly subject to the jurisdiction of the sheriff, and whose rents and taxes were levied by the latter. See Madox, Firma Burgi, 81–83, 150, 101; Rot. Parli., n. 249, Cowell, Interpreter, ‘gildable’; Statutes of the Realm, 27 Edw. III, st. 2, c. 13, 17 Hen. VII, c. 9, 27 Hen. VIII, c. 26, Coke, Reports, Pt. vii p. 125; Placita de quo War., 1, 180, 217, 223, 407, 408, Eyton, Shrop., iv 150, xi 158.

‘Scotenses’ in the Irish town charters (vol. n. pp. 134, 150) doubtless means ‘persons in scot and lot,’ the right of the burgesses to impose taxes upon those admitted to their mercantile privileges be accentuated by the use of this word.

To drink the Gild Merchant, ‘bevergi gilda markande’—potare gilda mercatoriand—meant, in Winchester, simply to hold a meeting of the fraternity for the purpose of assessing the merchants. ‘Gadere bat ryte of chepmen’—a requiller en gilda markande.’ Fit men of good repute were chosen, and distributed in four different houses. After the business had been transacted, or, as the citizens expressed it, after they had drunk the gild merchant ‘kant len avera beu gilda markande,’ the men chosen to superintend the work in the four houses came together to ascertain how much had been collected. They were to see that each house contributed its share; for if one house was worth more than another, it was to be charged according to its value. The money thus levied was to be handed over to the six collectors of tallage, who were bound to render account twice a year to the civic authorities.

This same peculiar expression ‘to drink the Gild,’ pointing to the prominence of the convivial element at these meetings, was also employed in Germany. It was doubtless found that ‘spyce cake, good bere and ale’ helped to loosen the purse-strings of the brethren.

There were periodical Gild collections in other towns besides Winchester; but we are not informed how they were made. 1 The wording of some borough charters, ‘they may make the Gild among themselves, for their profit, whenever they desire,’ 2 suggests the inference that the privilege conveyed by these grants was simply the right to hold such meetings in a borough. 3

1 Vol. ii pp. 254–266
2 Goette, Gesch der Stadt Stendal, 105 ‘celebreta sunt gildia et perfosseri ibbita’ Cf. Hohlbaum, Urkundenbuch, iii 552.
3 Vol. ii pp. 96, 211, 212, 245, 275, 332. From the language of an entry in the Andover rolls, ‘Summa totalis omnium denarorum perceptorum de potasione predicta’ (n. 332), it is evident that drinking and feasting accompanied the collection at Andover, as at Winchester. This was also probably the case at Guildford (n. 96). The payments called ‘gild groats,’ ‘scot pennes,’ ‘chep gavoll,’ ‘gloze silver,’ ‘hans pennes,’ ‘suge pennes,’ etc., were probably collected from gildmen (vol. ii pp. 1, 13, 14, 109, 236, 238, 335), but some of these may be impositions upon non-gildmen for permission to trade. Cf. also vol. ii pp. 32–34, 203, 208 (‘hansang-silver,’ ‘chepping-gavell’).

1 Vol. ii pp. 132, 150, 175, 189, 238.
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On the other hand, the prominence of the same idea of collecting money in places where we know that the formal fraternal organization existed, coupled with the use of such words as ‘ad geldas,’ ‘in gilda,’ etc., to express this idea, confirms the view of those who hold that gild, a fraternity, is derived from the Anglo-Saxon ‘gild,’ a payment, a contribution to a common fund.

Skeat, Dict., 248. ‘Et est assauoir que “gulidan” est un Saxon parol et signifie soluere, il est, que toute de trel fraternitie serra subjects a paier scot et lot’ (Coke, Reports, Pt. viii. 125).

CHAPTER V.

DISTINCTION BETWEEN GILD AND BOROUGH,
GILDSMEN AND BURGESSES.

The relation of the Gild to the borough community at large is an important question, which we must discuss with some minuteness, because the vagueness and diversity of this relationship in different periods of time render it difficult to ascertain the exact truth, and because the prevailing views on this subject are, in great part, erroneous.

Merewether and Stephens, among others, hold that the Gild Merchant was merely an ordinary mercantile association, devoid of all public administrative functions. But the preceding chapters prove conclusively that already in the twelfth and thirteenth centuries this fraternity was an official civic body, an organic and constituent part of the municipal government. Diametrically opposed to the doctrine of Merewether and Stephens is that of many historians who consider the Gild identical with the borough constitution as a whole; they maintain, in the words of Thompson, that the former ‘was not a mere adjunct of a town community,’ that, ‘in fact, the whole area of municipal government was occupied by the Gild Merchant,’ the head of the borough and that of the Gild being identical, and ‘burgess’ tantamount to ‘gildsman.’

It is the main purpose of this chapter to show that these writers

1 See above, p. 37, note 1.
2 See above, p. 37, note 2; vol. ii. p. 142; Thompson, Leic., 62, 68; Stubbs, Const. Hist., i. 475; iii. 453; Taswell-Langmead, Const. Hist., 20. Thompson also speaks of ‘the presence of the Merchant Guild, as the sole municipal body known to the inhabitants,’ in every borough of ancient origin (Munic. History, p. xi.).
are guilty of the error of confusing the whole with a part. We shall consider the subject from two different points of view: the relation of the Gild administration to that of the town, and the relation of the gildship to burgess-ship.

The Ipswich records of the time of King John clearly demonstrate that the Gild Merchant was a distinct portion of the general administration of the borough, having certain circumscribed functions of its own. The twelve portmen (i.e. the two bailiffs, four coroners, and six others) were elected and sworn 'to take charge of, and to govern' the town, to maintain its franchises, and to administer justice. But these officials are manifestly distinct from those of the Gild, the alderman and his four colleagues. The laws of the borough and the statutes of the Gild are distinguished with equal clearness; they were to be entered in separate rolls for the guidance of the bailiffs and alderman respectively. To add to the importance of this document, it is expressly recorded that the Gild Merchant was organized at Ipswich in the same way as in other cities and boroughs where such a society existed.

There is an abundance of evidence to confirm this assertion. As at Ipswich so at Southampton, the bailiffs of the town and the alderman of the Gild had separate rolls: and the functions of the former are often distinguished from those of the latter. At Chester there were evidently distinct purses for town and Gild; for certain burghal tolls were retained by the former, while others were set apart to sustain the latter. At Derby also there were apparently two separate treasuries; and the records of Southampton refer to both 'le tresor de la ville' and 'le tresor de la commune' in 1293 the alderman and brethren of the Gild Merchant of Lynn lent money to 'the mayor and commune' of the borough; and in 1309 the statutes of the Gilds 'and also those of the community' of Lynn are mentioned, the context indicating that the Gild Merchant was included in the former. A charter of Henry II orders the provost of Wallingford not to interfere with the duties of the alderman of the Gild merchant. In a Bridgewater deed the bailiff of the commonality is distinguished from the bailiffs of the Gild. As at Ipswich, Southampton, Lynn, Wallingford, and Bridgewater, so at Barnstaple, Bristol, Bury St. Edmund's, Chester, Leicester, Lincoln, Oxford, Totnes, Wycombe, and York, there were distinct officials for town and Gild—the bailiffs, provost, reeve, or mayor, on the one hand, and the alderman, stewards, etc., on the other. All the evidence at our disposal points to the conclusion that the Gild Merchant of the twelfth and thirteenth centuries was not a body in which the general local government was centred—that it was a very important, but only a subsidiary part of the municipal administrative machinery, subordinated to the chief borough magistrates, though far more autonomous than any department of the town government of to-day.

1 See above, pp. 23-26, and vol. ii. pp. 116-123.
2 Vol. ii. pp. 216-225, §§ 8, 27, 29, 32, 34, 44, 45, 54; see also ii. 231, 232. According to § 53 the alderman is head of 'the town and of the Guild,' and is to maintain the 'freedom and statutes of the Gild and of the town.' This clearly marks a later stage of development; traces of the old dual administration are visible throughout these Southampton ordinances.
3 Vol. ii. pp. 43-44.
5 Vol. ii. pp. 216, 222.

For the mayor of Leicester is mentioned in a charter of 1219 (Thompson, Leic., 69); also in 1248 (Rep. MSS. Com., 1881, pp. 405, 421). In this same period, anterior to 1250, we often meet with an alderman of the Gild of Leicester (Thompson, Leic., 66, 68; Rep. MSS. Com., 1881, p. 405).
6 Vol. ii. p. 147; Abbrev. Placitorum, 65; Rot. Lit. Claus., i. 123.
7 Vol. ii. p. 192; Rymer, Foedera, i. 323; Rot. Lit. Claus., i. 195, 196.
10 Vol. ii. p. 279; Drake, Eboracum, 183; Rot. Lit. Claus., i. 151.
11 The alderman of the Gild is not to be confounded with the aldermen of the wards of a borough. See below, p. 78.
The general limits within which the fraternity exercised its authority have already been defined. It concerned itself mainly with the regulation of trade; its enactments for that purpose formed the chief element of the Gild statutes. But in the thirteenth century trade was not yet the dominant power in town life that it afterwards came to be. The general laws of the burghal community emanated from the burghmote or assemblies (Court Leet, Burghmote, Portmote, etc.) 1; and in these metes the chief officials of the town, the bailiffs, provost, or mayor, were elected 2. The municipal police and judiciary—which also centered in the burghmotes—were controlled by these functionaries and their associates, who constituted the governing body of the town 3. Even in

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1 Jacob, Faversham, 71; Welld, Minutes, No. 19; Brent, Canterbury, 75; Woodward, Hampshire, i. 278; Holloway, Rye, 184; Waylen, Marlborough, 94; Drake, Eboracum, 198; Rep. MSS. Com., 1883, p. 170; 1885, App. v., p. 292, etc.; Norton, Comment., 74; Pickton, Selections, 75; Archeol. Journal, ix. 82. The Black Book of Winchester (ff. 5-9, etc.) has many entries; 

2 Rep. MSS.Com., No. 19; Ruth, Munic. Hist., i. 154, 156, 157; Statutes of the Realm, 19 Hen. VII, c. 7. For this usage in other gilds of England, see Harwood, Licht, 321; Wilts. Arch. and Nat. Hist. Magazine, i. 166; English Gilds, 21, 45, 46, 47, 48, 49, 50; Antiq. Magaz., vi. 72; Rep. MSS. Com., 1883, p. 295; Tate, A. M. viii, 115; for the same custom on the continent, see Wilda, Gildenwesen, 137.

3 Vol. ii. pp. 278, 308; see also ii. 66, 154, 164, 315; Statutes of the Realm, 15 Hen. VII, c. 7. The judicial authority of the Gild Merchant was at first doubtless very limited, its officers forming a tribunal of arbitration, at which the brethren were expected to appear before carrying their quarrels into the ordinary courts 2. The functions of these officers were inquisitorial rather than judicial. But, in some places, their powers appear to have been gradually enlarged during the thirteenth century so as to embrace jurisdiction in pleas relating to trade 3.

4 If Gild administration and borough administration, Gild laws and borough laws, Gild officers and borough officers respectively, were distinct conceptions, we should naturally surmise the same of Gild community and borough community, gildsmen and burgesses, gildship and burgess-ship. But the
non-identity of the latter can be proved by independent evidence.

In the first place, certain general considerations afford a strong presumption in favour of this view. If members of the Gild Merchant and burgesses were synonymous terms, we should expect to find merchants (‘mercatores’) frequently used for ‘burgenses,’ but this is very rarely, if ever, the case. Women, monks, and heads of religious houses belonged to the Gild, but they were excluded from burgess-ship, for they could fulfil the obligations of the one, but not of the other.

If we subject our materials to a closer scrutiny, we may, with confidence, enunciate three propositions. First, there can be no doubt that the gildship was enjoyed by many persons living at a distance, in the neighbourhood of the town, or in privileged soke within the latter, who were not burgesses; they were privileged ‘foraneri,’ ‘forinsecti,’ ‘extranei,’ ‘extrinseci,’ ‘straungeres,’ etc., as distinguished from the ‘burgenses intrinseci,’ ‘denizens,’ etc. At Totnes, as we have already remarked, the Gild was defined as an institution by which merchant strangers (‘extranei’) were made free of toll. The lists of gildsmen in this and other places include many persons apparently living in neighbouring, or even distant, towns.

the Gild rolls of Shrewsbury, the names of the ‘forinsecti’ are entered in a group separate from those of the burgesses; in like manner, at Barnstaple, the ‘forinsecti’ are distinguished from the ‘intrinseci.’ At Lynn, strangers (‘extranei’) were made free of tolls through the agency of the Gild. At Derby there were ‘forinsecti’ in the fraternity. At Wallingford there were ‘conventionarii forinsecti,’ so called, doubtless, because they paid a yearly composition for the right to trade freely as gildsmen. Heads of religious houses in Ipswich and many knights living in the neighbourhood are mentioned among the ‘forinsecti’ of that town; they entered the Gild in order that they and their servants might be exempt from paying toll in the borough.

Henry II granted the citizens of Lincoln ‘their Gild Merchant consisting of men of the city and other merchants of the county.’ The Southampton ordinances speak of persons ‘not resident in the town admitted into the Gild by the favour of the approved men of the town.’ In 1236 the abbot and monks of Buckfastleigh were admitted into the Gild of Totnes, so that they might make their purchases freely, paying yearly to the fraternity 22d. for all tallages.

Many similar conventions between burgesses and religious bodies were entered into, but frequently without expressly mentioning the Gild.

1 See above, p 30, n 1, and vol. ii, p 235. For monks engaged in trade, see Rot Parl., i 27, 156; Monast. Angl., iv 52; Hohlbach, Urkundenbuch., ii 497, 498, 586, gives a long list of the abbeys of Great Britain in the thirteenth century and the annual value of the wool which each produced.

2 See also vol. ii, pp 127, 190, 196, 274.

3 See vol. ii, pp 127, 190, 196, 274.

4 See vol. ii, pp 127, 190, 196, 274.

5 See vol. ii, pp 127, 190, 196, 274.

6 See vol. ii, pp 127, 190, 196, 274.

7 See vol. ii, pp 127, 190, 196, 274.

8 See vol. ii, pp 127, 190, 196, 274.

9 See vol. ii, pp 127, 190, 196, 274.

10 See vol. ii, pp 127, 190, 196, 274.
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Other passages clearly show that such 'foreigners' of the Gild did not belong to the burghal community, that they were not burgesses in the strict sense of the term. In 1281 an agreement was made between the burgesses of Leicester and the tenants of the bishop of Lincoln living outside the east gate of Leicester. The latter were allowed to enter the Gild, but it is certain that they did not thereby become burgesses; for the burghal community and the Gild community are unequivocally contrasted. 'Nor is it to be understood that the tenants of the bishop shall pay scot in this manner for amerciaments or fines that touch the community of the town and not the community of the Gild.' The tenants of the bishop of Winchester were free to buy and sell in that city and not the community of the Gild.1 A jury of the citizens of Hereford asserted that the tenants of the bishop shall pay scot in this manner for the violence of turbulent barons.2

These 'foranei' or 'forinseci' of English boroughs are not to be confounded with the out-burghers ('Ausbiirger') of German towns. The former were, in great part, merchants, who aimed to secure freedom of trade or participation in commercial immunities; the 'Ausbiirger' were, in great part, wholly disconnected with trade, and sought protection against the violence of turbulent barons.3

Secondly, a person could be a burgess without belonging to the Gild. At Ipswich, in the time of King John, a burgess, if a merchant, was to be free of toll only on certain conditions. These, as the context shows, were that he should enter the Gild, performing the duties of a gildsman.4 'If anyone trespass,' says one of the Southampton statutes, 'who is not of the Gild and is of the franchise, or do any violence unto a gildein, and is duly convicted thereof, he shall lose his franchise, and go to prison for a year and a day.' At Bedford, 'as well burgesses as others' were admitted into the fraternity.5 The Preston Gild ordinances of 1328 speak of 'all manner of burges the which is made burges be court roll and oute of the Gyld Marchand.' In 1198 certain persons dwelling in the suburbs of Bury St. Edmund's were allowed to have their names placed on the roll of the town prefect, and to enjoy equal rights with the burgesses; nevertheless, they were not to be free of toll in the market, unless they entered the Gild Merchant.6 In 1307 certain burgesses of Newcastle-upon-Tyne brought an action in the royal Exchequer against the members of the Gild Merchant, to which the former evidently did not belong. In 1330 there was a complaint that the profits of the Gild of Derby did not redound to the advantage of the 'community of the borough,' but 'only to the advantage of those who belong to the said society.' At Lynn, in 1357, a fine was to be imposed for a certain offence. If the culprit was a gild-brother, it was to be paid to the alderman of the Gild, if 'a burgess, and not a brother of the Gild,' to the mayor of the town.7 At Shrewsbury it seems that the burgesses were accustomed to enter the fraternity for a time, to withdraw from it, and then re-enter.8 Burgesses not in the mercantile brotherhood were also to be found in Bristol, Reading, and probably in other towns.

1 Vol. ii. p. 140, 141; cf. also ii. 142, 192.
3 Duncumb, Hereford, i. 343, 344; Archæol. Assoc., Journal, xxvii. 480; cf. vol. ii. pp. 109, 110.
4 In the cases of Gainsborough, Reading, and Andover (vol. ii. pp. 97, 203, 333) it is not clear whether the 'forinseci' referred to were non-resident, or strangers who came to reside in the town.
5 Von Maurer, Stadtverf., ii. 241–251; Heusler, Basel, 252; Warnkonig, Fland., i. 354.
6 Vol. ii. p. 120.
7 Vol. ii. p. 217, § 13; see also §§ 65, 69, 75.
8 Vol. ii. p. 17.
11 See also the complaint made in 1343, vol. ii. p. 185.
Thirdly, a person could be an inhabitant of a town without being either a burgess or a gildsmen. Thus, in the Southampton statutes, those of the Gild, of the franchise, and of the town are distinguished. At Bedford, as well burgesses as other persons, residing in the town, were received into the brotherhood. At Lincoln, during the reign of John, the fuller seem to have stood without the pale of both the Gild Merchant and the burghal community. In the same category would fall many tenants of privileged town, and all Jews residing in the latter. The brethren are sometimes contrasted with persons included in the terms burghers ('burgenses') and gildsmen ('hominis de gilda' or 'burgenses de gilda'). But if we examine these charters with care, we shall find that they afford another striking confirmation of our view. For 'hominis de gilda' is employed only when the grant refers to immunities which were of special interest to merchants, whose vocation necessitated frequent visits to various towns, but which, on the other hand, would be of less concern to the burgesses at large, especially to those not in the Gild. These immunities were exemption from trial in courts outside the borough and, above all, freedom from toll throughout the realm. It is certainly no adventitious circumstance that the expression 'hominis de gilda' (or 'burgenses de gilda') is employed almost without exception only in connection with such commercially important privileges, while the wording of the document suddenly changes to the simple 'burgenses' as soon as franchises are mentioned that were of great value to all the burgesses.

We must, then, hold fast to a distinction between guildship and burgess-ship. The pre-eminent qualification of the former was ability to pay scot and lot; that of the latter, ability to perform active burghal duties, such as to watch and ward, hold office, serve on juries, etc. The burgess was also liable to taxation, but probably to a less extent than the gildsman. The burgess was required to be the owner of a burgage tenement within the town; but the gildsman were included with the land under and around it, the usual rental being 'ad', probably the term at first referred primarily to the land, afterwards to the house. We meet with 'burgagium' in both these senses in modern language, not the householder or mere inhabitant, as some assert (Merewether and Stephens, 11:202). The 'burgagium' included a tenement with the land under and around it, usually rental being 'ad', probably the term at first referred primarily to the land, afterwards to the house. We meet with 'burgagium' in both these senses in modern language, not the householder or mere inhabitant, as some assert (Merewether and Stephens, 11:202). In the thirteenth or fourteenth century the personal element (apprenticeship, redemption, inheritance) became the basis qualification of burgess-ship in many towns, especially the larger trading centres. A great diversity as regards qualification prevailed in different boroughs from the fourteenth to the nineteenth century. See above p. 6, note 3; Stubbs, Const Hist, 1:467; 1:483; Maclean, Bodmin, 1:107; Seyre, Memors, 1:505, 509; Duncumb, Heref, 1:325; Pitton, Memorials, 1:505; Tate, Alnwick, 1:231, 232; Merewether and Stephens, 537, 699;
generally 'non feoffatil.' The former was compelled to be a resident in the town; but the gild-brother, as we have seen, was not generally subjected to this restriction. The new burgess was admitted in the regular burghal motes or courts; the gildmen, in the 'morgenspeche.'

Although it is very necessary thus carefully to distinguish between the various constituent ingredients of the medieval town, we must be equally careful not to exaggerate the difference between borough and Gild, whether as regards administration or membership. 'Any complete generalisation upon the constitutional history of the towns,' the Bishop of

Black Bk. of Adm., ii. 152; Record of Caern., 223; Thompson, Munici. Hist., 14; The Antiquary, ix. 161; Madox, Firma Burgi, 21, 39, 273-277; Falgrave, Commonw., i. 629, and Corporative Reform, 41; Boys, Sandwy., 522; Ingram, Altrincham, 71; Eyton, Shrop., x. 153; Watkins, Bideford, 12-14; Rep. Record Com., 1857, p. 424; Archaeo. Assoc. Journal, v. 422-427; Records of Chester, 53; Jefferson, Cumberland, ii. 24; Stark, Galash, 73; Boldon Buke, App. xl.; Gale, Inquiry, App. N. 45; Ormerod, Chesh., i. 498, i. 790; Paroch. Hist. of Conwy., iii. 175; Fraser, Elections, i. 82; Munici. Corp. Com., 1835, p. 2585; Harland, Mamec., 200-206, 219, 504-508; Bacon, Annals, 80.

1. Vol. ii. pp. 13, 236; Roberts, Lyne Regis, 23. The two distinctions made above concerning a dual system of taxation and the possession of a 'burgageiom,' come out quite clearly in the following clause of a Leicester record, to which I have several times referred; 'Nor is it to be understood that the tenants of the bishop shall be in this manner for amerciements or fines that touch the community of the town and not the community of the Gild, excepting those who have lands and tenements in the town of Leicester, who are burgesses though tenants of the bishop.' (Vol. ii. pp. 149, 141.)

2. See also Stubbs, Const. Hist., i. 474: 'The merchant guild contained all the traders, whether or not they possessed an estate of land.'

3. Rot. Chart., 93: 'Ia quod nullus burgessium praedictorum, nisi residen fuerit in praedicta villa de Helleston, has habebat libertates.' See also Gneist, Self-gov., 582; Merew. and Stephens, pp. v. 2580; Cox, Parl. Elections, 177; Baines, Lanc. and Chesh., i. 675; Lyon, Dover, ii. 307, 353; Simpson, Lanc., 279; Gale, Inquiry, x. ii. 7; Madox, Firma Burgi, 269.

4. Welfitt, Minutes, No. 37; Brief Desc. of Preston, 21; Harland, Court Leet Records, 51; Lyon, Dover, i. 221, ii. 353, Simpson, Lanc., 279; Tate, Alsowick, i. 233; Wodderspoon, Ipwy., 270; Holloway, Rye, 184; Rep. MSS. Com., 1883, p. 168; Johnson, Customs of Heref., 19; Merewether and Stephens, 581, 592, 903, 1714, 2108; Griffith, Records of Hunt., 45-49, 118; Chanter, Barnstable Records, No. 27; Harrod, Coleb. Court Rolls, 7; Monant, Coleb., i. 97, 98; Bacon, Annals, 14, 47. In 32 Henry VI it was enacted at Chester that no one should be admitted to the freedom of the city except in the Portmote only (Addit. MS., Mus. Brit., 16179, fol. 47). See also vol. ii. p. 125, n. 2.

1. Stubbs, Const. Hist., ii. 236, iii. 454. Merewether and Stephens (pp. v. xxvi., 349, 414, etc.) persist in denying this manifest truth.

2. See Appendix E.

3. For a few cases of collision between the two bodies, see vol. ii. pp. 51-53, 184, and perhaps, ii. 189 ('quod nulla gilda, etc.').

4. The smallness of the population was also conducive to such amalgamation. The great concentration of people in towns is a modern phenomenon, due to the growth of manufactures. The population of the country compared to that of towns, in the thirteenth and fourteenth centuries, was in about the inverse proportion to what it now is. Few English boroughs of that period contained more than 10,000 inhabitants; in many there were less than 1000; probably the average of the larger towns fell below 500. The number of burgesses would, of course, be much smaller; 500 to 1000 would, perhaps, be a fair average for the more prosperous towns; in some boroughs the number is stated, in the sources, to be less than 100. The whole topic, however, needs thorough investigation. See two papers on the subject by Amoyt and Hinde in Archaeologia, vol. xx. pp. 524-31; and Archaeologia Aeliana, 1859, iii. 53-64. See also Ifke, Crime, i. 179-183; Rogers, Six Centuries, i. 117-121; Hallam, Middle Ages, iii. 25, 233; Thompson, Munici. Hist., 195 and Leic., 87-88; Baines, Lanc. and Cheshire, i. 665; Ellis, Weymouth, 148; Hallshall, Chesh., 265; Monant, Coleb., i. 47; Abram, Memorials, 14; Picton, Memorials, i. 20; Tomlinson, Doncaster, 34; Harland, Mamec., 509-508; Blomefield, Nof., iil. 25; Baines, Yorksh., ii. 253; Poulson, Beverlae, i. 212-115; Owen and Blakeway, Shrews., i. 154; Merewether and Stephens, 672-674; Rep. MSS. Com., 1877, p. 345; Madox, Firma Burgi, 59; Charters of Carmarthan, 52; Redfern, Uttoxeter, 95; Beamont, Frodsham, 42; Devon Assoc., xvi. 725; Royal Inst. of Cornwall, Oct. 1865, p. 83; Powysland Club, viii.
ing at present; there were in the former fewer class distinctions, more equality of wealth, and more harmony of interests than there are in the latter. The professional element was almost wholly wanting. Every man was, to a certain extent, a soldier; the chaplains were lawyers; the monks were the teachers, physicians, and litterateurs. Almost all townsmen were in some way connected with trade. The few burgher proprietors of large estates who were not merchants found it advisable to join the Gild, in order that they might advantageously dispose of the produce of their lands and the manufactures of their villeins. The same would be true, though in a much less degree, of the humbler agricultural burgher. Most craftsmen, too, as we shall hereafter see, were concerned with the purchase and sale of wares.

The mercantile interests underwent a great expansion during the period of the thirteenth century. The mercantile element attained greater preponderance, the natural tendency would be to regard the Gild offices as superfluous, and to consolidate the headship of the Gild and that of the borough—a development which would be hastened by the circumstance that office-holding during the middle ages was generally regarded as a burden. These changes doubtless took place, in great part, gradually and silently, by a process of absorption, rather than of usurpation. Being an official organ of the municipality, the Gild naturally identified itself, from the outset, with the general welfare of the latter; and this solidarity of interests combined with the other factors which I have just enumerated, prevented much friction or collision between the two bodies. This identity of Gild and borough was especially easy of attainment in towns where the vital centre of burghal energy, the court leet, was dependent upon a mesne lord. The decline of the leet, in the fifteenth century, may also have aided in extending the name and functions of the Gild over the whole area of municipal government in some of the larger towns.

1 We find a striking example of this at Ipswich (vol ii pp 116-121). See also vol ii pp 158, 166, 198, 260.
2 Costes, Reading, 66-67; Tighe and Davis, Windsor, ii 400; Yates, Congleton, 123-124; Roberts, Lyme Regis, 367; Rot Parl, ii 459; Davis, Southamp ton, 168, Rep MSS Com, 1877, p 581; Black Book of Wynch, ff 22, 25, etc.; Bacon, Annals, 255, 269; Sinclair, Wigan, ii 236; Lyon, Dover, ii 268, 289, 344.
3 This gradual absorption—whch, regarded from one point of view, was an expansion of the functions of the Gild, until borough and Gild became co-extensive—can be traced in the records of Andover and Southampton (vol ii pp 3-8, 214-231, 289-348).
4 See below, pp 50, 91.
5 For the decline of the leet, see Merewether and Stephens, 947-956, 1011, Guest, Verfass, 306, and Selfgov, 585; Poole, Sydenham, 171, 172, Palgrave, Corp Reform, 28.
The Gild Merchant.

We shall soon return to the subject of the identity of Gild and borough. I wish here merely to point out the general drift toward such identity in the fourteenth century, which has blinded many writers to the true state of things in earlier times. Owing to this confusion, it is all the more necessary to accentuate the fact that Gild and borough were originally distinct entities. The importance of this distinction will be made more apparent in the next chapter.

CHAPTER VI.
INFLUENCE OF THE GILD UPON THE MUNICIPAL CONSTITUTION.

The study of the English Gild Merchant helps to elucidate the municipal history of the continent, as well as that of Great Britain. In the latter we find the maximum development of this institution, whereby we may, to a certain extent, gauge its influence in the other countries of Europe. For if it can be shown that this fraternity was not the basis of the municipal constitution in England, the same is likely to be true—\textit{a fortiori}—of the continent, where the Gild Merchant was a less prominent feature of the burghal polity\footnote{See Appendix F.}.

In treating this portion of our subject we must sharply distinguish between the influence of the Gild upon the origin of boroughs, and the part it played in the later growth of the borough constitution. To be more specific, we must consider its influence from three different, yet closely related, points of view, representing three stages of development—its relation to the origin of municipal government, to the conception 'free borough' ('\textit{liber burgus}') and to early municipal incorporation.

§ 1.

ORIGIN OF BOROUGH GOVERNMENT.

Some eminent historians have advocated the theory that, both in England and on the continent, the medieval town constitution was simply an enlargement of the Gild, the latter
being the original nucleus, and all else merely later ac-cre-tions\(^1\). But as regards England they have advanced very little evidence in favour of this view, and that little is of a dubious nature.

Their chief argument is based upon the London Cnihten Gild. They have identified the latter with a hypothetical Gild Merchant of the metropolis, and from these premises have drawn conclusions concerning the importance of the English Gild Merchant in general. Madox gave them their clue. He ventured the opinion that the name alderman as being the original nucleus, and all else merely later accretions. But as regards England they have advanced very little evidence in favour of this view, and that little is of a dubious nature.

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The identity of the prior of Holy Trinity and the alderman of Portsokenward, which suggested Madox's conjecture, can be easily explained. We know that the London aldermen of the twelfth century had a proprietary right to their wards, the title of alderman being merely an appurtenance of the devised estate. The Cnihten Gild was owner of Portsokenward, and as such possessor of an aldermanry. When its lands were transferred to the Holy Trinity, the office went with them, and hence the prior of Holy Trinity became alderman of Portsokenward.

Even if Madox's views were tenable, they ought not to be made the basis of pregnant inferences regarding other boroughs. It is a mistake to consider London the type by which to judge of the general development of English municipal history. In many respects, the metropolis is, and for centuries has been, an anomaly among the towns of England.

The other argument advanced by the adherents of the theory that the borough constitution was originally evolved from the Gild Merchant, is the circumstance that the present English town-hall is often called the gild-hall, which, they contend, proves the early identity of town and Gild. They therefore hold the view, that the boroughs. It is a mistake to consider London the type by which to judge of the general development of English municipal history.

The earliest mention of the London gild hall that the author of the history of the latter could find is of circa 1212 (Price, Guildhall, 44): It is called the public hall by Giraldus Cambrensis under the year 1191. "Convocata vero civitatem multi- tudenin in asyla publica, quae a potorum conventu nomen accept." (Gir Camb. Works iv, 494). There was no gild hall in Southampton before the fourteenth century (Davies, South, 71).

Thus at Colchester, Dartney, Ipswich, Kendal, Leicester, Macclesfield, Saltord, Devon, Doncaster, Kirkham, Pontefract, Wakefield, Leeds, and Lyme Regis, 'moot hall' was exclusively used, or preceded the term gild hall. See Taylor, Wakef, Ixii., civ, Thoresby, Duk Lowd, 18; Cromwell, Colchester, 193, 268, Harrod, Colch records, 212, 223, Gait, Colch., 141, 145, Munro-Corp Com 1835, p 1844, Rep MSS Com, 1883, pp 243, 244, 1855, App iv 209, 298, Notes and Queries 1852, v 253, Etwarke, East Chesh, n 475, Braybrooke, audley End 295, Tominson, Donc., 235, 236, Fushick, Kirkham, 24, 25, Fox, Pontefr., 357 ('Ania Placutatorum'). Roberts, Lyme Regis, 350 An Ipswich document of 12 Hen VIII refers to the 'town House otherwise called the Moote Hall or Guild Halle' (Rep MSS Com, 1883, pp 243, 258). In 1404 the old moot hall, or speech hall of Canterbury was first called the guild hall. (Hasted, Canterbury, 1109, 9615, Welfit, Minutes, No 34). See also the following note and below.

The only other examples prior to the thirteenth century that I recall to mind are those of Exeter, presumably temp. Hen II (Freeman, Exeter, 66) and Gloucester, Rich I. 'Burgenses de Gloucestina reddunt comptum de R., ut possint emere et vendere in Glouc'halla sua ad emendationem Burgi' (Madox, Exch. i, 462).

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In fact, the sources rarely mention such municipal burgi, 14, 27, Rymer, Foedera, 1235, Liber de Ant Log, 6, Murray, Dict, i, 214 ('eldene man on his bukh'), Archaeol Journal, ix, 74, vii; Madox, Firma Burgi, 14, 15, 152, Chronicles de London, p, x, Lohme, London, i, 128. For similar aldermanries in Canterbury and Lincoln, see Somner, Cant., i, 53, Brent, Cant., 104, Rep MSS Com, 1883 App i, 138, 167, Palgrave Commonw, 1, 630, Addit MS, Mus Brit., 4530, fol 37, Madox, Firma Burgi, 14, Larking, Domesday of Kent, App xxiv.

For more concerning this gild, see Appendix B.

Domesday, 11, 1 A 'Ghahala' is also mentioned in the Winchester survey of 1148 (ibid., iv, 545).
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In the relatively few towns where ‘gild-hall’ was unmistakably the designation of the town-hall, this was probably due in some cases to the later fusion of Gild and borough spoken of in Chapter v.; while in many others this use of the name originated as follows. An influential gild allowed the town authorities to use its hall for general municipal purposes, taking its place; while in others the gild-hall existed side by side with the moot-hall. The latter phenomenon affords a strong confirmation of the view that the Gild and borough were originally two distinct bodies.

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The burden of proof lies with those who uphold this erroneous theory. But the reasons for rejecting the latter are not based solely upon the speciousness of the proofs presented by its adherents. The whole structure of the municipal constitution, from the moment when it first becomes dimly visible to us, militates against the acceptance of their theory. The latter implies either a complete identity of town and Gild after the inception of borough institutions in Anglo-Saxon times, or the complete predominance of the Gild over the town, the municipal government being exclusively in the hands of an aristocratic fraternity (a 'collegium nobiliorum civium' or a 'sumnum convivium'). The preceding chapters show that neither of these alternatives is admissible. If the whole fabric of the borough polity rested upon the Gild Merchant as a foundation, how came it to pass that the latter's

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activity became narrowed down to one subordinate department of town government? Such a sudden contraction of power is prima facie improbable; it could have been wrought only by a veritable revolution, but of this there is not the slightest trace. The subsidiary position of the Gild in the burghal administration and burghal community during the twelfth and thirteenth centuries, and the absence of all unmistakable traces of its earlier influence upon the other municipal institutions of that period, speak strongly in favour of the view that the Gild was a superinduced element, a separate growth from without, a powerful organism grafted upon the parent stem of the town constitution, but not the fertile germ to which the latter owed its existence.

What this original germ was we can surmise only by reasoning backwards from later survivals. These point, as one would naturally infer from a perusal of the last chapter, to a separate judiciary—a jurisdiction distinct from the shire or other large districts—as the foundation and earliest prominent characteristic of boroughs. The latter originated in Anglo-Saxon times, before the Gild Merchant came into being.

1 This view has the concurrence of many eminent authorities. See Stubbs, Const Hist, i 107, 464, 467; Gneist, Verf, 125, 311, Verw, i 133; Verf und Verw, ii 496; Seligsohn, 580, 585; Gesch des Selbst-gov, 194; Kemble, Saxons, ii 338; Merew and Stephens, pp xi, 300, 381, 390, et pass, Cox, Elections, 133-138; Harland, Mamce, 379, 460; Hunt, Bristol, 57; Maurer, Mark-Courts, 29-33; Smurke, Consu tutuany, 82; Vinc, Munie Inst, 5, 6, Banes, Land and Chiefs, 1, 69; Sydenham, Poole, 160-172. This view, of course, rejected by those who hold that boroughs have their root in ancient municipal institutions handed down from Roman times without any break in their continuity. The chief exponents of this theory are Coote, Romans in Brit ain, 376-383; Wright, Celt, Roman, and Saxon, 505-524, and Munie, Privileges, in Archæologia, vol 32; and Pearson, Early and Middle Ages, 1 45 55. But their arguments, as a whole, are not convincing, consisting, in great part, of broad analogies that are applicable to all civilized nations in all ages. The most plausible explanation of the genesis of boroughs is that they originated in the need of a separate jurisdiction and administration for the new defensive centres which were gradually established or reconstructed after the destruction of the old Roman towns, and to which the people flocked for protection in the troublous Anglo-Saxon times. Cf. Robertson, Scotl. under Early Kings, 1 296. This jurisdiction—and hence the borough—was the spontaneous outgrowth of a whole age, and neither a mere survival of an earlier period nor the emanation of any single influence like that of the Gild.

2 Thorpe, Anc Laws, Edgar ii 5. And Index under 'Gemot.'
The meeting-place of the burghal moot is more ancient than the municipal gild-hall.

§ 2.

THE FREE BOROUGH.

We now pass from the misty period of conjecture preceding the twelfth century to one of known fact, from the first beginnings of municipal history to the more fully developed 'free borough' of the twelfth and thirteenth centuries. We are to determine to what extent the Gild Merchant formed a part of the conception 'liber burgus.'

According to Brady and Thompson the former was the essential characteristic of the latter; the one without the other being inconceivable. Brady makes this fraternity identical with the burghal community ('communitas'), which, he contends, consisted of a limited number of privileged merchants who governed the town. 'This Trading Gild, Fellowship, Communitas, or Fraternity, was in those times, with the privileges belonging to it, the very constitution of a Burgh, and was always a select Number.' Thus, according to Brady, the Gild was the all-pervading, life-giving principle of the borough. Without stopping to emphasise the fact that Brady's whole knowledge of this fraternity, or, at least, all that he communicates to the reader, is expressed in the vague phrase 'it was a trading society,' we may venture the opinion that a writer who could thus confound the early community, namely, the burgesses at large, with a select body, was not qualified to discuss any branch of English municipal history intelligently; the distinguished 'Doctor in Physick' either had a very superficial acquaintance with the sources, or wittingly perverted the truth.

Thompson is not guilty of such palpable errors, but, if possible, he exalts the influence of this fraternity even more than Brady. 'To think of a civic community without its Guild,' he says, 'would in truth be to think of the human body without the vital principle sustaining its activity and progress.' Thus this institution was the breath of life that animated the whole municipal organism. He then divides boroughs into two groups; 'quasi-boroughs,' such, for example, as St. Alban's, which had only a Court Leet, and the right to choose their own town officers; and 'real boroughs,' as, for example, Leicester, which were endowed with a Gild Merchant. The latter, he maintains, was co-extensive with the whole town administration, or, at least, all of it that was of real importance, the head of the Gild coinciding with the head of the borough. Thompson reaches these conclusions by generalising from very inadequate data, derived mainly from the history of Leicester, and from a later period, when much that he asserts was really true. Even in the case of Leicester his views involve him in palpable self-contradictions. 'Independence of jurisdiction and self-government,' he affirms, 'virtually constituted a Borough.' But in another place he states that the Gild had nothing to do with this independent jurisdiction, i.e., with 'the enforcement of civil and criminal law.'

Hüllmann, Wilda, Brentano, and others virtually agree with

1 Treatise, 84; cf. also, pp. 3, 20, 47, 49, 50, 77. 2 See vol. ii. pp. 31, 120-122, 127, 124, 125, 259; Madox, Firma Burgi, 35-38, 94-95, 115-131, and Hist. of Exch., i. 886-888, 740; Abbrev. Placit., 187, 354; Liber de Antiq. Legibus, 19, 55, 129, 149; Cal. Rot. Chart., 222; Rot. Parl., i. 47, 51; Boys, Sandw., 429. 'Obstitit communitas asserens burgenses omnes unius conditionis esse.' (A.D. 1312, Seyer, Memoirs of Bristol, ii. 94.)

1 Munic. Hist., i. 119. He also refers to the Gild Merchant as the chief institution of the place, inseparable from its existence (p. 100). See also ibid., 109; Gentleman's Magaz., 1851, vol. 35, pp. 596, 597.

2 Munic. Hist., pp. ix-xii, 13, 49; Hist. of Leic., 60, 68.

3 Munic. Hist., 15. Again, on p. 155, he tells us that a borough was a community that managed its own affairs in its Leet.

4 Ibid., pp. ix, 13, 26, 100. Again, in Gent. Magaz., vol. 35, p. 263, he contrasts the functions of the Gild and the portmannote, the latter being 'the scene of the administration of civil and criminal law.' The 'jurors' were the officers who presided over this court (ibid., p. 562, and vol. 36, p. 246). Leicester 'was governed by the jurors, who had a kind of magisterial jurisdiction' (vol. 35, p. 596).
Brady and Thompson, in that they make the grant of gild law identical with that of borough law. 'It became the general rule,' says Brentano, 'to confirm the Gild of a town by granting it all the liberties which another town enjoyed.' In another place he asserts that the kings of England used 'to recognize the constitution and liberties of towns . . . by confirming their Gilds.' In other words, Gild Merchant implied all the privileges comprehended in the term 'free borough.' The genesis of this error, like that of many others, is traceable to a cautiously expressed conjecture on the part of Madox: 'Peradventure, from these Secular Gilds, or in imitation of them, sprang the method or practice of gildating and embodying whole Towns.' The only proof that Madox and, consequently, Brentano, Wilda, and Hullmann advance to support this opinion is the following passage: 'The men of Andover render account of ten marks for having the same liberty in their Gild as the men of Wilton and Salisbury have in their Gild.' The proper interpretation of this passage certainly does not warrant the inference that the grant of the Gild was necessarily tantamount to a concession of a town constitution or 'liber burgus'; nor does it throw a gleam of light on any part of the question. It was quite common in those days to model a particular institution (the market, pleas, crafts, etc.), or the whole constitution, of one borough after that of another. So too the Gild Merchant of one place sometimes served as an exemplar for that of another. Some of the liberties of Andover were modelled after those of Winchester, which confirms the conclusion that the extract given above refers to the Gild only as a specific feature, and not as the totality, of the burghal constitution.

1. English Gilds, p. cxii.; see also p. xcvii.
2. English Gilds, p. xci.; see also p. xciv.
3. Firma Burgi, 27.
5. See Appendix E.
6. Above, p. 20, n. 3.
7. See above, p. 9, and vol. ii. p. 3.
12. Vol. ii. pp. 251, 385, 386; Williams, Denbigh, 119; Plac. de quo War., 517; Rot. Chart., 93; Taylor, Flint., 39, 31; Merew. and Stephens, 759; Rec. of Caern., 178, 185, 193, 196.
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rule, it enjoyed both these franchises. Thompson's assertion that the fraternity was to be found only in the more powerful towns, is not true; it existed in such then insignificant places as Gainsborough, Altrincham, Macclesfield, Liverpool, Rochester, and Chichester.

Indeed, we are struck with the prominence and flourishing condition of the Gild Merchant in many small boroughs that were not highly privileged, especially in those of mesne lords. We have already pointed out that the constitutions of towns were not cast in one and the same mould,—that there are exceptions to the general lines of development laid down in the preceding pages. In some of the towns of mesne lords the Gild was so prominent and active that it probably came to be regarded by the burgesses as the real civic body as early as the thirteenth century. The explanation of this phenomenon is probably to be sought for in the position of the burghal judicature. It cannot be too often repeated that the Gild Merchant in early times had no connection with the borough motes (courts, leets, etc.), and that these formed the real kernel of the original municipal polity—the institution toward which all others gravitated, and from which they in great part emanated. But in most of the episcopal, abbatical, and baronial towns, the courts were not, as in most royal boroughs, under the control of officers chosen by the burgesses, but of bailiffs appointed by the lord.

Thus the townsmen would feel the need of a centre of burgessic activity that they could call wholly their own. The Gild was the only institution that could satisfy this want; to it they would instinctively turn, and would soon come to regard it as the most important of their immunities, as the real axis of the burghal polity—the only civic centre round which they could rally their forces in struggling with prelate or baron for an extension of their franchises, or in battling for any other cause. Though the mesne lord frequently bestowed this fraternity upon his burgesses and tolerated its existence, he sometimes tried to control it, and jealously guarded against any infringement of his judicial authority. Hamon de Massy allowed his burgesses of Altrincham to have 'gildam mercatoram'; but no plea was to be held in the said borough, except in his presence or that of his bailiff. The Earl of Pembroke conferred the Gild upon the men of Gainsborough, but no stranger was to be admitted into the fraternity without his assent or that of his steward in his court. Bitter conflicts between the townsmen and their lord were not uncommon; being most bitter and most frequent in the case of towns held of religious houses. In

1 Ormerod, Chesh., 1, 356
2 Vol. II, p. 91
3 The idea of some writers (Yeats, Guilds, 181, of Earle, Bath, 85, O'Curry, Customs, ecc.) that the Gild Merchant generally originated in the suppression of the mercantile element by feudal lords is untenable. Though there was a natural antagonism between the representatives of capital and mobility, on the one hand, and stability and landed interests, on the other, it was only in towns of mesie lords that such friction between the two elements is visible
4 Besides the instances of acrimonious conflicts between the burgesses and their ecclesiastical lords in which the Gild prominently figures, I find many others in which it is not mentioned. Indeed these uprisings of the townsmen are so numerous in the early part of the fourteenth century as to seem almost like a general movement of mesne towns to become independent of their ecclesiastical lords. We may infer this, also, from the language of Walsingham, who, under the year 1326, says Quorum [i.e the Londoners] sequentes exemplum, civitatum, burgorum, et villarum communitates, et irrefrenatam assumentes audacia, chartas et libertates, per quas pure fieri possent liberi, a dominus sus per vim et violentiam exorquire nubeantur.' (Gesta Abbatum, 110, 156) For some materials illustrating the whole subject, which is worthy of careful investigation, see ibid., 1, 410-423; II, 155-179, 215, 260; III, 283-271, Annales Montisici, III, 105-106.
these contests the Gild often seems to represent the aggregate of the burgesses and of the burghal administration, or as much of the latter as their lord has bestowed upon them 1. Thus we may almost reverse Thompson’s dictum regarding the classification of boroughs; and assert not merely that the Gild was to be found in many dependent mesne towns, but that it assumed greater prominence and exerted a relatively greater influence in these than in many far more autonomous boroughs.

Thus I cannot agree with the assertion of Merewether and Stephens that rural villages and market-towns were endowed with this brotherhood. We search in vain for an example of this. Andover, the only instance furnished by Merewether and Stephens, was certainly a borough 3. The Gild Merchant did not necessarily imply considerable commercial prosperity or great industrial resources, but it seems always to presuppose, or to be intimately associated with, a certain aggre-

1 A passage in the Ipswich records (vol. ii. p. 123) seems to imply that the Gild Merchant was confined to cities and boroughs. The right to trade freely, and to control local commerce and industry implied an amount of general freedom of action that was incompatible with the condition of a community bound to the soil by vellin tenure, or hampered with the restrictions of an unprivileged village.—For the connection between the Gild and freedom from toll throughout the realm, see above, p. 44. The almost invariable juxta-position of these two privileges in the charters is probably not accidental.—So, likewise, 'gilda mercatoria' and 'firma burgii' probably went together, or, at least, the one would tend to lead to the other. For the possession and control of the local tolls, without which the powers of the Gild would have been incomplete, constituted an important item in the local revenues farmed by the burgesses.

2 Assumpsit nostris de Andovera' : Rot. Chart. 93.

3 For examples of 'communitas' unequivocally used in the legal abstract sense in 33 Edward I, 4 Edward III, 22 Edward III, and 40 Edward III, see vol. ii. pp. 18, 34, 36, 107, 354. The earliest charter of incorporation that I can find any trace of, is one of Edward III to Coventry. The king at the instance of Queen Isabella, who had a life tenure of the manor of Chelmsmore in Coventry, granted, January 20th, 1345, 'dictis hominibus de Couentre tenentibus dicti Manerii quod ipsi et corum heredes et successores Comunitatem inter se decetor habeant, et Maiorem et Ballius idoneos de se ipsis eligere et creare possint annum et'.

Intimately connected with the question of the place of the Gild Merchant in the conception 'liber burgus' is that of its relation to early municipal incorporation. It is the prevailing opinion that Merewether and Stephens definitely cleared up this subject; but their views are misleading and, in part, wholly untenable. They err, above all, in their 'great discovery' that there are no charters of municipal incorporation prior to the year 1439 2. It can be demonstrated that towns were formally incorporated a century earlier 3.

1 For some examples of mesne towns in which the Gild Merchant was prominent, together with some illustrations of the conflicts between the Gild and the mesne lord, see vol. ii. pp. 13-15, 21-23, 28-39, 51-55, 145, 151, 155, 171-173, 175, 189, 191, 202-210, 236-239.—In Germany the development of some dependent towns took a somewhat similar course (Sartorius, Hane, p. xvii.).

2 Hist. of Boroughs, 410, 488, 1912. Merew. and Stephens often quibble and distort the meaning of words to prove their propostions. This is well illustrated in the case before us. Andover, they contend, was no borough, because in the records only the 'men,' and not the 'burgesses,' of that town are alluded to. But very frequently these same writers base an argument upon their own presumption that 'homines' and 'burgesses' are synonyms (Hist. of Boroughs, 484, 485, 519, 662, 1157, et passim).

3 For examples of 'communitas'
True the formula of incorporation differs somewhat from that of Henry the Sixth’s charters, being much simpler than the latter; but this was due to the fact that the jurists had not yet shrouded the notion in misty complexity; even after the reign of Henry the Sixth the formula underwent changes, corresponding to a further development of the idea, or to its further sublimation by the juridical mind. It does not signify whether the words of incorporation are simply ‘communitas perpetua,’ or ‘communitas perpetua et corpora,’ or ‘corpus corporatum et politicum’; the context plainly shows that substantially one and the same privilege is conveyed.

In fact, it is certain that the abstract, subjective ‘communitas perpetua’—the ‘communitas’ regarded as a burghal franchise—had been already evolved from the concrete, objective community; in other words, that the technical or metaphorical notion of municipal incorporation was familiar to Englishmen as early as the reign of Edward I. Moreover, long before this juridical conception of an artificial civic body came into being, the borough had what may with propriety be called a natural corporate existence; it was an aggregate body acting as an individual, making bye-laws, having a common seal, holding property in succession, and appearing in courts which extended Edward I’s Statute of Mortmain to cities and boroughs, was probably the main cause of the great increase in the number of charters of incorporation in the fifteenth century, and of the more complex formulation of the latter conception. In many cases, like that of Plymouth mentioned in the preceding note, the raison d’être of incorporation is expressly stated to be to enable the burgesses to acquire estates and tenements without special licence. See the charters of Henry VI to Southampton and Ipswich (Addit. MS. Mus. Brit. 4530, f. 155-165), and Year Books, 59 Hen VI, p. 13. Cf. Goulston, Verf und Verw., i. 504, 505, p. 385, 386. Rep. MSS Com., 187, p. 581, 1881, p. 296, Plac. de q. War., 618, 620, Hunt, Bristol, 59; Seyer, Charters of Bristol, 28, 30; D’Alton, Drogheda, i. 158, Dal., Harw., ii. 212, Arch. Journal, xxix. 351, Cox, Elections, 187, 188, Wigan, i. 103, Addit. MS., Mus. Brit. 31294, ff. 1, 12 (A.D. 1309), Mackerey, Lynn, 200, Madox, Firma Burgi, 44, 56, Charteae Hiberniae, 27, 49, etc. These examples are all anterior to the reign of Ric II, and could be easily multiplied.

The burgesses of Ipswich had a common seal before 1201 (vol. ii, p. 121). See also i. 141, 221. In 1305 the townspeople of Salisbury, in order to be relieved from the obligation of paying tallage to the Bishop of Salisbury, air

In 15 Rich II the men of Ban-ckinsale received a royal charter which, after a preamble reciting that the king commissi...
of law. The formal incorporation of boroughs in the fourteenth and fifteenth centuries did not materially alter the town constitution; it was, in most cases, merely a recognition of existing franchises with a stronger accentuation, and a more precise formulation, of the right of independent action as a collective personality, with a distinctive name, especially as regards the holding of real property. In the sixteenth, seventeenth, and eighteenth centuries the term ‘corporation’ was more commonly applied to a ‘select’ governing body, which, since the fourteenth century, had gradually usurped the earlier popular government in most boroughs; with these later close corporations our inquiry is not particularly concerned.

We cannot stop to investigate in detail how the various discordant elements of the borough were, during the twelfth and thirteenth centuries, gradually fused together into one homogeneous body, with its common seal, its common purse, common officers, common privileges, and common obligations, so that all the parts acted together harmoniously, ‘quasi corpus communum et anima una.’ The idea of the community as an abstract personality—a political ‘corpus,’ an ‘ens rationis’—rendered the majority of their city and their other burghal privileges to the king, they also promised to surrender their common seal. See Rot Parl. 175, 176, Hoare, Modern Waits, vil, 73, 74, 738, 739, Ryley, Placita, 265. Early in the reign of Edw III a common seal was made by the townsman of St Albans. ‘Fecit merex sigillum officiarii, et consilia communia, alias regni burgus tam re quam nomine consona.’ But in 6 Edw III they renounced their liberties before the Keeper of the Rolls of the Chancery, and delivered to him their seal, praying that he would destroy it. See Walarcham, Gesta Abbat, ii 215, 260, Madox, Firma Burgi, 176.

1 Madox, Firma Burgi, 54–114; Coote, Romans, 375; Cox, 187, Stubbs, Const. Hist., vi 632. See the early use of the terms ‘societas’ and ‘communa,’ as applied to the burghal community, in Blomefield, Norf., iv 54, and Abbrev Plac., 65.

2 This Merew and Stephens admit (Hist. of Boroughs, 242).

3 The five characteristics of municipal incorporation in the fully developed form were power to hold property in succession, the right to plead in courts of law, power to make bye laws, and the possession of a common seal and a distinctive name. All of these, except the last, are mentioned in municipal charters of the fourteenth century.

4 Munc Corp. Com. 1835, Rep., 17, 18, Palgrave, Corp. Reform, 56.

5 For the growth of the select governing body see below, p. 110.

6 Thope, Dipl. Angl., 616.


8 Factum Maiorum in his que tangunt Communitatem est factum ipsius Communitatis (Abbrev. Plac., 273, 9 Edw. I). The passage relating to Liverpool in Plac. de quo War, 381, also shows the importance attached by the burgesses to this privilege of having a chief officer of their own election. When the king suspended the liberties of a borough, the first and most important change was the substitution of one or more royal wardens in the place of the mayor or other head officer of the town. At the same time, the royal bailiffs of the county would often treat the borough as a part of the ‘corpus comitatus’—et vicecomes et bailivi Regis Comitatibus faciant officia regalia in predicata villa de Donewyco. Madox, Firma Burgi, 155, 21 Edw. I. See also ibid., 51–53; Lofte, London, i. 188.
of strength and a spirit of independence. As the same men generally directed the counsels of both the town and the Gild, there would be a gradual, unconscious extension of the unity of the one to the other, the cohesive force of the Gild making itself felt throughout the whole municipal organism. But the influence of the fraternity was material as well as moral. It constituted a bond of union between the heterogeneous sokes of a borough; the townsfolk might be exclusively amenable to the courts of different lords, but, if engaged in trade within the town, they were all members of one and the same Gild Merchant. The independent regulation of trade also accustomed the burgesses to self-government, and constituted an important step toward autonony; the town judiciary was always more dependent upon the crown or mesne lord than was the Gild Merchant.

Quite distinct from the question of the influence of the Gild Merchant upon the early growth of the municipal corporation is that of its relation to this conception after the latter had fully developed into a juridical abstraction. Many writers assert that 'Gilda Mercatoria' was simply the grant of such formal incorporation; in other words, that 'communitas' or 'communa,' in this abstract sense, and Gild Merchant were synonymous terms. Thus Madox in one of his manuscripts affirms that 'when a town was embodied, it was said to have a Gilda Mercatoria and a Hansa.' According to Thompson the Gild Merchant was the 'tangible embodiment and corporate realisation of the community.'

Before proving the speciousness of this view, two concessions must be made. First, it is quite possible that the gilds in general, and especially the social-religious gilds, exerted some influence upon the formation of the technical idea of incorporation. Their compact organization, the completeness of their unity, might easily suggest a resemblance to a personal entity. Hence formal incorporation of burghal institutions may have begun, as some writers assert, with the gilds; at all events, gilds occur among the earliest examples of express incorporation. Moreover, some towns were governed by a social-religious gild, which seems to correspond to the later technical corporation, though not identical with the latter.

Secondly, it cannot be denied that the word 'communitas' in the concrete sense was applied to the Gild Merchant. But this was also true of other gilds, of mere villages, hundreds, counties, religious orders, etc. 'Communitas' being a generic term of broad application. Thus within the borough.

1 See above, pp 56, 67; vol II p 378, Rymer, Foedera, 1, 41
2 Addit MS, Mas Brit, 4531, fol 100; Firma Burgi, 27 Madox was evidently in doubt on this point. Opposite the above mentioned note in his manuscript he has the word 'Lay this aside as useless,' through which, however, a line is drawn, as though the writer had again changed his views on the subject.
3 Thompson, Munm. Hist, 100, cf. Gent Magaz, 1851, vol 35, p 506 For the same or similar views, see Brentano, English Gilds, pp xxvii-xcvii; Brady, Treasiss, 17, 47, 77; Coote, Romans, 412; Hunt, Bristol, 54; Loft, Lond, 1, 165, Caution, Eletiions, clav., Arntg Magaz, n 19, 20. Most of these writers make 'gilda mercatoria' = 'communitas' = 'liber burgus' = formal incorporation. Dr. Stubbs' views on this subject are not very clearly expressed, he generally leaves the impression that the Gild Merchant was tantamount to the 'communitas,' though he seems at times to incline to the opposite opinion (Const Hist, i 464, 467, 475-477, 481, ii 604, Select Charters, 265)
4 Mrew. and Stephens, 825, 840, 846; Kyd Corporations, i 63 Cf. Norton, Comment, 25, 26; Gnest, Verf und Verw, n 504 By a royal patent of 16 Rich II, certain persons in Boston were allowed to found a fraternity, and to have an alderman, 'et quod idem Aldermanus plactare et implacat (facio,' accipierit ad communitatem legem per nomen Aldermani habere, necon animo commune sigillum facere possint,' and they may hold land of the annual value of 10s (Ree Office, Pat Roll, 16 Rich II, p 2, m 20). In 20 Rich II the members of the fraternity of St Mary in Dorchester were incorporated under a distinctive name, and were made 'persones habiles et capaces ad facendum, recependum, herdandum et peridendum in camis et places nostras' (ibid, 20 Rich II, p 1, m 29). The fact that most gilds held property will probably explain why they were among the earliest cases of incorporation.
5 Above, p 84, note In a record of 16 Henry IV relating to a craft fraternity, 'gildate' is used in juxtaposition with 'incorporate,' but whether as a synonym or in a distributive sense is not clear. 'Quidam avocata Lyndenwayerwerknum nullam incorporament vel gildata' (Madox, Firma Burgi, 26)
6 Vol II pp 49, 104, 139, 173, 241 English Gilds, pp xxii, xxiii, 201; Liber Cust, i 126, Madox, Firma Burgi, 36, 82, 88, 89, and Exch 1 261, 74, 48; Rot Parl, i 4, 6, 161, ii 212, Abbrev. Plac, 264, Record of Caern, 46, 84; vol II p 280, n 1.
The Gild Merchant.  

Influence upon Municipal Constitution.

Gild Merchant and the right to have a 'communitas' are discussed as two entirely separate things. In like manner, 'communitas,' used in this same abstract sense, and the Gild Merchant are mentioned as distinct ideas in a charter granted to Hedon, 22 Edward III; in a record relating to Bristol, 46 Edward III; and in a dispute between the burgesses and the abbot of Bury St. Edmund's, 33 Edward I. During the reign of Edward III the men of Coventry received two charters, one bestowing upon them a 'communitas,' another granting them a Gild Merchant. Moreover, in many town charters of the fifteenth, sixteenth, and seventeenth centuries, the Gild and the formal incorporation of the borough appear simultaneously as two privileges that are manifestly not regarded as identical.

If we accept Dr. Stubbs's view that the erection of a 'communa' in London in 1191 was intended as a recognition of the city's corporate existence, this event constitutes another proof of what we have just asserted. For, whatever the precise nature of this commune may have been, the assumption that it was the Gild Merchant is untenable. It is equally wrong to identify the old French 'commune' with the mercantile fraternity of England—two widely divergent institutions. The former was essentially a political, the other a commercial, privilege; the one was, in many cases, a revolutionary growth, the other the outcome of a peaceful

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1 Thus 'communitie deins comminatalie' is spoken of in 49 Edw. III, the former referring to a gild, the latter to the City of London as a whole (Liber Assisarium, 321). The term 'communa' is often applied to boroughs in charters of Henry III, generally in the clause relating to immunity of arrest for the debts of other persons, 'nisi forte ipsi debitores de eorum ant communam,' etc. (e.g. Blomefield, Norf., iii. 50; Poulson, Beverlac, 71.)

2 Above, pp. 65-70.

3 Firma Bugi, 115-131.
development. The French commune embraced the totality of the town government and of the burgesses, and it implied incorporation; neither of these characteristics belongs to the early Gild Merchant. Finally, in the words of Dr. Stubbs, the commune lacks 'the ancient element of festive, religious, or mercantile association which is so conspicuous in the history of the guild' 2. In the many charters granted by John and other English kings to the towns of France 3 and England, the 'communa' of the former is never confounded with the 'Gilda Mercatoria' of the latter.

The only plausible argument in favour of the view that the Gild was identical with 'community' or 'communa', in the corporate sense of the term, is the passage in Glanvill: 'Si quis nativus quiete per unum annum et unum diem in aliqua villa privilegiata manserit, ita quod in eorum communam, scilicet gildam, tanquam civis, receptus fuerit, eo quod deorum communi, corporate sense of the term, is the passage in manuscripts in the British Museum and Bodleian Library have the latter reading. But the whole clause 'ita ... fuerit' may be a gloss added in the thirteenth century. Indeed, this appears quite probable when we consider that a corresponding passage in a charter of Henry II to Lincoln: 'si aliquis ... manserit in civitate Lincolnie ... et dederit consuetudines,' etc. 4 Here, as the context of this document and other contemporary records of Lincoln clearly demonstrate, 'dederit consuetudines' equals 'gildas' or being 'in gilda.' 5 A stipulation concerning villeins in many town charters of the thirteenth century is, as has been already stated, open to this same construction 6.

My interpretation of the Gild as something distinct from municipal incorporation is, I am aware, at variance with that of most legal writers. Coke, who is generally referred to as the authority on this point, informs us that in ancient times the inhabitants or burgesses of a town were incorporated when the king granted them 'Gilda Mercatoria.' 7 This doctrine has often been maintained in courts of law, and

1 Glanvill, Constit. et Consuetudines, i. 174. See also Madox, Firma Burgi, 370; but they do not attempt to prove it. For 'commune' as a common payment see Du Cange, Gloss, 'commune' (1); see also Madox, Firma Burgi, 370 ('totius de Communitate et Gellis Burgi Huntendoniacae'), and cf. ibid., 280.
2 Ruyster, Foederi, i. 40.
3 Vol. ii. pp. 146, 378. Cf. 'ad gildas et consuetudines' in the charter given by Rymer—Constitutio—was also similarly used as a substitute for 'community.' See vol. ii. pp. 34, 187, 251, 378; Blomefield, Norf. iii. 34.
4 See above, p. 59.
5 Et fut bien observe que daacul temps inhabitaus ou Burgess du ville ou Burgh fuerent incorporat quant le Roy grant a eux daver 'Gildam Mercatoriam' (Reports, Pt. x. 30). Cf. vol. ii. pp. 206, 269.
sometimes with success. Nevertheless, it must be regarded as the arbitrary interpretation of an eminent jurist, which came to be thoughtlessly accepted as a fact by most legal and historical scholars.

A parallel perversion of the truth is to be found in the history of the 'firma burgi' and some other municipal privileges. From the time of Edward IV, the possession of fee-farm by a town was held in the courts of law to imply municipal incorporation; but no historian would now venture to assert that previous to this reign, or even afterwards, the grant of 'firma burgi' actually embraced formal incorporation. But the figment, originally the emanation of some jurist's fertile brain, came to be regarded as a trustworthy precedent for judgment in the law courts.—Well may Madox exclaim: 'One general Figurative notion of Incorpora—tion. How either meaning could have been derived from the above-mentioned passage, it is not easy to conceive.

It is quite probable that Coke's erroneous interpretation of the Gild may be traced to the same source as another even more unwarranted. Many law books define 'Gilda Mercatoria' as the right to hold pleas of land. The main authority for this statement cited by them is a writ of the reign of Richard II directing that a certain plea of novel disseisin should not be held outside the city of Winchester, because the latter's charter stated that no one belonging to the Gild Merchant of Winchester should plead without the walls of the town. Now Coke quotes this same writ in support of his view that the grant of the Gild signified formal incorporation. How either meaning could have been derived from the above-mentioned passage, it is not easy to conceive.

To sum up the conclusions reached in this chapter, we may state: that the influence of the Gild Merchant manifested itself, not in the origin, but in the development, of the municipal constitution; that it was one of the most important privileges constituting the 'liber burgus' of the twelfth and thirteenth centuries; and that, in conjunction with other liberties, it aided in evolving the later legal idea of technical municipal incorporation, but was never actually equivalent to the latter.—I have omitted all mention of one interesting phase of the influence of gilds on the development of the borough constitution, namely, that of the craft fraternities. This subject, together with the relation of the crafts to the Gild Merchant, will be discussed in the next chapter.

2 See Rolle, Abbrig. i. 573; Viner, Abbrig., vi. 263; Lachers, Elec. iv. 241; Stephen, New Commentaries, ii. 30; Blackstone, i. 457; Thompson, Essay, 100, 105; Tyrrell, Hist. of Engl., iii. Pt. ii. App. 182, 186; Herbert, Livery Comps., i. 28; Coote, Romans, 576; Hunt, Charters of Bath, 78; Worth in Devon. Assoc., Proc., xvi. 744.
3 Viner, Abbr., vi. 263; Bacon, Abr., ii. 254; Merew. and Stephens, pp. 244, xxxvi.—ix., 214, 354; C. also Stubbs, Const. Hist., i. 467, 468; Kyd, Corporations, i. 43; Archaeologia, ii. 319. In like manner it was held that either the privilege of being exempt from toll or the right to have a mayor implied legal incorporation. See Brooke, Abr., ed. 1573, i. 190; Traditions of Newport, etc., iv. 22; Viner, vi. 264; cf. also Stubbs, Charters, 265, 308; Freeman, Exeter, 59, 74. Some towns, even after they had been formally incorporated, had no mayor (Madox, Firma Burgi, 28, 29).
5 See Cowell's Interpreter and Blount's Law Dict. under 'gild merchant'; Archaeol. Assoc., Journal, xxxvi. 279; Drake, Eboracum, App. xxxii.; Turner, Merchant Guild of Lewes, 56; Simpson, Lancaster, 279. The statutes of 37 Edw. III and 15 Rich. II, which are sometimes cited to prove this statement, do not afford any evidence in support of it. A record given in vol. ii. p. 158, affirms that the Gild Merchant was a court which had jurisdiction in various pleas, 'so the same do not concern the title of lands.'
CHAPTER VII.

THE GILD MERCHANT AND CRAFT GILDS.

When we study the municipal history of the principal countries of Europe, we are struck by the existence of certain features common to all of them. Nevertheless, each country maintains an individuality of its own. This is particularly true of England. The Norman Conquest by strengthening the crown gave a particular direction and a peculiar colouring to the whole course of English municipal history. There was in England no 'communa' as in France and Flanders, no federation like the 'Städtbund' of Germany or the 'Hermandad' of Spain, no oligarchic 'summum convivium' as in Denmark, no fierce conflict between patricians and craftsmen as in the Netherlands, Switzerland, and Germany, no civic 'imperia in imperio' as in Italy. A potent royal prerogative like that of England was not congenial to the growth of such institutions. It is then radically wrong to transplant certain prominent features of the burghal development on the continent to Great Britain, without other evidence than that of analogy. Even where the lines of development are in great part parallel, care must be taken not to confuse the one with the other, as many writers have done in treating of the history of English crafts.

1 The affiliation of medieval boroughs affords a good example of this. See Appendix E.
2 The Cinque Ports, though a very powerful body, whose history is of national importance, never had the independence and political signification of the German municipal federations. Concerning the five Danish Burghs which seem to have been associated together, little is known (see Palgrave, Commonw., i. 644, ii. p. cxxv). The union of Dublin, Cork, Limerick, and Drogheda in 1284 was of little importance (Gilbert, Documents, 196). The only federation worthy of comparison with those of the continent is to be found in Scotland. See Appendix D.

We are particularly concerned with only one phase of this subject, namely, the relation of the craftsmen or artisans and their associations to the Gild Merchant. It is necessary at the outset to emphasise the fact that, generally speaking, craftsmen were freely admitted to the Gild Merchant in the twelfth, thirteenth, and fourteenth centuries. The term merchant, as is well known, was not in those days confined to large dealers, but embraced all who traded. The line of demarcation between merchant and craftsman was not yet sharply defined. Every master craftsman was regarded as a merchant, for he bought his raw materials, and sold the products of his handiwork in his shop or at his stall, just as some coopers, shoe-makers, bakers, and other tradesmen still do at the present day. The glover bought his skins; the baker his corn; the butcher sold hides as well as meat; the weaver, fuller, and dyer bought wool and woad, and sold cloth; the tanner bought bark and hides, and sold leather. Craftsmen were not only admitted to the Gild Merchant, but also, in all probability, constituted the majority of its members.

Most writers assert that the English Gild Merchant was the ruling body of the borough, an aristocracy of rich

2 'Mercator superveniens in civitatem et trusellum deferens' (Domesday, i. 263). 'De mercatoribus, videlicet, piscatoribus, factoribus panorum, tannatoribus, etc. (Rot. Hund., i. 531). 'Mercator, de quacunque patria sit, portans mercedomia suis super dorsum suum, vocatus haukers,' 11 Hen. IV (Black Book of Winceh, 5 b). See also vol. ii. pp. 9, 15, 127, 257, 259, 278; Maseres, Hist. Angl., 47, 52; Poulson, Beverlaco, i. 55, 255-257; Herbert, Liv. Comp., i. 73; Thompson, Munic. Hist., 14.
3 Vol. ii. pp. 144, 173, 205, 206, 254, 274, 277, 293, 328, 335, 345, 358, 378, 381, 382; Cunningham, Industry, 210; von Ochenkowski, 210, 216; Welfit, Minutes, No. 21; Placita Abbrev., 65; English Gilds, 210, 358, 384; Ferguson and Nanson, Carli., 267; Archaeol. Journal, vi. 146, 147, ix. 79; Madox, Firma Burgi, 204; Ashley, Econ. Hist., 94; and Woolen Industry, 72; Liber Cust., 130; Tate, Alnw., ii. 328-348; Nicholls and Taylor, Bristol, ii. 267. Early in the sixteenth century Armstrong speaks of 'pore handy craft peple, which that wer wont to kepe shoppes and servaunts, and hadd labour and levyng by making pyna, poynts, girdells, glovis, and all such other thyngs necessary for comon peple' (Pauli, Drei Volksw. Denk., 39).
merchants who tyrannized over the craftsmen, and debarred the latter from sharing in the mercantile privileges of the town. But the truth is that a popular, and not an oligarchic, form of government prevailed in English boroughs of the twelfth and thirteenth centuries. The only plausible evidence advanced to support the theory of the general exclusion of craftsmen from the burghal and mercantile franchises, is the fact that in London, Beverley, Oxford, Marlborough, and Winchester, certain weavers and fullers did not enjoy the rights of full burgesses. But it is far more rational to consider the restrictions upon these artisans as exceptional, being probably due to the circumstance that they were regarded as alien intruders who were attempting to develop a comparatively new branch of industry. In later times we meet with

1 This is the view of the writers mentioned below, p. 109, n. 3

2 See, for example, vol. II pp. 116-123 (Ipswich), the constitution of Ipswich is expressly stated to be like that of other free boroughs (ii 115, 117, 122).

3 Liber Cust. i, 130, 131 (temp. Edw. I); cf. Liber Albvs, 119, von Olchenkowski, 60, 61, 62, 63, 64, 65, and Econ Hist., 82, 83. The plea in Abbrev. Flacc., 65, is sometimes cited to prove the same concerning the fullers and dyers of Lincoln, but the words 'non habent legem nec com\n
\n..
where the form of government in towns was, in great part, democratic. The change that actually took place in English municipal government during the fourteenth and fifteenth centuries was in the reverse direction from that portrayed by Brentano and his followers; the government in many towns gradually passed from the hands of the burgesses at large into those of a close, 'select' body. We cannot stop to discuss the genesis of this important transformation. It was due to several factors, among which the apathy of the burgesses themselves—their anxiety to be rid of the burden of office-holding—and the increase of population, deserve to be emphasized. But the new, irresponsible governing body, as was to be expected, soon began to abuse its power; their unjust assessment of tallages and irregular administration of the civic finances soon led to dissensions, the people attempting to regain their ancient power. In these troubles we scarcely ever meet with any mention of the Gild Merchant, and rarely with any reference to the crafts as such. It was a struggle between the governing council (the 'magnates,' 'potentiores,' etc.), on the one side, and the burgesses at large ('populus,' 'minores,' etc.), on the other 1.

1 I have collected considerable material illustrating the history of the growth of the 'select bodies' or close governing council in English towns, and I hope some day to be able to discuss this subject in detail. Some account of it will be found in May, Const. Hist., ii, 494-496. See also vol ii, 25, 156, 170, Cal Rot Chart, 222, Rymer, Foeder, i, 478, Rot Hund., i, 263; Madox, Firmæ Rúgiæ, 54, 65; Rot Parli., i, 47, 51, iv, 476, v, 123; Blomefield, Norf., ii, 126, Rep MSS, Com., 1881, pp 410, 424, 1887; App. ii, pp. xiii-xv, 191-194; Place Abbrev., 187; Woodward, Hamp., i, 277; Owen and Blakeway, Shrewsb., i, 169-174; Poulson, Beverlac., 126, 253, 286. The dissensions at Bristol, 1312-1516, which have been erroneously called a fierce conflict between plebeian crafts and an aristocratic Gild Merchant, strikingly illustrate the true nature of the struggle that took place in many towns of England. The tumults at Bristol were caused by an attempt on the part of fourteen influential townsfolk to withdraw the management of municipal affairs from the hands of the burgesses at large. One of the records begins thus: 'Jam præséntem est fac simus, in villa Brístollæ super consuetudinem in poantu mari et in foro, super privilegium et alius rebus, in quibus quatuor decem de majoribus eisdem ville videbantur praematuram habere Obstinit com-

In a few mercantile centres, mainly in the North of England, the crafts occupy a more prominent position in these struggles, and were ultimately allowed to participate in the government of the town. They thus became integral parts of the municipal constitution, having political as well as economic functions. The only examples of this development that I have met with are to be found in the history of Newcastle 1, Durham 4, York 3, Carlisle 4, Morpeth 3, and others.
Kilkenny, and Drogheda, where the crafts as such were represented in the common council of the borough, their representatives generally constituting a lower branch of the local legislative body, subordinate to the aldermen of the wards. In some of the above-mentioned boroughs the crafts as such also took part in the election of town officers.

But this is an exceptional phenomenon. In most towns the said city doth consist of a Lord Mayor and twenty-four Aldermen, who have usually sate together in one Room apart by themselves, and also of such who are commonly called Sheriffs Peers, not exceeding forty-eight persons, and of ninety-six other persons who are elected into the said common council, out of several of the Guilds or Corporations of this City, and who have usually sate together in one Room apart by themselves, and have been usually called the Commons of the said City for the time being do preside, etc (Rules, etc, by the Lord Lieutenant, 1672, p 8). In 1835 twenty-five guilds were thus represented in the common council (Munc. Corp. Com., Dublin, 13). See also vol. ii pp. 78, 83, 84.

In London since 49 Edw III the mayor and some other officers of the city have been elected by the trading companies—since 15 Edw IV by the liverymen assembled in the Court of Common Hall. Until the present century the members of parliament for the city were chosen in the same way. The election of aldermen has always been by the wards, the same is true of the common-council men, with the exception of the period 49 Edw III—7 Rich II. See Norton, Comment, i.i.146, 126, 127, 244, 245, 248. The facts concerning the common council are concisely stated in Liber Albus, 41: 'ubi prae [49 Edw III] eligerunt hujusmodi communari per Wardas, quod de caetero, et aliae pro Comunum Consilii civitatis per singula Muster et non per Wardas... Sed satis uita ordinance, crevit tumultus in populo, et parvipendebantur maiores a minoribus, etc. Hence the change in 7 Rich II. Nevertheless, Brentano (p. 104) calls the Common council—49 Edw III the completion of the triumph of the oppressed plebeian crafts over the aristocratic element. For the mode of election of the Common Council by the wards, see Liber Albus, 40, 461-463.


2 During the sixteenth and seventeenth centuries, the crown sometimes granted a town the power to create, or 'divide itself into' fraternities or mysteries. This is particularly true of Irish boroughs. See vol. i pp. 59, 250, 266, Munc. Corp. Com., 1845, p 494, D'Alton, Drogheda, 121, Rep. MSS. Com., 1885, App. v 337, Colby, Londond., 39.

3 Brentano says 'they retained everywhere' this 'independent jurisdiction and government' (Engl. Gilds, cxxii.)

4 In some places, such as London and Exeter, they had a limited judicial authority in petty pleas regarding their own members (Liber Cust., 123, Devon. Ass., no. 117), but it was never independent—never beyond the supervision and control of the governing body or mayor and common council of the town. Generally speaking, their functions were inquisitorial rather than judicial, they surveyed the transactions of their trades, and saw that all defects were reported and punished.

5 Some examples will be found in Black Book of Winchester, fol. 32 b (Weavers, 25 Henry VI), Stubbs, Const.
not assume formidable dimensions. Even in those exceptional cases, spoken of above, where the crafts actually secured a share in the government of a town, it is wrong to speak of a conflict between them and an aristocratic Gild Merchant. The governing body of the borough was rarely known by the latter name. Indeed, this appellation was more frequently applied to the aggregate of the crafts—a fact which it is now necessary for us to demonstrate in detail, as it is the key to a large part of the later history of the Gild Merchant.

Craft gilds are first mentioned during the reign of Henry I, about a half a century after the first appearance of the Gild Merchant. The latter included merchants proper and artisans belonging to different trades; the craft gild, at first, included only artisans of a single trade. The position of these craft fraternities in the town community during the twelfth and thirteenth centuries was different from that of the Gild Merchant. They had not yet become official civic bodies, like the ‘Gilda Mercatoria,’ forming a part of the administrative machinery of the town. Their existence was merely tolerated in return for a yearly ferm paid to the crown, whereas the Gild Merchant constituted a valuable burghal privilege, whose continuance was guaranteed by the town charter. Still the craft gilds occupied a more important position in the community than that of a mere private association of to-day. For with the grant of a gild to the craftsmen generally secured what in Germany was called the ‘Zunftzwang’ and the ‘Innungsrrecht,’ i.e. the monopoly of working and trading in their branch of industry. The craftsman thus associated remained in the common Gild Merchant; but the strength of the latter was weakened and its sphere of activity was diminished with every new creation of a craft fraternity, though these new bodies continued subsidiary to the Gild. But the aggregate of all those who lost in the process were, of course, the common Gild Merchant. They had not yet become official civic bodies, like the ‘Gilda Mercatoria,’ forming a part of the administrative machinery of the town. Their existence was merely tolerated in return for a yearly ferm paid to the crown, whereas the Gild Merchant constituted a valuable burghal privilege, whose continuance was guaranteed by the town charter. Still the craft gilds occupied a more important position in the community than that of a mere private association of to-day. For with the grant of a gild to the craftsmen generally secured what in Germany was called the ‘Zunftzwang’ and the ‘Innungsrrecht,’ i.e. the monopoly of working and trading in their branch of industry. The craftsman thus associated remained in the common Gild Merchant; but the strength of the latter was weakened and its sphere of activity was diminished with every new creation of a craft fraternity, though these new bodies continued subsidiary to the Gild. But the aggregate of all those who lost in the process were, of course, the common Gild Merchant.

Gildam suam, sicut tunc habuerunt
Ita quod nullus faciat officium in
villa Oxonie, nisi sit de Gilda illa.

The ‘corduaniarii qui postea venterunt
in villam’ may belong to the Gild
For this concession one ounce of gold
yearly is to be paid to the King
This charter was confirmed in 45 Hen
III and 12 Edw II. The latter also
granted ‘quod nullus sustinet in cadaem
villa Oxonie aut suburbium ejusdem
corduaniarii aut eorum tannatum concratum,
ne novum opus ad officium pretium
pertinentes in eadem et suburbio vendat,
nisi sit de illa Gilda, sub
forisfactura manuoperis ilius.’

The weavers of York appear to have obtained
a charter from Henry II, granting them
the monopoly of weaving throughout
the county of York. ‘libertatem habeant
per cartam Henrici Regus, et nostri,
quod nullus in Comitatu Ebor telam
aliquam faciat extra eorundem nostram
Ebor’...—The weavers of York appear to have
obtained a charter from Henry II, granting them
the monopoly of weaving throughout
the county of York. ‘libertatem habeant
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aliquam faciat extra eorundem nostram
Ebor...’

The latter also granted ‘quod nullus sustinet in cadaem
villa Oxonie aut suburbium ejusdem
corduaniarii aut eorum tannatum concratum,
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nec novum opus ad officium pretium
pertinentes in eadem et suburbio vendat,
nisi sit de illa Gilda, sub
forisfactura manuoperis ilius.’
and under the general regulation of, the older and larger fraternity\(^1\). The greater the commercial and industrial prosperity of a town, the more rapidly did this process of subdivision into craft gilds proceed, keeping pace with the increased division of labour. In the smaller towns, in which agriculture continued a prominent element, few or no craft gilds were formed; and hence the old Gild Merchant remained intact and undiminished in power longest in this class of boroughs\(^2\).

The period of the three Edwards constitutes an important epoch in the history of industry and gilds\(^3\). With the rapid development and specialisation of industry, particularly under Edward III, gilds of craftsmen multiplied and grew in power. Many master craftsmen became wealthy employers of labour, dealing extensively in the wares which they produced. The class of dealers or merchants, as distinguished from trading nations may have taught them a more enlightened commercial policy and broader views than those that prevailed elsewhere in English towns. For their burdens and comparative freedom from trade restrictions, see Holloway, Rye, 8, 156, 192; Laing, in Sussex Arch. Coll., iv. 214; Boys, Sandw., 322; Lyon, Dover, ii. 337, 374.

\(^1\) Before craftsmen formed themselves into gilds, and probably for some time after certain of them were thus united, regulations were made for them by the Gild Merchant. See vol. ii. pp. 4, 143, 144, 204–207, 223–225, 275, 290–296.

\(^2\) See above, pp. 90–92.—Perhaps this development of the crafts explains why no Gild Merchant of London is mentioned. The expansion of trade and industry in the twelfth and thirteenth centuries was doubtless much greater there than in any other towns of England. The rapid economic growth of London probably produced a net work of craft gilds earlier than elsewhere in England, and thus the city dispensed with a single general Gild Merchant.—The case of the Cinque Ports requires quite a different explanation. They had no Gild Merchant, and seem to have encouraged the admission of strangers to the municipal franchise and to their trade privileges, perhaps because these persons helped the townsman swear the great burden of fitting out ships for the royal service, and because their active intercourse with other nations may have taught them a more enlightened commercial policy and broader views than those that prevailed elsewhere in English towns. For their burdens and comparative freedom from trade restrictions, see Holloway, Rye, 8, 156, 192; Laing, in Sussex Arch. Coll., iv. 214; Boys, Sandw., 322; Lyon, Dover, ii. 337, 374.

\(^3\) Von Ochenkowski, 53; Schanz, Handelspol., i. 107, 337; Ashley, Woolen Ind., 40–44, 59; Baines, Commerce of Liv., 95; Bourne, Eng Merchants, 17; Cunningham, Eng. Industry, 170, 202, 203, and Politics and Econ., 18; Longman, Edw. III, i. 84–88; Norton, Comment., 162, 163; Rymer, Foedera, ii. 823; and cf. above, p. 51.

'For he [Edw. III] hadde a manere jelosye
To his marchauntz and loved hem hartilye,
He felt the wayes to reule wel the see,
Wherby marchauntz might have prosperitee.'

artisans, also greatly increased, forming themselves into separate fraternities or mysteries\(^1\). When these various unions of dealers and of craftsmen embraced all the trades and branches of production in the town, little or no vitality remained in the old Gild Merchant. In short, the function of guarding and supervising the trade monopoly had become split up into various fragments or sections, the aggregate of the crafts superseding the old Gild Merchant. A natural process of elimination, the absorption of its powers by other bodies, had rendered the old organization superfluous. This transference of authority from the ancient general Gild Merchant to a number of distinct bodies, and the consequent disintegration and decay of the former, was a gradual, spontaneous movement, which, generally speaking, may be assigned to the fourteenth and fifteenth centuries, the very period in which the craft gilds attained the zenith of their power.

The development which has just been characterized is clearly reflected by the wording of the records during and after the fifteenth century. The statute of 1 & 2 Phil. and Mary, c. 7, enacts that persons dwelling in the country shall not sell by retail within cities, boroughs, or market-towns any cloth, haberdashery wares, grocery wares, or mercury wares, except in fairs, unless 'they or any of them shall be of any of the Guildes and Liberties of any the said Cities, Boroughs, Townes Corporate, or Market Townes.' The older records would have said: 'unless he be in the Gild Merchant,' etc.\(^2\)

In like manner, the old restrictive clause in grants of the Gild Merchant, 'so that no one may merchandise,' etc., is often replaced in later records by a prohibition, not merely against

\(^1\) In the reign of Edward II the crafts of London were already divided into two general classes, the 'officia mercatoria' and the 'officia manuoeraria' (Liber Albus, 495). This distinction between mercantile crafts and crafts of manual occupations in London appears even more clearly during the reign of Edward III. See Statutes of the Realm, i. 379; Rot. Parl., ii. 280. Early in the sixteenth century, Armstrong complained that 'all the peple therin [i.e. London] are merchante' (Pauli, Drei Volksw. Denk., 40).

\(^2\) For another example, see vol. ii. p. 155.

\(^3\) Above, p. 8.
trading, but also against exercising any craft or mystery, except in the case of persons belonging to the Gild Merchant. This same prohibition more commonly appears in later charters and other town muniments without mentioning the Gild Merchant, the right to trade and occupy a craft being expressly reserved to the 'freemen' of the town, or to the members of the various craft guilds.

In some towns where the crafts took the place of the Gild Merchant the name of the latter wholly disappeared; but in others it continued to be used, not to indicate a concrete bond of union, as of old, with distinct officers and separate administrative machinery, but only as a vague term applied to the aggregate of the crafts. Thus, in the sixteenth century, the Gild Merchant of Reading was said to be divided into five companies, each of which included many different trades. An Andover record, presumably of the sixteenth or seventeenth century, speaks of the 'ordinances of the Guild of Merchants in Andover, which Guild is divided into three several Fellowships'—the drapers, haberdashers, and leather-sellers. In the seventeenth century the term 'Gilda Mercatoria' was applied to the eight craft fraternities of Carlisle collectively. At Ipswich the Gild Merchant or Corpus Christi Gild was composed of various craft fraternities. The totality of the twenty-four companies of Chester are likewise said to have been called 'the gild'; also the aggregate of the trade fraternities at Kendal.

'Gilda Mercatoria' (or 'the gild,' 'the general gild,' 'the public gild,' 'the common gild,' etc.) was frequently used, especially in the North of England, to denote a general assembly whose main object was the regulation of trade, or the discussion of matters in which all the crafts were interested. Hence these 'gilds' likewise represented the aggregate of the crafts. They were, as a rule, popular assemblies of the craftsmen, or 'freemen,' as distinguished from the burghal common council. At Newcastle-upon-Tyne, in the eighteenth century, the gild, or 'court of gild,' served as a medium of communication between the crafts and the common council. At these meetings the companies stated their grievances, and at times after protest against the admission to the burghal freedom of such persons as were objectionable to them. In the seventeenth century the court of gild, or 'common gild,' etc. (Harley MS. Vol. ii. pp. 184-188, 380-382; Hutchinson, Northumb., ii. 414. The yearly congregations of the burgesses of the twelve mysteries spoken of in Queen Elizabeth's charter (Brand, Newc., ii. 608) were evidently the assemblies in plena gilda often alluded to in the history of Newcastle.

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2 Vol. ii. pp. 37, 50, 106, 107, 247; Tighe and Davis, Windsor, ii. 483; Izacke, Exeter, 94; Hoare, Modern Wilts, vi. 171; Simpson, Derby, i. 149; Mercers and Stephens, 1492, 1500, 1511, 1712, 2144; Wilts. Arch. and Nat. Hist. Magaz., iv. 170; Addit. MS., Mus. Brit., 1519, fol. 11; Morant, Colch., i. 53. In the seventeenth century there was a custom in Chester 'that noe man can use or exercise any trade unles—besides his freedom of the Citty—he be also admitted, sworn, and made free of the same Company whereof he desires to trade.' (Harley MS. 2054, fol. 71.)
4 The thirty-two elected from the Gilda Mercatoria (vol. ii. p. 39) were taken from the eight craft fraternities. Cf. Ferguson and Nanson, 1498, 1500, 1511, 1712, 2144;
5 Vol. ii. pp. 37, 38, 39, 46, 50, 106, 107; Tighe and Davis, Windsor, ii. 483; Izacke, Exeter, 94; Hoare, Modern Wilts, vi. 171; Simpson, Derby, i. 149; Mercers and Stephens, 1492, 1500, 1511, 1712, 2144; Wilts. Arch. and Nat. Hist. Magaz., iv. 170; Addit. MS., Mus. Brit., 1519, fol. 11; Morant, Colch., i. 53. In the seventeenth century there was a custom in Chester 'that noe man can use or exercise any trade unles—besides his freedom of the Citty—he be also admitted, sworn, and made free of the same Company whereof he desires to trade.' (Harley MS. 2054, fol. 71.)
7 Vol. ii. pp. 11, 349.
8 Vol. ii. pp. 135, 136; Wodderspoon, Memorials, 155, et seq. In very many towns there was a Corpus Christi Gild which embraced most of the crafts. On Corpus Christi day, which was often called 'the gild day,' these crafts took part in the pageant plays and in the procession of the Corpus Christi brotherhood. See vol. ii. p. 51; Surtees, Durham, iv. 20; Welford, Minutes, No. 22; Brand, Newc., ii. 315-359, 369-379;
and eighteenth centuries, we find 'gilds,' more or less similar to that of Newcastle, at Alnwick 1, Berwick 2, Durham 3, Hartlepool 4, and Morpeth 6.

In some towns the totality of the crafts also appear in latter times formally organized as a single fraternity with its own officers, revenues, etc. In other words, the parts into which the old Gild Merchant had resolved itself, were again fused into one body, which occupied a place in the civic polity similar, in many respects, to that of the ancient Gild Merchant. At a general assembly held in the gildhall of Devizes, in 1614, it was ordained that the Gild of Merchants should be divided into three several fraternities or companies—the Drapers, Mercers, and Leathersellers, each of which had a master and two wardens. These three fellowships were subdivided into various crafts, the Drapers, for example, consisting of the sons dwelling in the country from retailing in boroughs, was not properly observed in Preston, the mayor, bailiffs, and burgesses deemed it expedient, in 1628, to establish the Company of Drapers, Mercers, Grocers, Salters, Ironmongers, and Haberdashers, for the maintenance of the said statute in Preston 3.

In 1616, the Mercers' Company of Faversham was established by the corporation of the town. It had a master, two wardens, several assistants, a clerk, and a beadle. No person not free of this Company was to exercise any trade in the borough. The fellowship was not to interfere with the government of the town, but was to concern itself only with measures relating to the trades or mysteries. In 1699 it was ordained that in the future the mayor of Faversham for the time being should be master of the Company; that the wardens should be chosen from the town jurats, four of the assistants from the common council of the borough, and the other four from the freemen of the Company. Membership of the Company was distinct from the freedom of the town 1.

In the sixteenth and seventeenth centuries the tailors, mercers, drapers, capsers, hatters, glovers, and skinners of Ludlow were united in an association, which after 1710 was called the Stitchmen. It appears to have had supervision over the whole trade of the town; and continued in existence till 1862. The officers of the society were the 'six-men' and two stewards 2.

As the statute of 1 & 2 Philip and Mary, prohibiting persons dwelling in the country from retailing in boroughs, was not properly observed in Preston, the mayor, bailiffs, and burgesses deemed it expedient, in 1628, to establish the Company of Drapers, Mercers, Grocers, Salters, Ironmongers, and Haberdashers, for the maintenance of the said statute in Preston 3.

At a Court of Common Council held at Wallingford, January 30, 1663, it was ordained that all trades within the borough should consist of one body, to be called the Company of Drapers. In 1667 it was re-established, being created 'one body corporate.' In 1701 'the mayor, burgesses, and commonly ordained that all persons who were then using, or should thereafter use, any art, mystery, or occupation in the borough or the liberties thereof, should be a body corporate, guild, or fraternity, by the name of the master, wardens, and assistants of every art, mystery, and occupation used in the borough and liberties thereof, and have succession and a common seal 4.'

At Walsall, in the fifteenth century, the crafts formed them-

3 Vol. ii. p. 199.
5 Wallingford, ii. 234, 237.
who exercised considerable control over the trade of the towns. They organized themselves into a Gild, at the head of which were three wardens, consisting of thirty-six tradesmen taken from twelve occupations. Their functions were to regulate trade, correcting frauds in the same, and to prevent strangers from trading.

The most interesting and instructive example of such consolidation of crafts into one body is furnished by the town of Dorchester. In 1629 a charter of Charles I intrusted the general government of the borough to a corporation, consisting of the mayor, two bailiffs, six aldermen, and six burgesses; these fifteen capital burgesses constituted the civic common council. The charter also created a second corporation, for the increase and supervision of the commerce of the town, consisting of many different crafts. It is evident that this complex organization exercised the functions of the ancient Gild Merchant.

Thus whether as the totality of the crafts, or as the meetings of the latter in their collective capacity, or as their reorganization into a single association, the Gild Merchant was tantamount to, or was replaced by, the aggregate of the craft fraternities.

This relation of the later craft fraternities to the Gild Merchant, or the displacement of the latter by the former, presents itself in still another aspect when we inquire into the signification of the word 'freemen' of a town. The expressions 'freemen' and 'being in the freedom' often became synonymous with the older terms 'gildsmen,' and 'being in the Gild Merchant.' In the records of Totnes, for example, it is expressly stated that those entering the Gild were 'commonly called freemen.' The brethren of the ancient Gild Merchant, as has been shown, were those who enjoyed

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1 Vol. ii. pp. 65-68, 365-370.—At Coventry the crafts were also united into one body. In the fifteenth century ordinances were made 'by a general Counsel of all the Craft and Craftes' or by a consell of alle the fyllyshape of the crafts' (vol. ii. p. 51).—The silver mace of the Cork gilds, which seem to have been likewise associated into one union, is still in existence (Hist. and Archaeol. Assoc. of Irel., 1886, vol. vii. pp. 341-361).—The amalgamation of all the crafts of a town into two or more crafts was also quite common. In 1667 those of St. Alban's were divided into two companies, the Merchers and Inholders (Munic. Corp. Com. 1835, p. 2922). In 1573 all the freemen of Gravesend were 'nominated into two Companies or Fellowships,' the Mercers and Victuallers (Cruzen, Gravesend, 195, 197, 198). In 1529 the freemen or craftsmen of Kingston-upon-Thames were divided into four companies (Munic. Corp. Com. 1835, p. 2898); those of Axbridge, in 1674, into three companies (vol. ii. p. 12). At Ipswich, 18 Eliz., the trades were drawn up into four fellowships, each with many subdivisions (vol. ii. p. 130).

2 In 1663 certain persons were summoned to compound for using the liberties 'of the guild merchants,' in buying and selling, not being freemen of Totnes; and certain sums were received of such as had been taken into the Company of Gwilde Marchants, commonly called free men ('Devon. Assoc., Trans., xii. 323, 324). In like manner at An-dover the 'freedom' ('libertas') was equivalent to 'gilda mercatoria;' and at Winchester 'to be free' was tantamount to membership of the Gild Merchant (vol. ii. pp. 7-11, 257, 310-325, 333). In 1372 a person entered the Gild of Guildford 'ut liber sit' (vol. ii. pp. 105, 103). See also vol. ii. pp. 43-46, 48, 60, 97, 105, 106, 109, 110, 121, 131, 143, 144, 179, 189, 193, 195, 213, 230, 243-247, 253, 254, 270, 246, 258—Munic. Corp. Com. 1835, p. 898; Gentleman's Magaz., 1851, xxxv. 262; Turner, Oxford, 348.
freemen occupied the same position in most towns, comprehending all who were allowed to trade freely. But these freemen in many boroughs were practically co-extensive with the brethren of the craft fraternities, the freedom of the town being obtained mainly or solely through the medium of the crafts. In these places the civic freedom was in conception distinct from, and paramount to, that of the crafts; but the two franchises became interdependent or intimately connected, the one being a necessary condition for the attainment of, or constituting a legitimate claim to, the other.

1 Vol ii pp 37, 166, 268, Welitti, Minutes, No. 24, Muníc Corp. Com. 1835, p. 968, 1417, 1386, 1526, 2898; Merew and Stephens, 153, 194, Cruden, Gravesend, 194, 195.

2 The freedom of the town was obtained solely through the intervention of the craft gilds in Alswick, Carlisle, Durham, Morpeth, Oxford, Windsor, Wells, and probably some other boroughs. See vol ii p 192, Muníc Corp. Com 1835, Rep p 19, and App. 1368, 1417, 1471, 1513, 1628, 1906, ibid 1880, p 603, Jefferson, Carlisle, 286; Ferguson and Nanson, Carl 1337, 179, Tich and Davis, 5117, Charters of Ludlow, 299, Merew and Stephens, 1127, 2117, Hutchinson, Durham, ii 133, Mackenzie, Northumb., 1 192-196 in Axbridge, Northwich, Gravesend, and St Albans, likewise, all freemen or citizens were enrolled in the trade companies (vol ii pp 119, 190, Bromefield, Norf., iii 124, Cruden, Gravesend, 195, Muníc Corp. Com 1835, p 2922, Merew and Stephens, 194). The interdependence of the town freedom and that of the crafts is well exemplified by the following extract from the charter of 1 Edw IV to the tailors of Exeter:

Et quod nullus inr una libertatem illam acquirat salvo residendi vel de mari et locis, nisi prius habeatur et testificetur quee bonis, libris et clausus sit pro cessione. If the officers of the craft present such a person to the mayor, the latter must admit him to the civic freedom (Rec Office, Conf Roll 19-23 Eliz., m 18, Eng1 Gilds, 301, 305). For somewhat similar regulations regarding the tailors of Bristol and Dublin, see Nicholls and Taylor, Bristol, ii 259, Muníc Corp. Com., Dublin, 274. Lucas in his Liberties and Customs of Dublin says: 'Every man who prosecutes or takes out his freedom must come free through some or other of the guilds, but obtaining his freedom of a guild, he must pass his bond to prosecute his freedom of the city, without which he cannot be sworn free of the guild' (Egerter MS., Mus Brit., 1772, fol 43, but of Parl Papers, 1833, vol 13, pp 207, 213, and Muníc Corp. Com., Dublin, 18). From the time of Edward II citizenship of London has been acquired mainly but not exclusively through the crafts. In 6 Edward II an ordinance was passed prohibiting the mayor and aldermen from admitting to the freedom of the city any person whose character or status was not well known, without the assent of the craft, which he proposed to follow. By a later enactment (before 11 Edward II) the surety of six men of the craft to which the applicant for citizenship belonged, was required, an alien was to be admitted to the freedom only at the instance of six men of the craft, which he proposed to exercise, but if he belonged to no particular craft, then the assent of the whole community of the city was necessary for his admission. See Liber Albus, 1834, 187, Liber Cest., 265, 270, Riley, Memorials, 151; Norton, Comment, 91, 166, 107, 244, 247, 252; Guildhall Records, Letter Book E, fol 4, Pilling, Laws of Lond 64, 63, 71, Loftie, London, 113, 114, Brentano, p cxiv, perverts the truth by adapting the facts to his theory. The following extracts give the relations of the Companies to the civic franchise of London in the eleventh century: 'No one can become a Freeman of the Corporation but by previous admission into these [88] Companies, except in some cases in which the honorary Freedom is presented by a formal vote of the Corporation. When by birth, apprenticeship, purchase or gift, a person has become a member of a Company, he has acquired an inchoate right to the Freedom of the Corporation, and he is admitted on proving his qualification, and on paying certain fees to the Corporation.' (Muníc Corp. Com., 1835, p 976, 968, 1647, 2898; ibid., Irel., 593; Merew and Stephens, 1830, May, Livesham, 488, 489, Harley MS., Mus Brit., 2104, fol 348; Anutq Magaz., vii 19, Cuts, Colch., 111.)

1 Hence the later definitions of a borough and a burgess. Brady describes the latter as a tradesman dwelling in a borough for the sake of traffic (Treatise, 3, 19). "Traffic is the very essence [of a borough] and by it the being and vitality of a Borough or City is maintained." (Skene, Memorials of Burghs, 94.) Les Citees et Burghs sont noblement enfanterus par sustenance de loial Merchaundise, dont souvr par la gendre partie la Richesse et le commun Profit de toutes Realnies" (Rot. Parli, ii 332, 50 Edw. III.)

To fully understand this development we must recall to mind the two great transformations that occurred in English municipalities during the fourteenth and fifteenth centuries, namely, the expansion of trade and the growth of a select governing town council. The economic development gave the crafts a more important position in the town community, and materially altered the old qualifications of burgess-ship. In the larger boroughs commerce and industry became the exclusive occupation of the townsman, the 'rus in urbe,'

as such the freedom of the City,' etc. (Liv Comp. Com., 1881, p 22.)

But here as elsewhere throughout this chapter, my statements concerning the craft fraternities apply only to certain categories of towns, the diversity of custom was so great that general rules cannot be enunciated. In many boroughs the freedom of the crafts and the municipal franchise were clearly distinct, and in others (e.g. Colchester and Yarmouth) the craft associations either did not exist at all, the Leet continung to regulate trade, or constituted an insignificant element of the burghal polity. See vol ii pp 46, 91, 186, 187, Thompson, Hist. of Boston, 158, Thompson, i, etc., 227, 228, Brand, Newe, ii 366, Muníc Corp. Com. 1835, pp 967, 968, 1647, 2898, ibid., Irel., 593; Merew and Stephens, 1830, May, Livesham, 488, 489, Harley MS., Mus Brit., 2104, fol 348; Anutq Magaz., vii 19, Cuts, Colch., 111.)

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gradually vanishing. The ancient burgage tenure—the natural concomitant of the old burghal communities, in which agriculture rather than capital and industry played the chief role—was no longer connected with citizenship. The latter was gradually transformed into a personal privilege, without qualification of property or residence, being obtained by birth, apprenticeship, purchase, gift, or marriage. Payments of scot and lot became the pre-eminent obligation of burgesship; and the right to trade or exercise a craft became its pre-eminent privilege. Thus the freemen—who in many places were identical with the burgesses—were the successors of the brethren of the ancient Gild Merchant. The old popular Leet government of the borough was superseded by a select governing town council, to whose members the name 'burgess' was, in later times, often restricted. To this close corporation the crafts became a powerful and useful auxiliary, often even an effective check to its extravagances; but they did not succeed in supplanting or dominating over it. The select body was an anomaly, which, with the aid of the royal prerogative, prevented the crafts from securing the paramount position to which their wealth and numbers entitled them. Whatever power they did obtain, whether as potent subsidiary organs of town government for the regulation of trade, or as the chief or sole medium for the acquisition of the municipal freedom, or as integral parts of the common council, was, generally speaking, the logical sequence of a gradual economic development, and not the outgrowth of a revolutionary movement by which oppressed plebeian craftsmen endeavoured to throw off the yoke of an arrogant, patrician Gild Merchant.

CHAPTER VIII.

LATER MERCANTILE COMPANIES: MERCHANTS, STAPLERS, MERCHANT ADVENTURERS.

The Gild Merchant is often confused with various other kinds of gilds. In the preceding pages I have attempted carefully to distinguish it from the purely private social-religious fraternities and from the craft gilds. Equal care must be taken to avoid confusing it with the later mercantile associations, above all, with the various companies of merchants, merchant staplers, and merchant adventurers.

During the fourteenth and fifteenth centuries we find the old Gild Merchant resolved into two general classes of crafts, mysteries, arts, or occupations, namely, those wholly of a mercantile character, and those in which the artisan still figured prominently. The former consisted exclusively of dealers, who bought and sold what others made or produced; while the latter embraced workers, who either did not sell any wares at all or only such as they manufactured with their own hands. The mercantile societies may, in turn, be subdivided into those that dealt in only one particular line of goods, such as the drapers, leather-sellers, vintners, etc., and those that traded in a variety of articles, namely, the common or ordinary merchants, whose companies seem, in most cases,
to have been made up mainly of grocers and merchants.1

The old Gild Merchant embraced both merchants and artisans; the later Company of Merchants contained merchants only. In some places, where the mercantile crafts were not

1 A mercer was originally a merchant who dealt in small wares, like the ancient German 'Kramer'. At first there was probably no marked difference between retail mercers and retail merchants, these terms often seem to be used synonymously in the sense of ordinary traders or general dealers. But the term mercer afterwards came to be restricted to what Americans call 'dry goods' (haberdashery, etc.), and still later chiefly to silk wares. See Riley, Liber Cust., 814; Sket, Dict., 364; Grimn, Worrerbuch, 111, Hohlbau, Urkundenbuch, Gloss, vol. ii. 563; Ancren Riwel, 455; Bracton, De Legibus, i. 48; Rot de Lib., 168; London and Middlesex Arch. Soc., iv, 133; Ashley, Woollen Ind., 68. The following passages throw some light upon the nature of the mercer's occupation:—Mecator qui vulgo mercen

narus dicitur (Hohlbau, Urkundenb., 111. 564).1 Mercenarius, qui in sua
domina stabulum habet, de quo quod portat ad collum suspensum, quando
noviesse exit, debet obolum (ibid., iii 297, a d 1252).2 Des menues ou
petitz merceurs come soie, fil d'or et d'argent . de naperie, de lynghe telle, de
ameues, d'aus fresques gros merce-
eres, et auxant toutes manieres d'autres gros marchandises, etc. (Rot Par.,
111. 47, 2 Rich II.) Trop de Marchandise, comme en groceire, mer-
cerne et peltine, etc. (ibid., 111. 226; cf. ibid., i. 332.) In 1436 the
Mercers' Company of Southampton fined a man for hawkling (Davies, Southamp., 275) A d 1510-11.3 De
finbus merceonariorum pro correctione
habenda de les hawkers, 111. iii. 111.1 (Records of Nottingham, iii. 104). Feb. 19, 1576-7.4 No Draper, Mer-
cer, Haberdasher, Hatter, Grocer, petty Chapman, or any other Retailer and

1 Thus at York in 1475 there were fifty-seven crafts, the grocers, drapers, mercers, and fifty-four others (Davies, York Records, 233-236). In 1448 there were in Coventry companies of tailors, drapers, mercers, and more than twenty other craft fraternities (Pole, Coventry, 33, 34, 35). The mercers existed as a separate society much more frequently than the grocers. Thus we find the former, among other places, at Gravesend, St. Alban's, Newcastle, Southampton, Kingston-upon-Thames, Sandwich, Hereford, Evesham, Wells, and Wallingford. See above, p. 123, n. 1; vol. ii. pp. 350, 385. Johnon, Customs of Heret, 118, May, Evesham, 488; Davies, South., 275, Rep. MSS Com., 1872, p. 332; 1876, P. 569, 1877, pp. 576, 577; Munc
Corporation 1835, pp. 294, 1268. The mercers were often united with other
crafts, especially the grocers, haberdashers, and apothecaries. 'Ibus the mercers' company of Durham consisted of mercers, grocers, haberdashers, ironmongers, and

salters (Munc Corpor. Com. 1835, pp. 328-351; Hutchinson, Durham, ii. 26). The mercers of Shrewsbury in-
cluded grocers, ironmongers, and goldsmiths (Munc Corpor. Com. 1835, p. 2016). At Gateshead the mercers were united with the drapers, tailors, and some other trades (ibid., 1252). In Chester the grocers, ironmongers, mercers, and apothecaries formed one company (ibid., 2636). At Kendal the mercers, drapers, haberdashers and grocers were also thus united in 1638 (Rep. MSS. Com., 1885, App. iv. 305). The mercers and woolen drapers of Oxford were incorporated as one fraternity in 1572 (Turner, Oxon. Records, 342, 348). In 1779 there were in the town of Gloucester a Company of Merchers and eleven others; the former included—besides mercers—apothecaries, grocers, and chandlers (Antiq Magaz., iv. 246). See also above, p. 119, n. 1; and p. 121; vol. ii. pp. 55, 56, 89, 199, 208, 249. For examples of mercers united with

merchants, see below, p. 139, n. 2.
examples, rather than to attempt to lay down any rules concerning their general constitution and functions.

The Company of Merchants of Alnwick is, I surmise, still in existence. Its records begin in 1582. It was governed by an alderman and proctors. In 1582 there were sixteen members; in 1789, thirty-two; in 1868, nineteen. In 1603 it was ordered that 'none of the fellowshipp shall buy skinnes, unless it be with the alderman's license, before the tyme of the yeare that they ought to be sold at, upon paine of xx.s.' In 1609 the society sent searchers 'for shepe skynnes and goate skynnes, to goe unto the countrye upon the charges of the fellowshipp.' In 1612 it was enacted that 'no alderman whatsoever nor any other of the fellowshipp in particular, unless the whole fellowshipp be consulted thereunto, shall gyve any lycence and leave to any foryners and strangers to sett out on the Markett dayes, which is prejudicial to the whole fellowshipp, of the payne and penaltie for every such offence xl.s.' In 1635 it was agreed 'that the alderman and two of the company shall forbid the pedleres and petty chapmen to sell, or sett forth or show to be sold, any sort of grosseries or maynchester [i.e. Manchester] wares upon any Markett daye or any other daye, either in the Markett or [in any] house in the town; and yf they shall refus so to doe, it is agreed by the whole company to take distress or distresses from every offender,' etc.

Many other similar enactments show that the Company of Merchants of Alnwick were general shop-keepers, who dealt mainly in mercery and grocery wares. In 1657 four persons were prosecuted because they 'dayly sell all sorts of Marchandise in the oppen market.' In 1661 the Company resolved 'to answer, both in purse and person, against all opposition of the Chepmen and Pedlars and all others that seekes to wrong the fellowshipp.' In 1673 and in 1686 many such persons were found guilty of retailing grocery and mercery wares. At the Quarter Sessions held in 1682 three men of Alnwick were indicted 'for exercising the mystery and calling of a merchant within the borough, not being freemen or having served an apprenticeship for seven years.' Again, in 1683 three others were indicted 'for exercising the mystery or occupation of mercers in the burg of Alnwick'; and in 1684 seventeen persons were indicted for the same offence. In 1685 Thomas Hardy of Alnwick and twelve others were indicted for exercising the art of grocer; and two indictments were found against James Davison for trading both as mercer and grocer. The Company spent considerable money in prosecuting such delinquents at the Quarter Sessions. In 1686 Henry Wilson, of Rennington, bound himself 'not to sell any grosser goods or mercery goods, in what kind soever, towbaco or pipes, brandy or watters, or any other merchant goods, but what he shall buy of Joseph Falder or other merchants belonging to the fellowship of merchants in Alnwick.' James Calhoun bound himself in 1718 'not to sell grocery goods or any broad cloths, druggets, buttons, mowhairs, buckram, canvas, stay tape, or sewing silk.' In 1717 Mark Donell bound himself 'not to exercise the trade of mercer or grocer, not having served his apprenticeship to it (excepting thread, laces, inkles, tapes, ferretyngs, garters, and caduces), unless he hereafter serve his time.' The last attempts to enforce their monopoly were made by the Company in 1771, when they successfully prosecuted two persons for using the art or mystery of grocer.

Besides the Company of Merchants there were formerly ten others in Alnwick—the cordiners, glovers, tanners, weavers, smiths, wrights, butchers, tailors, fullers, and cooperers.

1 Tate, Alnwick, ii. 324, 326.  
2 Ibid., ii. 327. For some account of this Company in 1880, see Munic. Corp. Com. 1880, p. 603, et pass.  
3 Tate, ii. 321, 328-350. Most of these companies were still in existence in 1880. See the Report mentioned in the preceding note.
The still-existing Company of Merchants of Carlisle possess records which go back to the sixteenth century. These merchants included mercers, drapers, grocers, apothecaries, etc., in fact, all traders in Carlisle who were not actual manual workers. It was governed by two masters, two wardens, and two under-masters. In 1658 there were forty-four members; in 1706, only thirty-three. The following are a few of the many ordinances made by this fellowship.

A.D. 1634. 'None to sell sickles or sythes or anie other merchantize suffred to be sould by strangers, but onelie at the two faires. None fforyner or stranger suffred to sell anie merchandyse but in tyme of our faires. None to buy or sell cottons or frise under couller ffor Scottes men . . . . All those that doe trayde to pay euery quarter daye twelve pence. No Scotes man suffered to retaile eyther in market or houses. . . . An acte against George Rumley for refuseing the merchant dinner."

A.D. 1641. 'John Watt hath submitted himselfe to the censor of this occupation to undergoe and pay what they shall set done [i.e. down] the next quarter day for his default in keeping unlawfull weights and measures, which he hath confessed.

A.D. 1651. 'Whereas it is ordered this quarter day ye several persons sell waires in ye street to ye great prejudice of this trade. Therefore we require ye undermasters Edu[ard] Monke and Richard Glaister to take notice of such persons as doe sell waires in ye streete, they may be able to informe the leete court juraye next to be houlden, and see to present the same.' This ordinance was made September 26th. On

October 11th of the same year the following passage occurs in the court leet records: 'Wee present John Boweman, being noe freeman of this city, for keeping open shopp and selling merchant wares by retaile, as well upon the week day as market day, contrary to the priviledge of this city, not having compounded with the companie of merchants; and therefore doe amercy him 5li."

July 2, 1652. 'Complaint being made this quarter daye ye Richard Monke was partner with William Oliuant, a forriner, in buying and selling a can of vinegar, th ereupon ye said Richard being questioned for the same doth acknowledge the truth of ye information and submitts himselfe; the sentence of ye court is this, ye upon confession he is acquitted for ye same, promising neuer to doe ye like, it being ye first fault, & he indyed [i.e. indeed] ignorant of our orders.' In 1656 Peter Norman is charged with a similar offence as to a bargain of herring, and in 1659 as to some wool.

July 4, 1656. 'It is ordered by the consent of the whole company that noe brother of this company shall at any time suffer either Scotsmen or others to retayl in his house any flax, onion-seed or any other commoditie which may be prejudicial to the company of merchants, etc.—It is ordered by the consent of the company of marchants aforesaid that noe brother of this trade shall joyn with any stranger or forraigner in the trade and occupation of a merchant, either within the citie or libertyes thereof. Neither shall any brother of this company give any account of profitt or gaine to any stranger or non-freeman concerninge their trade, uppon penaltie that every brother that offends herein to forfeit for the benefitt of the trade the sume of ten pounds.'

April 7, 1741. 'It is ordered that Mr. Jos. Potts, James Jackson, H. Pearson, and the undermaster of this guild for the time being, carry on a prosecution against Richard

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1 Ferguson and Nanson, Munic. Records of Carlisle, 88-89.
2 Ibid., 89. 'The merchants' gild . . . included the shopkeepers, some grocers and seedsmen, other drapers, haberdashers, apothecaries, etc.' (Ibid., 28.)
3 Ibid., 106, 107, 111.
4 Ibid., 94, 95.
5 Ibid., 91.
6 Ibid., 111.
Hodgson for exercising the trade of a mercer, not having served an apprenticeship. There are many similar entries in the records; the culprits were most frequently guilty of exercising the trade of a grocer.

Besides this Company of Merchants there were seven other craft fraternities in Carlisle—the weavers, smiths, tailors, tanners, shoemakers or cordwainers, skinners and glovers, and butchers.

The Company of Merchants of Dublin is even more interesting than those of Alnwick and Carlisle. In 1451 Henry VI granted a charter of incorporation to the Holy Trinity Gild or the ‘Gild of the art of Merchants of the city of Dublin.’ Its chief officers were to be two masters and two wardens. No foreigner was to buy by retail or wholesale in the city except of the merchants of Dublin.

In 1577 Queen Elizabeth conferred upon the fraternity the monopoly of buying and selling all kinds of wares brought to the town excepting victuals. Foreigners were not to buy from or sell to any persons except merchants of the Gild; and they were to expose their goods for sale in the common hall only. Such wares were not to be removed from the hall within forty days without the special permission of the masters and wardens of the society. All goods of foreigners sold elsewhere than in the common hall were to be confiscated by the officers of the Gild.

The chief functions of the two masters were to preside over the four quarterly meetings, and to see that the ordinances of the fellowship were duly observed and that ‘Trynnyte daye be worshipped and kept.’ The two wardens collected the fines and quarterly dues. In 1657 a council of twenty-four was appointed to manage the affairs of the fraternity; but the members at large continued to attend the quarterly meetings. In 1679 it was ordered that only sixty of the brethren chosen by the council should be present at these quarterly assemblies. At this date there were about four hundred members.

In 1749 it was stated that it had been customary for the masters and wardens, in pursuance of an order made at every Michaelmas quarterly meeting, to appoint the council every year, and that they had always named the Lord Mayor, all the aldermen of the city, the sheriffs and ex-sheriffs, the masters and wardens, and all ex-masters and ex-wardens, together with thirty-one other brethren of the fraternity, to be members of the council. It appears that this council had usurped the right of electing the masters and wardens, and of returning persons to represent the Gild in the common council of the city.

In 1573 it was ordered that ‘no one of any other corporation [i.e. fraternity or gild] shall be admitted a brother of this Gild until he withdraw from the other body.’ Many members of these other craft fraternities were also shopkeepers; but they retailed only one particular line of wares and were not to ‘sell all sortes of merchandize.’ The Holy Trinity Gild was by far the most important fraternity in Dublin. It contributed two-thirds of the town cess in the reign of Elizabeth; the other gilds, the remainder. It also frequently lent money to the civic authorities.

An interesting feature of the Dublin Merchants’ Company was its supervision of the ‘common town bargains.’ These were cargoes purchased by certain civic officials in the name of the town, and then distributed in shares among the merchant burgesses, no one being allowed to buy wares landed in the port, unless the municipal authorities refused to purchase them. This seems to have been quite a common practice.

Footnotes:
1 Ferguson and Nanson, Munic. Records of Carlisle, 116.
2 Ibid., 23-40, 125-271. Ferguson and Nanson’s work contains the fullest collection of printed ordinances relating to English crafts.
3 This was the usual number of meetings held during the year. See vol. ii. pp. 68, 70, 83.
4 There were twenty-four craft fraternities besides the Holy Trinity Gild (Munic. Corp. Com., Dublin, 13).
5 Vol. ii. pp. 78, 80, 81.
6 Vol. ii. p. 78. Wine, salt, coal, and iron were, as we shall soon see, the most important commodities in which the Dublin Company of Merchants dealt.
7 Vol. ii. p. 78.
in England, Ireland, Wales, and Scotland. It evidently

aimed to secure the equitable distribution of merchandise, particularly victuals; to prevent "engrossing"; and to keep
down prices.

We have a very full account of how these joint purchases
were made in Dublin. The Holy Trinity Gild here had the
monopoly of such purchases. The principal articles bargained
for were wine, coal, iron, salt, pitch, and rosin. The two
masters of the Gild were always two of four "buyers," and the
two wardens were the "dividers" and "deliverers," trewly
to delywyr and dewydid unto all the brethren. When the
buyers made a common bargain, the masters and wardens
summoned the brotherhood and ascertained what portion each
gildsman desired to have. If, after the wants of all had been
satisfied, a surplus remained, it was distributed among
the brethren merchants, "every man after his degree." If the
bargain was not sufficient to satisfy the wants of all, it was
distributed among them in the same way, each merchant
receiving a share proportionate to his commercial rank.
As soon as the bargain had been thus divided and "delivered," an
assembly of the gildsmen set a "reasonable price" upon the
wares, which were not to be sold at any other price, under a
heavy penalty. No one was permitted to make an offer for any cargo brought to Dublin, unless the gild-officers (i.e. the 'buyers') refused to purchase it; even then no merchant could buy any part of it without the licence of the 'buyers.' If such licence was granted, then all the brethren who had previously expressed a desire for some of the wares, were to have their due share. The wardens 'shall have for their paynes double holdinges [i.e. shares] of all the bargaines to be made for this yealte.' Brethren receiving goods bought by the Gild were to pay for them within ten days. They were sworn to keep secret all matters discussed at the meetings of the fraternity, and especially the views of the assembly concerning 'bargaynes that bene boght and solde.' When the stranger merchant had disposed of his cargo, he was to depart within a period specified by the gild officers. In 1603 it was ordered that the masters and wardens should make no bargains for their own account, but only for the benefit of the whole brotherhood; nor should they refuse any bargain without the consent of a competent number of the brotherhood.

In some towns other fraternities besides the Company of Merchants made purchases in common, and afterwards divided them among the brethren. Thus wood and bark were bought for the whole Company of Tanners of Alnwick by officers called quartermasters, who allotted to each tanner a proportional share of every purchase. So, too, in the first half of the eighteenth century the brethren of the Cordwainers' Company of Newcastle-upon-Tyne made purchases of leather in common, which were recorded in 'The Company's Sharers' Book.'

There was a Company of Merchants in various other towns besides Alnwick, Carlisle, and Dublin. In the meagre accounts of them that have come down to us, nothing is said of 'common bargains.' Still it is quite probable that such purchases were made by other companies of merchants besides that of Dublin.
§ 2.

Merchant Staplers.

The staplers were merchants who had the monopoly of exporting the principal raw commodities of the realm, especially wool, woollen, leather, tin, and lead; wool figuring most prominently among these ‘staple’ wares. The merchants of the staple used to claim that their privileges dated from the time of Henry III, but existing records do not refer to the staple before the time of Edward I. Previous to this reign the export trade was mainly in the hands of the German Hanse merchants.

The staplers were the towns to which the above-mentioned wares had to be brought for sale or exportation. Sometimes there was only one such mart, and this was situated abroad, generally at Bruges or Calais, occasionally at Antwerp, St. Omer, or Middleburgh. From the reign of Richard II until 1558 the foreign staple was at Calais. The list of home staples was also frequently changed. During a portion of the reigns of Edward II and Edward III they were at Newcastle-upon-Tyne, York, Lincoln, Norwich, London, Winchester, Exeter, Bristol, Dublin, Drogheda, Cork, Shrewsbury, Carmarthen, and Cardiff. By a statute of 1328 it was enacted that ‘the staples beyond the sea and on this side ordained by kings in times past,’ should cease, and that merchants, foreigners or natives, might freely go and come with their wares in England. In 1353 staples were established at Newcastle, York, Lincoln, Norwich, Westminster, Canterbury, Chichester, Winchester, Exeter, Bristol, Carmarthen, Dublin, Waterford, Cork, and Drogheda. In 1369 it was enacted that the staple at Calais should be abolished, and that staples should be held at Newcastle, Hull, Boston, Yarmouth, Queenborough, Westminster, Chichester, Bristol, and Caen. A list of the general overseers of the staple from the reign of Richard II until 1558 is given in the Statutes of the Realm, vol. iii, pp. 388-425. The staple at Bruges was abolished in 1568. In the same year a staple was established at Calais, as the staple at Dunkirk was abolished. This list of the staple at Calais is given in the Statutes of the Realm, vol. iii, pp. 425-431.

1 For some accounts of the staple, see von Ochenskow, 187-220, Stubbs, Const Hist, ii 444-448, Duke, Probuson Hyst, 53-81, Jones, Merchants of Staple, in Wills Magaz, x, 137-159 (based mainly on Duke), Schanz, Handelspolitik, i 327-351; Ashley, Econ Hist, 111-113, Armstrong, T. Treatise concerning the Staple, in Paul’s Dri Volksw Denk, 15-43; Cunningham, Engl Industry, 176-179, 184-186, l Debats des Heritais, pp. xxi-xxvii, 114, 115, 144-146, Coke, Fourth Inst, c 46, Hall, Customs Revenue, i 29-45. The fullest accounts are those of von Ochenskow and Schanz, the former for the earlier history, the latter for the later history, but neither of these writers exhausts the subject. None of the above mentioned authors have consulted the Staple Rolls in the Record Office (Tower Records). Only four of these seem now to be extant, they belong to the years 27-50 Edw III, 1-23 Rich II, 1-10 Hen VI (Tower Misc, Roll 341), and 1-19 Hen VI respectively. The first is particularly valuable and should not be ignored by the future historian of the staple.

2 Butter, cheese, and cloth are also occasionally mentioned. Merchandises de l’Estaple, come Lourys, Qours, Peaux lanzet, et Plumb, ou Esteym, Bure, Furnage, Draps, ou autres Commoditez de la Terre (Rot Parli., iii 278, 14 Rich II).

3 Schanz, i 329, Malyenes, Centre of Circle of Commerce, 93.

4 Rymer, Foedera, ii 248, 1172, et pass; Statutes of the Realm, 12 Rich II, c 16 —The following is one of the earliest documents relating to the staple. ‘Pro Maiore Mercatorum et ipsar Mer- catoribus Rex Collectoribus custumae lanaren et pellem lanarum in portibus de Novo Castro super Tyman, Hertelpole, Kyngestonia super Hull, Lenn, Gernemsut, Gippseswo, Lon- don,’ Sandewecia, Cioestria, Suthamtonia,

Bristollia, et Cestra, Salutem Cam de constilo nostro ordinamurorum quod Mercatores indigene et alienos lanas et pelles lanutas infra regnum et potes- tatem nostram enmeretem et ad terras Brabancon, Flandres et de Artios ven- denas ducere volentes, lanas ilias et pelles ad diciam stapulam infra aliquam carum et terram per Mannem et Communenatem dictorum Mercatorum de regno nostro ordinam ac assign- nandum, ac prout expedire viderint mit tantas, et non ad alia loca in terris illius ducant seu discant facant villo modo’, and inasmuch as we allowed fines to be imposed by the mayor and counsel of the said merchants for breaches of this ordinance, to be levied by our ministers, ‘ad opus nostrum, prout in carta nostra inde conficit plenus continuat’ never- theless, we hear that certain merchants are guilty of breaking this enactment. Hence we request you to help the said mayor in the execution of this ordinance as much as you can (Rec Office, Pat Roll 7, Edw II, p. 1, m. 18, Aug 22) Thus ‘mayor of the merchants of the realm’ or ‘mayor of the staple’ had the general oversight of all the staples. Cf. Rymer, Foedera, ii 378, 566, Parli. Writs, v. ii App. 291, Rep. MSS Com. 1881, p. 127.

5 Von Ochenskow, 190. But the Staple Rolls in the Record Office show that the home staples were not changed as frequently as one might infer from the Statutes of the Realm, and that they did not necessarily alternate with the foreign staple, as some writers seem to think, but that both generally existed at the same time.

6 Rymer, Foedera, ii 705. In the same document mention is made of Lostwithe, Tewo, and Asperton, as home staples for the tin of Cornwall and Devonshire.

7 Statutes, i 259.

8 The staple at Canterbury was established ‘en leur de Sunt Thomas’ (Rot Parli., ii 253).

9 Statutes of the Realm, i 332. In the same year a petition from the commons to establish staples at Worcester, Nottingham, Hull, Boston, Stamford, Lynn, and Ipswich, was refused (Rot Parli., ii 253).
Winchester, Exeter, Bristol, and in the Irish and Welsh towns in which they formerly were. Lynn, Melcombe Regis, Ipswich, Galway, and Limerick are also mentioned during the reign of Edward III. Under his successor, Richard II, Boston, Westminster, Winchester, Exeter, and Bristol figure most prominently among the home staples. During the same reign the staple was changed from Queenborough to Sandwich. The Staple Rolls of Henry the Sixth's reign mention only Boston, Chester, Newcastle, Westminster, Chichester, Exeter, and Bristol as home staples. The statute of Edward IV, c. 2, enacted that all merchandise of the staple should be carried to Calais and to no other place abroad; and that the said wares should be shipped only from such towns in England where the king had his beam, his weights, and his collectors of customs, namely, at Poole, Southampton, and Sandwich, and Bristol, see also Rot Parl., n. 359; Mun. Corp. Com. 1835, p. 1175; Rec Office, Staple Roll 27-50 Edw. III, m. 6, et pass., Rot. Parl., n. 288, 318, 319. For the staples at Ipswich and Lynn, under Rich II and Hen IV, see ibid., n. 560; and Staple Roll 1-23 Rich II. In 11 Edward III a staple was established at Galway for three years (Chartae Hiberc., 69); for the staples of Cork, Drogheda, Limerick, and Waterford in the same reign, see ibid., 69, 70.

1. Statutes of the Realm, i. 390. For the staple at Boston, see also Rot Parl., n. 332, and Thompson, Hist of Boston, 338-340. For the staples at Yarmouth and Bristol, see also Rot Parl., n. 319; Mun. Corp. Com. 1835, p. 1175.

2. Rec Office, Staple Roll 1-23 Rich II.

3. Ibid., and Rot. Parl., m. 10, 1 Rich II.


5. In 1453, Henry VI allowed Poole to be a port for shipping and unloading all sorts of merchandise and all kinds of wares belonging to the staple, and he granted that the mayor of the staple should have cognizance of the staple, with the same liberties as the mayor of Southampton. (Rec Office, Pat Roll 1 Edw. IV, p. 3, m. 23; Sydenham, Poole, 161) 'The statute staple—of which there are some precedents, [temp. Edward VI] still existing in an old book in the municipal archives of Poole—was a bond of record acknowledged before the mayor of the staple, in the presence of all or one of the constables, and to all obligations made on recognizances so acknowledged the statute required that a seal, ordained for that purpose, should be affixed, and this seal of the staple was the only one necessary to attest the contract. These courts have gone into disuse; but the seal belonging to the staple court of Poole is still in existence. It bears the legend—SICILIS STATUERE IN PORTU DE POLE' (Sydenham, 162).

6. A patent of 23 Hen VI granted that the town of Southampton should have 'una stapula tam ad recogncccione debitorum in eadem stapula juxta formam Statuti Stapule in eadem stapula accipienda, quam ad omnia alia ad huysamodi stapulam pertinencia ibidem facienda et exercenda'; the burgesses were to elect annually a mayor and two constables of the staple. (Rec Office, Rec Office, Pat Roll 2 Rich. III, p. 3, m. 32, Rep. MSS. Com., 1887, App. iii p. 45.)

7. Speed, the historian of Southampton, who died in 1782, says 'The Corporation still continue to elect of the officers of the staple every year who are sworn into their offices, the mayor taking the oath of the Mayor of the Staple, besides the oath of a mayor as a civil magistrate' (Davies, Southamp., 219).


9. Statutes, i. 333-343.
and justice is to be done them from day to day and hour to hour, according to the law of the staple or the law-merchant, and not according either to the common law or particular burghal usages¹. They shall be impleaded before no tribunal except that of the mayor and constables of the staple. This mayor is to have recognizances of debts, a seal being provided for that purpose². In every staple town a mayor and two constables are to be appointed by the king to govern the staple; in the future the former shall be annually elected by the commonalty of the merchants, as well aliens as denizens³. The mayor and constables shall have power to keep the peace, and to arrest offenders for trespass, debt, or breach of contract. The mayors, sheriffs, and bailiffs of the towns where the staples are held, shall aid the mayors and constables of the staples in the execution of their duties⁴. The merchant strangers shall choose two aliens to sit with the mayor and constables of the staple to try suits touching alien merchants⁵. The ordinance contains several other important enactments, which we cannot here stop to discuss.

It is evident that the staple was primarily a fiscal organ of the crown, facilitating the collection of the royal customs. It also ensured the quality of the goods exported by providing a machinery for viewing and marking them; and it stimulated commerce by providing alien merchants with a special tribunal and protecting them in other ways, 'to give courage to merchant strangers to come with their wares and merchandises into the realm⁶.'

It is likewise evident, from the ordinance of 27 Edward III

¹ Statutes, i. 332-343, c. 2.
² Ibid., c. 8.
³ Ibid., c. 9.
⁴ The Staple Rolls in the Record Office consist chiefly of royal confirmations of such elections. These Rolls show that the two constables as well as the mayor were generally elected by the merchants both native and foreign.
⁵ Statutes, i. 332-343, c. 21.

and from other records, that the mayor and constables of the home staples were public functionaries of the king, originally distinct from the municipal authorities⁷, although in course of time it became customary in some towns for the mayor of the borough to act ex-officio as mayor of the staple⁸.

We are particularly concerned with the organization of the staplers as a company or gild. There can be no doubt that they constituted one general fraternity or fellowship, although few modern writers allude to this fact, and some expressly deny it⁹. Indeed, the Company of the Staple of England is still in existence, although it is now shorn of all its ancient trade functions, its members assembling only to feast together. In a plea before Justices Day and Wills ⁴, March 20, 1887, it was claimed that Edward III founded the Company, but no confirmation of this appears in the Statute, Parliament, or Staple Rolls of his reign. It is more probable that the Company was established by one of his immediate successors. It was already in existence about the middle of the fifteenth century. 'Concerning your marchauntes of Fraunce,' says a writer of that period, 'we have also marchauntes in England, who frequenteth all the partes of the world for traffique of marchaundyse. And especially II. companies, that is to say, the ryght worshipful company of marchauntes adventurers, and the famous felyship of the Estaple of Calais, by whom not only the martes of Barowe ⁵ and Andwarpe be mayntened, but

² Davies, Southamp., 219; Hunt, Bristol, 77; Rep. MSS. Com., 1885, App. v. 282.
³ Duke, Prolusiones, 71-77.
⁴ This case was tried in the Queen’s Bench; a report of the proceedings is given in the Daily Chronicle of March 28, 1887. It was an action brought by the Company against the Bank of England for the recovery of £4250 in consols, which the clerk of the Company had drawn from the Bank and appropriated to his own use. The head of the society is still called the mayor. Now that its funds have been embezzled, this spectre of a once powerful organization will probably soon vanish.—I have tried to ascertain whether the Company possesses any of its ancient records, and whether I would be allowed to consult the same, if any existed. The solicitors of the Company, Messrs. Watney, Tilleard, and Freeman, of 4 Lombard Court, E.C., made no answer to my inquiries.
⁵ (?) Bruges.
also in effect at the townes of Brabant, Holand, Zeland, and Flanders 1.

The home staples of England and Wales individually do not seem to have constituted separate fraternities 2, though they often acted jointly, as, for example, in electing their mayors and constables. In Ireland, on the other hand, during the fifteenth and sixteenth centuries, the staplers of a town were generally incorporated as a company or fraternity 3. The charter granted by the king to such a fellowship generally allowed its members annually to elect a mayor and two constables, to make bye-laws, to have charge of the king’s beam for the weighing of wares, and to take recognizances of the staple. It was the custom in some Irish boroughs to appoint the retiring mayor of the town mayor of the staple, and the retiring bailiffs of the town constables of the staple 4.

1 Coke, in Le Debat des Heraults, 114, 115. In the early part of the sixteenth century Armstrong refers to the merchants of the staple as a ‘company corporat’ (Paul, Drei Volksw Denk., 15). See also Rep MSS Com., 1872, p. 25.
2 Perhaps Boston forms an exception; for the staplers there had a hall and owned property (Thompson, Boston, 212, 213). Probably, however, such halls were used more for the weighing and viewing of the staple wares than for convivial purposes.
4 Vol ii p 251; Munc. Corp Com., Ireland, 818 In Waterford the mayor of the town appears to have been ex officio mayor of the staple, the sheriffs, the constables of the staple, and the gaoler, marshal of the staple (Rep. MSS Com., 1885, App v 282, 284). The following also relates to Waterford: ‘Feoda Curie Staple dicte Civitatis et Americamenta ejusdem — In primis, de qualibet querela cujuscumque actionis, videlicet, ad usum et dispositionem Maiorium et Constabulariorum, et non ad communem paxdem, xx a Item, Recordanum, sive clerus, pro introitu cujuslibet querelae, vix d.’ Various other fees follow, including the fee of the marshal: ‘Americamenta ejusdem Curie sicut in Curia Civitatis suprascripta’ (Ibid., 287).

In idea and generally in practice, the Company of Merchants, spoken of in the preceding section of this chapter, was distinct from the Company of the Staple. The latter had to do with the sale and exportation of a certain few commodities; the former was concerned with internal trade and dealt in a great variety of articles. At Dublin, however, the staplers seem to have constituted a higher branch of the Society of Merchants, probably consisting of its wealthier members 1. No one in Dublin could be a stapler until he had exercised the occupation of a merchant at least two years 2. The distinction between the town, the Company of Merchants, and the Company of Staplers is well illustrated in the history of Drogheda. In this borough the mayor of one year was mayor of the staple during the year following and master of the Gild of Merchants during the third year. There was a similar succession in the offices of sheriffs of the town, constables of the staple, and wardens of the Gild of Merchants 3.

The increase of home manufactures and the corresponding diminution in the export of wool sapped the foundations of the staple system. The prohibition of the export of wool in 1660 4 must have given a finishing blow to the staple as an active organism. But there were still some survivals of the home staples in the first half of the present century 5, and as I have already pointed out, the Company of the Staple of England is still in existence.

the Kyng — And no manere of man by no freshe hyds within the jurisdiction of the saide staple, save only marchaunts of the same whiche shal be admityd by the Maire and constables of the saide Staple lawfully to by and syll’ No one was to buy fresh hides ‘above x d an hyd’ in any place where the Staple has jurisdiction, nor salt hides ‘above x r a dacker’ (Ibid., 306).
§ 3.

**Merchant Adventurers.**

The original Company of the Merchant Adventurers carried on trade chiefly with the Netherlands. Their principal mart was at first Bruges, whence it was removed to Antwerp early in the fifteenth century. In distinction from the staplers, who dealt in certain raw materials, the Merchant Adventurers had the monopoly of exporting certain manufactured articles, especially cloths. Though of national importance, they constituted a strictly private company, and not, like the staplers, an administrative organ of the British government. The former were all subjects of the English crown; the staplers were made up of aliens as well as Englishmen. In the sixteenth and seventeenth centuries frequent dissensions broke out between these two bodies regarding the exportation of cloth. To carry on foreign trade freely in wool as well as in cloth, a merchant had to join both companies.

Much obscurity hangs over the early history of the Merchant Adventurers. They claimed that John, Duke of Brabant, founded their society in 1216 or 1248, and that it originally bore the name of the Brotherhood of St. Thomas à Becket. But it could scarcely have existed in its later form before the reign of Edward III, when the cloth industry began to flourish in England. The earliest charter granted to it as an organized association dates from the year 1407. Their powers were greatly increased by Henry VII. The soul of this society, and perhaps its original nucleus, was the Mercers' Company of London, which from a fellowship of general dealers in petty wares had developed into a body of wholesale traders, dealing mainly in silks. Down to 1526 the minutes of both Companies were kept in the same book; and the Mercers' Hall was the headquarters of the Merchant Adventurers until the fire of 1666. But among the latter there were many other merchants besides mercers.

In 1601 John Wheeler thus describes the society, of which he was secretary:—'The Company of the Merchants Adventurers consisteth of a great number of wealthy and well experimented Merchants, dwelling in diverse great Cities, in 1881, p. 127; Malynes, Center of the Circle of Commerces, 85-96.

1 Schanz, l. 346.
2 Ibid., i. 345; Wheeler, 10; Statutes of the Realm, 12 Hen. VII, c. 6. They do not seem to have been called Merchant Adventurers anterior to the reign of Henry VI. The earliest use of the term that I have met with dates from the middle of the fifteenth century (see above, p. 145). Down to the reign of Henry VII they are generally called 'mercatores in paribus Hollandie, Sebastiani, Brabancie et Flandria.'
3 Rymer, Foedera, viii. 464. The later confirmation charters do not refer to any earlier grant. See Schanz, ii. 544, 575; Calendar of State Papers, Domestic Series, 1660-1661, p. 464; Notes and Queries, Second Series, i. 515; Malynes, Center of Circle of Commerce, 88.
4 Schanz, l. 345, 341.
5 Liv. Comp. Com., 1884, App. i. 1. See also London and Middlesex Archaeol. Soc., Trans., iv. 134; Schanz, l. 336, ii. 572; Herbert, Liv. Comp. i. 232; Statutes of the Realm, 12 Hen. VII, c. 6 ("the felishippe of the Mercers and othre marchauntes and adventurers").
7 Treatise of Commerce, 19, 24.
Maritime Townes, and other parts of the Realme, to wit, London, Yorke, Norwich, Exeter, Ipswitch, Newcastle, Hull, &c. These men of olde time linked and bound themselves together in Companie for the exercise of merchandise and sea-fare, trading in Cloth, Kersie, and all other, as well English as forreigne Commodities vendible abroad, by the which they brought vnto the places where they traded, much wealth, benefit, and commoditie, and for that cause have obtained many verie excellent and singular priuiledges, rights, jurisdictions, exemptions and immunities, all which those of the aforesaid Fellowship equally enjoy after a well ordered maner and forme, and according to the ordinances, lawes, and customs deuised and agreed vpon by common consent of all the Merchants, free of the said Fellowship, dwelling in the aboue-named Townes and places of the land: the parts and places which they trade vnto, are the Townes and ports lying betweene the rivers of Somme in France, and the Scawe [in Denmark] in the Germane sea: not into all at once, or at each man's pleasure, but into one or two Towns at the most within the abouesaid bounds, which they commonly call the Mart Towne, or Townes; for that there onely they stapled the commodities, which they brought out of England, & put the same to sale, and bought such forreigne commodities as the land wanted, and were brought from far by Merchants of diverse Nations and countries flocking thither as to a Faire, or market, to buy & sell. Besides, the said Companie...
Bristol received a charter from Edward VI, and that of Chester was incorporated by Queen Mary; each was governed by a master and two wardens. The Company of Merchant Adventurers of Hull was, we are informed by a local historian, distinct from the Society of Merchants of Hull. Elizabeth granted the latter the monopoly of the trade of Hull with foreign countries. The Merchant Adventurers of Exeter constituted a very influential body. The master and wardens of this art or mystery had power—with the help of the mayor and four aldermen of the city—to inflict punishment for any defects (in weights, etc.) relating to their trade. Edward VI incorporated the merchant venturers inhabiting the town of Newcastle-upon-Tyne, qui modo sunt de societate mercatorum venturariorum in partibus Brabantiae in partibus transmarinis. Its officers were a governor, twelve assistants, two wardens, a clerk, and a beadle. This Company consisted of three separate fraternities—the Mercers, Drapers, and Boothmen or Corn Merchants. The Merchant Adventurers' fellowship of York originated in the Company of Mercers of that city. It had a governor, eighteen assistants, and three or more searchers. In Chester, likewise, the mercers seem to have formed a prominent element in the Company of Merchant Adventurers. Companies of Merchant Adventurers are still in existence at Bristol, York, and Newcastle.

The materials illustrating the relations of these local societies to the general Company of Merchant Adventurers are not very abundant. Wheeler says: 'By the said Gouernour and Assistantes [of the general Company] are also appointed and chosen a Deputie and certaine discreet persons, to be Associates to the said Deputie, in all other places conuenient, as well within as without the realme of England, who all hold Correspondence with the Gouernour of the Company and chiefe Court in the Marte Towne on the other side the seas, and haue subalterne power to exercise Merchants law, to rule, and looke to the good ordering of the Brethren of the Companie euery where, as farre as may be and their Charters will beare them out.' Among the ordinances of the general Company is one regulating the exportation of goods by 'the frire brethern of this ffellowshippe dwellinge at Excester.' In 1519 the society at Newcastle agreed to pay the general Company of Merchant Adventurers—the merchants of London beyond sea —£8, 'in lieu of all impositions.' In 1528 the governor and two wardens of the Newcastle society recommended a brother, on the payment of the usual duties, to be admitted into the fellowship of the Merchant Adventurers of England; 'to which privilege it appears, by the tenor of their recommendation, that any merchant who had served seven years to one of the fraternity at Newcastle had a just and unquestionable claim.' The following enactment was made by

2 Addit. MS. 18913, fol. 57. No date is given, but the ordinance was probably made in the sixteenth century.
3 Brand, Newc., ii. 225; Bourne, Newc., 222; Mackenzie, Newc., ii. 666.
4 'None of the Brethren of Newcastle shall take anie more apprentices to bee free of this ffellowshippe than ys permitted to other brethern elswhere, vpon the penalties therefore ordained. Neither shall anie apprenticee to bee bound for lesse tyme then tenne yeres service by Indenture orderly made, except suche apprenticee may otherwise bee free of the ffellowshippe by Patrimonie.'
the general Company, probably in the sixteenth century:—

'Then of the Brethern of this fellowshipe dwelling at New-

castle vpon Tyne bringinge into these partes where the said

fellowship ys privileged woolle, commonly called black

wooll, shall sell or vtter the same vnder eleven marckes

the sack, neither white woolle vnder eighteen

marckes the sack, vpon pain of tenn poundes sterlinge

toties quotations.' The arms of the Company of Merchant Adventurers of Hull

corresponded to those of the Merchant Adventurers of Eng-

land. In 1576 the latter agreed to admit ten inhabitants of

Boston into their Company; whereupon the town authorities

of Boston appointed these ten. It is probable that in some

towns, like Boston, the Merchant Adventurers were not

numerous enough to form a separate society; but in other

places, like Newcastle, there were subsidiary fellowships of

Merchant Adventurers, under the general regulation of the

parent fraternity, whose headquarters was at London. A

similar relation subsisted between the London Teutonic

Hanse and its local branches in England.

In a petition of the governor, wardens, assistants, and fel-

lowship of Merchant Adventurers of Newcastle-upon-Tyne to

parliament in 1644, they state 'that they have beene an an-

tient company of merchants ever since King John's tyme';

and 'that the merchants of Newcastle are an antient guild of

merchants ever since the 17th yeare of King John.' They

their Apprentyces to bee orderly enrolled, and suche Enrollement to bee
derssed with the dase, monthe, and

year of the date thereof vpon the In-
denture, vpon pain of fourtie shillinges

And yf ane apprentice shalbe enrolled at

Newcastle, the Governour there shall

keep Register thereof and yearly send

over note of those which shalbe ther-

so Enrolled' (Addit. MS. 18913, fol.

89).

1 Addit. MS. 18913, fol 88; cf. also fol 89. Various other ordinances re-
lating to Newcastle are given on ff. 88, 89, of this manuscript, they were made

by the general Company, probably in the sixteenth century.

2 Frost, Hull, 37.

3 Thompson, Hist of Boston, 73.

4 Gierke, Genossenschaftsrecht, 135

It is said that there were German Hanse

societies or 'steelyards' in Hull, York,

Newcastle, Boston, and Lynn, besides

the chief one in London. See Paul in

Hans Geschichtsbilder, 1877, p. 131;

and Drei Vollesk Denken, 45; Hargrove,

York, u. 275; Lappenberg, Hans Stuhl-

5 Vol. II. p. 185. Cf. Merew. and

Stephens, 1672, 1673.

doubtless had in mind the charter of 17 John, which granted

to the burgesses of Newcastle a Gild Merchant. Like all

other medieval societies, the Adventurers of Newcastle would

naturally be inclined to surround their origin with the halo of

antiquity. It is possible that they were really descended from

the ancient Gild Merchant in an unbroken line of con-

tinuity; but the unsupported assertion of the Adventurers

themselves is not sufficient evidence to justify us in conclud-

ing that this was actually the case. It is more probable that they,

like the other local fellowships of Merchant Adventurers,

constituted merely one of the various mysteries or occupa-

tions which succeeded the ancient Gild Merchant. The latter

was the predecessor, rather than the progenitor, of these later

fraternities.

The contrast between the old Gild Merchant and the Com-

pany of Merchant Adventurers is striking. The one had to

do wholly with foreign trade, and its members were forbidden
to exercise a manual occupation or even to be retail shop-

keepers; the other, as has already been pointed out, con-

sisted mainly of small shopkeepers and artisans. The line of
demarcation between merchants and manual craftsmen was

sharply drawn by the second half of the sixteenth century,

the term 'merchant' having already acquired its modern

signification as a dealer on an extensive scale.
Besides the Company of Merchant Adventurers trading to the Low Countries—which during the eighteenth century was called the Hamburgh Company—various new Companies of Merchant Adventurers trading to other lands arose in the sixteenth and seventeenth centuries, especially during the reigns of Elizabeth and her immediate successors. Among them were the Russian or Muscovy Company, the Turkey or Levant Company, the Guinea Company, the Morocco Company, the Eastland Company, the Spanish Company, and the East India Company, the last-mentioned being the most powerful of them all. Some of these bodies also had local branches in the towns of England.

in buying and selling of commodities, or by way of permutation of wares both at home and abroad in foreign lands, is a Merchant.' (The Ancient Law-Merchant, p. 5). At Chester in 1589 the occupation of a merchant is contrasted with that of a retailer (Rep. MSS. Com., 1881, p. 364).

1 Adam Smith, Wealth of Nations, 330; Smith, Memoirs of Wool, i. 204. In 1697 one of the principal 'residences' of the Company was at Hamburgh (Addit. MS. 18913, fol. 209). See also Macpherson, Commerce, ii. 171. 447. 500. 502.

2 Schanz, i. 381; Hall, Customs-Revenue, i. 50-54. 316; Cunningham, Eng. Industry, 321, 322, and Politics and Econ., 80, 81; Bourne, Eng. Merchants, 86, 165, 196, 217; Gardiner, England, i. 187-190; Smith, Wealth of Nations, 320-329; Rep. MSS. Com., 1874, p. 25; Macpherson, Commerce, Index under 'Companies of Merchants'; Tracts on Commerce, ed. McCulloch, 332, 631, 637, 647, 664; Hakluyt, Voyages, i. 267, 265-265, 241, 257, 369, 453; ii. pt. i. 146; ii. pt. i. 53, 114. For the East India Company, see Stevens, Dawn of British Trade, pass. In 1391, Richard II granted a charter regulating the affairs of English Merchants in Prussia (Rymer, Foedera, viii. 693). For a similar grant by Henry IV, see Foedera, viii. 360; cf. viii. 112.

The English merchants 'in partibus Norwegiae, Sweciae et Daciae commorantes' also received a charter from Henry IV in 1408 (ibid., 511). In 1478-9 a fraternity of English merchants trading to Ireland was established at Dublin, called the Gild of the Blessed Virgin Mary. By a statute of 1481 this Company was granted the monopoly of trading to those parts of Ireland where the writ of the king of England was obeyed. See Gilbert, Dublin, i. 324, 420-426; Irish Archaeol. Soc., Tracts, ii. 71.

3 Vol. ii. pp. 362, 373: and above, p. 155, n. 2. For the Company of Merchant Adventurers of Exeter trading to France, see also Statutes of the Realm, 4 Jac. I, c. 9. Worth in his History of Plymouth, p. 215, says that the merchants of Plymouth received royal permission to trade with Portugal in 1360. The following is taken from Mackerell's History of Lynn, p. 216: 'Henry [V] by the Grace of God King of England and of France and Lord of Ireland, To Our Trusty and Well beloved the Mayor, Aldermen, and other Merchants inhabiting within our Town of Lynn; [Inasmuch as ye have] shewed unto us that by the old Privilege among you used, in Exercising the Sale of your Merchandizes in the Lands and

Countries of Denmark and Norway, Ye have an Antient Custom to have an Alderman, chosen by election among you to be Ruler and Governor of Your Company to the said Countries, and to see good Rule and Order kept among you there; hence the king allows them to assemble together and choose the said Alderman as they have been accustomed. Cf. Richards, Lynn, i. 486.

Armstrong clearly uses the term in this sense early in the sixteenth century. See Pauli, Drei Volksw. Denks., 40; cf. ibid., 44, 45; see also vol. ii. pp. 13, 176, 265, 359, 350.
CHAPTER IX.

THE LATER HISTORY OF THE GILD MERCHANT.

It is no easy task to trace the later history of the Gild Merchant. In the fragmentary remains of the ancient structure still extant in modern times, there is a confusing vagueness of outline, which is inherent in the development itself, and for which neither the meagreness nor the manipulation of the sources can be held accountable. For where the Gild Merchant had not completely disappeared, it either vegetated on in a wholly different form, or merged its existence in other institutions. Like almost every other phase of English municipal history in modern times, the prevalence of a multitude of anomalies and the great diversity of development preclude any successful attempt at broad generalisation.

Before considering the later fortunes of the Gild Merchant, let us attempt to define the stages of development through which it had already passed. As its earliest history is wrapped in obscurity, we must resort to conjecture, basing the latter, however, upon the results deduced in the preceding chapters. Whether we place the inception of the fraternity immediately before or after the Norman Conquest, whether we make it the continuation of older Anglo-Saxon gilds, or a derivative from Normandy, or a wholly new and spontaneous growth, it was doubtless at first merely a private society, unconnected with the town government, having for its object the protection of its members, the tradesmen of the borough, and the maintenance of the newly invigorated trade interests.

During the twelfth century it gradually became a recognised part of the town constitution, thus entering upon its second stage of development. How this came to pass can be easily realised from the later history of English gilds in general. For in the fourteenth and fifteenth centuries, as has already been pointed out, a simple social-religious gild at times attained such power in a community that it came to be regarded as an important constituent element of the civic administration. Quite similar must have been the growth of the Gild Merchant, which from the outset was doubtless composed of the most influential burgesses, and which, as the exponent of the mercantile interests, must always have been greatly concerned in the increase of the privileges and prosperity of the borough in general. It was very natural that the town authorities should use such a society for public purposes, entrusting to it the surveillance of the trade monopoly, in which its members were particularly interested,—allowing it to gradually become an important part of the civic administrative machinery. It has been my chief object to describe the institution in this second and most important stage of its development. The Southampton statutes seem to have been made partly before and partly after the fraternity had become an official civic body; some of them probably also belong to a still later period of the history of the Gild.

The beginning of this third and final stage of development cannot be definitely fixed; for in some places it was of an earlier date than in others. The fourteenth century may in general be called the period of gradual transition. In the fifteenth century the transformation was completed. In this and the following centuries the term 'Gilda Mercatoria' became less and less frequent. In many places it soon wholly disappeared. Where it continued to subsist, the Gild no longer

1 Above, pp. 83, 84.
3 For some notices of the Gild Merchant in the sixteenth and seventeenth centuries, see above, pp. 9–20; vol. ii. pp. 1, 2, 12, 19, 21, 25, 36, 45, 46, 53–56, 86, 109, 148, 191, 193, 195, 197, 208, 213, 234, 240, 264–268, 272, 276, 278, 279, 280, 308, 309; Allen, Ports., 97; Powysland Club, iii. 92; Devon. Assoc., xii. 324; Simpson, Derby, 75.
The Gild Merchant.

had an individuality of its own. Its alderman and other peculiar officers, its whole organization as a distinctive entity, had vanished. It had merged its identity in that of the general municipal organism. The head of the fraternity was now the head of the town; borough and Gild, burgesses and gildsmen were now identical. What had once been a distinct integral part of the civic body politic became vaguely blended with the whole of it.\(^1\) The old Gild Merchant was now rarely mentioned in connection with the municipal trade restrictions and regulations, the latter being commonly applied to burgesses\(^2\), craftsmen, freemen\(^3\), or 'foreigners'\(^4\).

The exegesis of this transformation has already been given in the preceding pages\(^5\). It was due mainly to three causes: (1) the expansion of trade and the multiplication of the craft and mercantile fraternities, which absorbed the ancient functions of the Gild Merchant and rendered it superfluous; (2) the growth of the select governing body, which usurped most of the privileges of the old burgthers at large, and hence tended to obliterate the distinction between them, or their less privileged successors, and the ancient gildsmen, leaving both only certain trade immunities; (3) the decay of the leet—the rallying point of the old burgthers as distinguished from that of the gildsmen—the functions of which passed, in part, to the crafts, but mainly to the select body and to the justices of the peace.\(^6\)

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2 Vol. ii. pp. 20, 56, 150, 176, 177; Allen, Liskeard, 280; Gribble, Barnst., ii. 356, 357; Palmer, Varri., 53; Great Red Book of Bristol, fol. 6.


4 Vol. ii. pp. 37, 111, 183, 265, 272, 273, 352, 360; Simpson, Derby, 92, 93; Noake, Worc., 8; Hutchins, Dorset, i. 126; Bailey, Transcripts, 58; Munic. Corp. Com., 1835, p. 1636; Statutes of the Realm, 34 & 35 Hen. VIII, c. 18.

5 Above, pp. 73, 75, 110-116.

6 In some places the leet and the craft fraternités continued to exist side by side. See above, p. 132; vol. ii. pp. 273-275; Hodgson, Morpeth, 67, 68.
Having become a social-religious fraternity, it was dissolved by the Gild Statute of Edward VI, its property passing into the hands of the corporation of the borough.

At Ipswich the development was somewhat similar. Though the old name 'Gilda Mercatoria' continued to be used as late as the seventeenth century, already in 1325 the fraternity had been re-organized as the Corpus Christi Gild, to which not only the laity of Ipswich but also the priors of two religious houses of the town and all the parish priests belonged. The main object of the newly constituted fraternity was to provide for the yearly procession on Corpus Christi Day, when the priests and trade companies marched through the town, the latter displaying their banners and pageants. After the procession came the feast, at which the brethren regaled themselves with wine and 'ffidlers'. It is worthy of note that in Ipswich, as in Lynn, though the ancient functions of the Gild Merchant had disappeared, its social-religious successor was a quasi-official part of the civic polity. The two aldermen or gild-masters, who enjoyed the onerous privilege of being allowed to provide the annual banquet, were answerable to the bailiffs and portmen of Ipswich. Allowances of wine and money were sometimes made from the town treasury for the maintenance of the Gild. Various ordinances concerning the observance of its ceremonies were enacted from time to time in the burghal courts. The town maintained a 'guyld prest to syng and to pray for all the brethern and sistern.' Every burgess seems to have been a member of the fraternity; which still vegetated in the reign of James I, and finally degenerated into a dinner for the common council of the town—'the twelve' and 'the twenty-four.'

In 24 Henry VI the ancient Gild Merchant of Chichester was re-organized as the Gild of St. George, of which the mayor of the town was always to be master. At Barnstaple, likewise, the Gild Merchant seems to have been transformed into a social-religious gild.

Thus, in modern times, the machinery of the Gild Merchant fell to pieces, but its name vaguely clung either to the aggregate of the craft fraternities, to the town polity as a whole, to the narrow governing corporation, or to a private social-religious gild.

In one and the same town the history of the word is sometimes different from the history of the institution itself, the name and traditions of the Gild Merchant going in one direction, and its actual functions in another. In Preston, for example, a new Company, as has been already stated, was established in 1628 for the maintenance of the trade monopoly. Now at that time the 'Gilda Mercatoria' of Preston still existed, but, as we shall soon see, its existence was merely formal, only a very vague notion of its ancient signification having survived.

The vagueness with which the term Gild Merchant was used in the reign of Queen Anne is admirably illustrated by a suit of the corporation of Winchester against a person called Wilks, for trading in the town without belonging to the Gild Merchant. One of the Justices said: 'Non constat to us whether the Gild here be the whole town, or part of the town, or what part of the town, nor by what right there is any gilda mercatoria in this place.'

Vague and almost meaningless as the term had evidently become, it still tenaciously clung to some of the town muniments and national records. A curious and instructive example of this is afforded in 1705 by an 'Act for establishing ports and towns' in the English colony of Virginia. 'And because such a number of people as may be hoped will in process of time become inhabitants of these ports and towns, cannot expect to be supported without such regulations are made.
and methods put in practice as are used in towns of other countries; Be it enacted, That each town to be erected by virtue of this act be constituted, and every of them singly and apart is hereby constituted and established a free burgh, shall have a market at least twice a week, and a fair once a year, at such times as hereafter is appointed, shall have a merchant guild and community with all customs and liberties belonging to a free burgh,' etc. One cannot help wondering what idea the denizens of the new world attached to such a grant of the Gild Merchant, concerning the signification of which the learned judges of the mother country had confessed their ignorance in the case of Winchester v. Wilks, only a few months before the passing of this Act.

In the eighteenth century we meet the word much less frequently than in the seventeenth; and toward the beginning of the present century it became very rare. The Municipal Corporations Commission, in 1835, found it still used in only a few boroughs. The remnants of the Gild Merchant and of the craft fraternities were rapidly vanishing before the new ideas of a more liberal age,—the age of laisser faire.

The onerous, self-destructive restrictions of gilds were now being superseded by the stimulating measures of Chambers of Commerce. More than six centuries elapsed before the enactment of Magna Carta that all merchants ‘may go through England, by land and water, to buy and sell, free from all unjust imposts,’ became a realised fact throughout the realm. The Municipal Corporations Act of 1835 provided that ‘every person in any borough may keep any shop for the sale of all lawful wares and merchandizes by wholesale or retail, and use every lawful trade, occupation, mystery, and handicraft, for hire, gain, sale, or otherwise, within any borough.’

In a single town the English Gild Merchant still subsists, but only as the shadow of its former self—a spectre from the distant past. At Preston the Gild Merchant has been ‘celebrated’ regularly once every twenty years for more than three centuries, on which occasions the burgesses renew their freedom and indulge in all the festivities of a civic carnival. The last Gild Merchant was held in 1882. There was then
much feasting and dancing, there were gay processions of
townsmen, and much talk of the glories of the past. And
yet how few even of the scholars and noblemen there assembled
from various parts of Great Britain knew what an important
role the Gild Merchant had played in the annals of English
municipal history, what strange vicissitudes it had undergone,
what a remarkable transformation the centuries had wrought
in it.

1 Vol. ii. pp. 200, 201.

APPENDIX A.
The Literature of English Gilds.

Dr. Brentano is commonly regarded as the chief authority on the
general history of English gilds. Wilda, from whom Brentano
derived some of his leading ideas, touched upon the subject only inci-
dentally, basing his conclusions wholly upon Madox’s works, the
Gild Statutes of Berwick, and Danish analogies. Fortuny, 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 Hüll-
mann’s ‘Städte wesen’. 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. lxviii.-lxix., 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 re-
ligious fraternities, came to the North, the latter amalgamated with

1 The substance of this Appendix appeared in the English Historical
Review, i. 780-784.
2 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 Gewer-
vereine.’ Leipzig, 1871.
3 For Madox’s account of the gild
merchant, see above, p. 1, n. 2.
4 For the Berwick Statutes, see Ap-
pendix D.
5 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 gilds of the middle ages' (p. lxxxi.). England is their birthplace (pp. lii., xcvi., cxxviii.). 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 gilds, 'in direct imitation of the family' (pp. Ixxi., lxxvi.).

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, consociationem conjuratam; 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. Ixxi., 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 burgal 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. xci., 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. cvi.-cviii.). These aggressions gave rise to the formation of craft gilds (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 gilds was due to the rise of large capital and its investment in manufacture (p. cxiii.).

The modern factory system caused the old regulations of trade by the craft gilds and by the Statute of 5 Elizabeth, c. 4, to fall into desuetude, 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 gilds 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, and knighthood; and one may derive the latter from the family with as much raison as Brentano does the former.

More unfounded still is his assumption that England is the birthplace 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. The presence of the root 'gild,' which has various significations, does not necessarily imply the existence of such a fraternity. Indisputable mention of gilds appears on the continent sooner than in England. True the oldest

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1 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 Hyde, 369. Writers have also noted the resemblance of the borough community, the ancient mark, etc., to the family (Gaupp, Stadt- und Sonderrecht, ii. p. xvi.; Arch. Assoc., Journal, xxxviii., 368; Gierke, i. 90, 244; cf. Ludlow. Gilds, 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, 345.

2 See below, p. 177.

3 The Latin equivalents are 'sacri-", 'tributum," 'societas," etc. (Schmid, Gesetze, 58; below, p. 177.)

4 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 Lundoniz' may have been, 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 gilds 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. xci.) 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 gilds in Anglo-Saxon times, there will probably always be great divergence of opinion on account of the meagerness 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 gilds, either never took place in England, or was such an isolated, impotent phenomenon that it does not come to light in local records. 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 an integral part of the common council, in some boroughs, especially in the larger towns of the North, 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'. 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 ease 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.

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.

The crafts, too, had their distinct functions to perform, and though we meet with isolated disputes between them and the town authorities, such as at Exeter, and quite frequently with attempts of the rich to over-tallage 'the lesser folk'; it is probable that not a single instance can be cited of a conflict between the gild merchant and the craftsmen 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.' 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.

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1 Above, pp. 111, 112.
2 Above, p. 113.
3 Above, p. 109. n. 3.
4 Above, Chapter V.
5 Above, pp. 110, 113.
between the gild 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.

In his exposition of the internal organization of English craft
gilds, 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. His work on Eng-
lish gilds 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 re-
pertory of the views of others, and as a condensation of the valu-
able ordinances in Smith's English Gilds.

Dr. Salvioni, in his 'Gilde Inglesi,' has adopted most of Bren-
tano's views, but presents them less incisively and less emphatically
than the latter. Here and there he even ventures to differ from
Brentano's, who, nevertheless, is evidently his main source. More
than one-third of the book (pp. 34-69) is devoted to a careful analy-
sis of the statutes contained in Smith's 'English Gilds,' 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 gilds (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.

1 See Appendix D.
2 His paper on 'Gilds' was reprinted from the Insurance Cyclopedia, vol. v.
341-392. It also appeared in an en-
larged form in the Antiquarian Maga-
ze and Bibliographer, vols. i.-ix.,
1881-1886. The enlarged work has
been published under the title 'Gilds:
their Origin,' etc. London, 1888.
4 'Le Gilde Inglesi. Studio storico
del Dott. G. B. Salvioni.' Firenze, 1883.
5 On p. 16, for example, he rejects
the assumption that England is the
birthplace of gilds.

The history of English Gilds is yet to be written. Such im-
portant 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 com-
prehensive 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 pros-
pect of complete knowledge of the subject.

1 Two books have very recently ap-
peared which must be briefly noticed
in this review of the literature of gilds.
Seligman's Two Chapters on the Me-
dieval 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 wirtschaft.
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 disserta-
tion of 1883. See the Nation, Num-
bers 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; though vestiges of the primitive structure still remained. 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 kindreds.

APPENDIX B.

ANGLO-SAXON GILDS.

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 Londiniae,’ 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, is untenable. The earliest mention of this institution is to be found in the Carolingian Capitulary of the year 779. Then and in the following century gilds evidently constituted no rare phenomenon in the Empire of the Franks; 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.

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. These did not originate in the heathen sacrificial or drinking feast of the ancient Teutons. 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. Brentano, English Gilds, pp. lvii., lxiv., xxviii.; Wilda, Gildenwesen, 63, 64, 119, 244 (cf. Pappenheim, 213); Scrutton, Roman Law, 55, 56.

1 Hartwig, Untersuchungen, 137.
2 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, Altdan. Schutzgilden, 82-109. He
does not prove the English origin of the institution.

3 Hartwig, 138; Wilda, Gildenwesen, 39, 40; Wauters, Lib. Com., 138-140; Giry, St. Omer, 277.
4 I.e., above, 169, 170; Pappenheim, 14-17.
5 Wilda, Gildenwesen, 25-34, 63.
6 Both Hartwig (p. 154) and Pappenheim (pp. 1-2) 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.
their association with other clubs and trades-unions from the gilds. Every age has forms of association particular to itself which have grown up spontaneously. It is not necessary to seek for the germ of gilds 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.

The religious element, a potent factor in the history of gilds from their birth to their final extinction, is an almost insurmountable obstacle to their logical classification, for, as Wilda rightly observes, every gild comprehended within itself a religious one. They may be divided into the following groups—the ecclesiastical or calendar 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. Wace is the only one who attempts to prove this hypothesis, his arguments, however, are not convincing. The others seem to think that the word by itself is all the proof needed. But ‘gild’ has various different meanings ('adoratio,' 'tributum,' and 'societas'), and is of common occurrence in simple and compound words that do not refer to associations of any kind.

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 gegildan, but on the contrary

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1 Hartwig, Uebers. 156 pag. The view that gilds are derived from Roman times is maintained by Coote (Ordinances, pass. Romains, in Brit., 383-412), Pearson (Hist. of Eng., 1 44, 47, 274), and Wright (Cel. Roman, 425, 510). Cf. also Palgrave, Commonw. 628. They do not even prove that these ‘collegia’ were numerous in England. In fact, Pearson (p 47) admits that the inscriptions found there are chiefly confined to the smiths. Cf. above, p 86, n 1.

2 Some of the essential features of the medieval gild 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 Col legis, etc., Bossuer, Colleges fun Rom, Coote, Romains, in Brit., 385-396, Pencrrollus, De Corporibus Artificiun, Codex Theod., xii, xiv, Polt Science Quart., n 494 515; Massmann, Liberius Ann., 75-86, Selingman, 50; and the references given in London Liv Comp Com 1884, 18.

3 For the communities of the Essenes, see Gneetz, Gesch der Juden, n 96.

4 The most recent important contribution to the general history of gilds is Pappenheim’s Altdanzische Schutzgilden. He maintains that the Danish gilds originated in the old Northern ‘sworn brotherhood,’ ‘Blutsbruderschaft,’ ‘fiothriearlag.’ 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 (sper) beneath the strip of turf, and the ceremony was completed by exchanging the oath of brotherhood. Pappenheim (pp 38-54) believes that the early Danish gilds were derived from this institution because the name brother, the element of revenge, and the idea of mutual help, are common to both.

5 Wilda, Gildenw. 344.
assumes every man to have such: we cannot therefore construe it of voluntary association formed for religious, social, or funereal objects. 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), those who mutually paid for one another, the information in the sources being too meagre to permit us to define their functions with more exactness.

The 'Judicia Civitatis Lundoniarum', made during Athelstan's reign, are a collection of ordinances, 'which', as the preamble asserts, 'the bishops and reeves belonging to London, have ordained addition to the laws established at Greatanlea and Exeter and Thuresfeld. 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 entirety, this view appears untenable. For a gild is pre-eminently a voluntary organization, 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. 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; and all the inhabitants of the city and its suburbs are bound by the enactments. 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 ('fric', and the pledge ('wed') which we have given and which the King has commanded of us ('je we seald habba', and se cyng us beboden hafa'), 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.

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 'gegild' 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. In the reign of Alfred the other bishop to sit with the bishop of London in this assembly. Stubs 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. 444).

1 Cf. Gierke, Genoss., i. 256, 255; Vandervendere, Magistrates, 6; Kemble, Saxons, i. 239.
2 Chapters 9-12 of the 'Judicia' are taken almost verbatim from earlier public laws. Cf. Schmid, Gesetze, xlvii.
3 The 'bishops and reeves' who ordained these 'Judicia' were royal officers. Cf. c. 11 (Schmid, 170; Torpe, 102) and Anglo-Saxon Chronicles, 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. Stubs 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. 444).
4 C. 8, § 4; cf. Wilda, Gildenw., 246.
5 C. 8, § 9 (Schmid, 168; Torpe, 101-102).
6 Rettberg, Kirchenges., ii. 788; Rock, Church of our Fathers, ii. 378.
half the revenue of the town of Worcester was given away in exchange for a few 'de profundis.' The other so-called gild-clause, c. 8, § 1, is not at all consistent with the true gild spirit. It prescribes that the eleven 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. Accordingly it is directed that at these monthly meetings there should be 'butt-filling' (i.e. ale-making) and a repast ('met-scype') 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 evident at the time 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 'gilds.'

There are still extant the Anglo-Saxon statutes of four social-religious gilds that flourished at Cambridge, Abbotsbury, Exeter, and Woodbury. These records probably date from the first half of the eleventh or early twelfth centuries, and as a partial model of the London ordinances, they contain, and how questionable these few are, we must maintain that the statutes of Anglo-Saxon and other gilds, and perceive how the 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 'gilds.'

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1 Thorpe, Dipl. Angl., 136–138. The text of the document reads 'twelve,' but this is evidently an error. See Schmid, Gesetze, 615; Thorpe, Laws, Glossary, i.e. '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., i.e. 'hynden') think that 'hynden-man' here means the head of the tithing; but this construction makes the passage difficult to understand.

2 See below, p. 190, n. 9.

3 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.'

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 (1249–95). But the 'Judicia' do not record any union of existing societies; 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. 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. It certainly was no gild merchant, no allusion being made to trade.

4 Wilda, Gildew., 69.


7 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 Hullmann. 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.


9 All these statutes are printed, with a translation, in Thorpe, Dip. Angl., 605–617; and all, excepting those of Orcy's gild of Abbotsbury, in Hickes, Dissertatio, 18–22. The statutes of Orcy'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, 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 original text. The thanes' gild of Cambridge shows plainly how the new bond of mutual assistance in case of theft, or for unseemly behaviour, contributions to a common purse, mutual assistance in distress, the gild hall, periodical meetings called the 'morgen space'.—in short, all the characteristics of later gilds, appear in the statutes of these four fraternities.

In the statutes of the Exeter and Cambridge gilds, referred to above, the cnhth appears as a kind of subordinate member. The 'gegllda' of the Exeter fraternity contributes to the common stock two measures ('esters') of malt, but the cnhth contributes only one measure of malt together with some honey. If any cnhth belonging to the thanes' gild of Cambridge draws a weapon, his lord ('hlafor') is to pay a fine of one pound, and get what he can [from his cnhth], and thus let the whole fraternity ('gild-scope') aid him in recovering his money. And if a cnhth 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 cnhth sits in anyone's way ("fulnan styg"), 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 cnhth. 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'). But he is not a menial

1 For the gild hall ('gegyldehealle'), see Kemble, Codex Dap., iv. 277, and Thorpe, Dap Angl., 565, the 'morgen space' occurs in the statutes of the Cambridge
gild.
2 In the London 'Jutzenia', c 1, § 1, 'gefer scepe' is also erroneously written for 'gefera scepe,' the latter form of the word being given in the same passage Schaud, Gesetze, 156, 588, Thorpe, Laws, 97. Cf Philipps, Angels Recht, 78, 79.
3 For gilds see above, note 2.

APP. B ]

Anglo-Saxon Gilds.

One of the earliest and most prevalent of Anglo-Saxon fraternities was the cnhths' 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 cnhth signifies. In early Anglo-Saxon times it meant boy or servant ('puer,' 'servus'), but in the ninth or tenth century it acquired a new signification.

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 space'.—in short, all the characteristics of later gilds, appear in the statutes of these four fraternities.
dependent; he is evidently often on very familiar terms with his superior. We find the cnihth mentioned in his lord’s will side by side with the latter’s children and most trusty household functionaries, sharing with these, bequests of money, jewels, and lands. Athelstan Atheling, for example, bequeathed to his cnihth Athelwine the sword ‘that he erst gave me.’ Sometimes the cnihth held lands of his lord by a temporary tenure, but there was a natural tendency for this to become permanent. Bishop Oswald invested his cnihths with land, which, he directed, should pass to certain of their heirs and then revert again to the church. The cnihth Almer was given land which he already held; and the cnihth Wulfgar ‘all [the land] as his father had acquired it.’ The cnihth ‘of (‘act’) such and such a place is often mentioned, as though he were permanently identified with the estate named. The cnihth’s lord is generally some person of high rank, often a bishop or atheling. Finally we may remark that the cnihth appears armed with a sword, like a nobleman. He was not a mere ‘page’ or ‘servant,’ but the armed attendant or military retainer of some great lord.

It is a mistake to completely identify the cnihth 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, ‘thegnas and cnihtas.’ In the Cambridge

gild statutes the cnihth 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 cnihth. That the latter ranked as a thegn, may also be inferred from other documents. He was generally a thegn’s thegn—probably identical with the ‘lesser thegn’ of Cnut’s Laws and the ‘rad-cnihth’ of Domesday. The ‘rad-cnihth’ is defined by old glossarists as a free man who served his lord on horse. Both the thegn and the cnihth were included under the generic terms ‘minister’ and ‘miles’; but ‘miles’ seems gradually to have been applied with preference to the cnihth.

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. Domesday mentions twelve magistrates or lawmen (‘lagemanni’) at Lincoln and Stamford, who probably reckoned as thegns; this was certainly the rank of the ‘lagemanni’ of Cambridge. A similar body at Shrewsbury in the thirteenth century is called ‘the [twelve] thegnesmen’; and another at Corfe Castle still later, ‘the

1 Kemble, Cod. Dipl. iii. 295, iv. 260, 288; Thorpe, Diploma Angl. 545, 559–561, 573, 574.
2 Kemble, Cod. Dipl. iii. 353; Thorpe, Diploma Angl. 651–652.
3 For various other bequests made by lords to their cnihths, see Kemble, Cod. Dipl. iii. 274, 295, 296, 363, 369, 288; Thorpe, Diploma Angl. 521, 531, 559, 566, 568, 575; Earle, Land Charters, 219, 225, 237, 238, 241, 266; Turner, Anglo-Saxon Chronicles, p. 127. Athelmar ‘dux’ left ‘minum hired cnihthum v. pond to gedele’ (circa A.D. 1000. Liber de Hyda, 254).
5 Thorpe, Diploma Angl. 559, 560.
6 Ibid., 545. In 968 two cnihths of Canterbury sold their lands (Sommer, Cant., i. 178).
8 Kemble, Cod. Dipl. iii. 49, 59, 159, 295, 363, 369, 288; Thorpe, Diploma Angl. 521, 531, 543–545, 559, 561, 568, 575; Liber de Hyda, 256; Earle, Land Charters, 238.
9 Kemble, Cod. Dipl. iii. 353; Thorpe, Diploma Angl. 561, 612; Coote, Romans in Brit. 405.
10 Thorpe calls the cnihth a ‘page’ in Diploma 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.
11 Cf. Robertson, Scotl. under Early Kings, ii. 136.
12 ‘Cnihths’ are mentioned in other parts of the Chronicles; see Earle, Saxons Chron., 391.
13 Palgrave, Commonw., i. 578; Robertson, Scotl. under Early Kings, ii. 136, 456; Stubbs, Const. Hist. i. 155, 156; Turner, Anglo-Saxon, iii. 125.
14 In the documents printed in Kemble, Cod. Dipl. iii. 49, 59, 159, 168, ‘cnihth,’ ‘minister,’ and ‘meus fidelis,’ are evidently used as synonyms.
15 Turner, Anglo-Saxon, iii. 124–129; Stubbs, i. 365; Schmid, 666; Coote, Romans in Brit. 405. The cnihths are called ‘mileses 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, §.
16 ‘Pogn-ribites weorðe’ (Schmid, Gesetze, 390; Thorpe, Laws, 81).
17 Domesday Book, i. 336 a. 336 b.
18 ‘De harieti Lagemannorum habuit isdem Picet vii. lib. et unum palefridum et unius millitis anna’ (Domesday, i. 189 a.)
19 Owen and Blakeway, Shrewsb., i. 104.
eight barons. 

The term 'burg-thegn' is by no means uncommon; it is doubtless the equivalent of the later civic 'barones,' such as existed at Chester, Warwick, York, the Cinque Ports, and London. The 'liths-men' (ship owners) of London, who with others raised Harold to the throne, were doubtless such 'burg-thegns.' Citizens serving the king on horse and 'rad cnhts' are referred to in connection with the boroughs of Domesday. In the Anglo-Saxon charters cnhts 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.' There can be no doubt that many cnhts participated in commerce and in the management ofburghal affairs.

The cnhts' gild of which we have the most detailed account is the 'Anglica cnhtene gilda' of London. 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 chartyllary of the Holy Trinity Priory. A strong flavour of the fabulous element pervades the story of the origin of this gild. In the days of Cnut, king of England, there were thirteen cnhts very dear to the king and to the realm, who besought Cnut to give them the water, and that afterwards on a certain day, in the field called 'Burgh' or 'Burghen' in the Anglo-Saxon Chronicles under the name of Winchester 181, 214, 219, 221. For the thanes of the Five Danish Burghs, see Palgrave, Commonow, 2 644. The 'sec generis' of Winchester is called a king's thgn in the Anglo-Saxon Chronicles under the year 897.


Anglo-Saxon Chronicles, anno 1036.

Domesday, 1 261, 279, 252 (Walthingham, Hereford, Shrewsbury). 4 Equi ties of Nottingham are also mentioned (ibid., 280). Above, p. 125, n. 3.


This chartulary was formerly in the possession of John Anstis or Thomas Astle (Monast. Angl., vi 121, 152). 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 cnhtene gilanna. The Confessor gave them a charter, granting that they might have their manorial jurisdiction ('soon'), 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.

William I, William II, and Henry I confirmed to the men of the 'cnhtene gilda' their gild and land and customs, as they had them in the time of King Edward (the Confessor). We next hear of the fraternity in 1125, when certain burgesses of London, fifteen in number, 'from the ancient progeny of noble English cnhts' assembled in the chapter-house of the Holy Trinity near Aldgate, and gave to that church and the canons thereof the land and soke called 'Angliss Chnhtegilda,' 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.


5 anno ab incarnatione domini millesimo centesimo quinto quidem burgenses Londonoe ex illa antiqua nobilium militum anglorum progenie, salutem, Radulfo filio Al- gody, Wulwarde le Doiersbye, Ogarus le Prude, Edwardus Upcornhill, Blackstanes, et Alwynus cognatus eius Alwinus et Robertus frater eius filio I co- stan, Leostanus Aunthbry, et Wyzo filius eius, Hugo filius Wolgaris, Algarus Fucusenne, (Orgius filius Deremmann, Osbertus Drinchepecyn, Adelardus Hornepesume, comenentes in capitulo ecclesiæ Christi, quod sita est infra murum eiusdem civitatis una portam quæ nuncupatur Algate, dedixerunt ipsi ecclesie et canonicas Deo serventibus in ea totam terram et socam que deelataro de Angelis cnhtegilda (nunc) vrbis, quæ nudo adaequent foas eandem portam et pretantur vsque in fluentem Thamesam Dederunt inquam susceperunt fratres 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 cnhiten gild as such formed a part of the town government, or had any official connection with the municipal authorities. We can only assert that these cnhites were probably burghers, and constituted an influential fraternity in London.

A cnhite's gild existed in other towns besides London. The Winchester Domesday speaks of 'the cnhite's hall, where the cnhites used to drink their gild' (Ghenetayallba u bih cnhitay potabat gildam suam, et cem libere tenebunt de rege Edwarde), and of a second hall held by cnhites in the reign of Edward the Confessor ('Chenectes tenebant la chenictahalla libere de rege Edwardo'). Again, in a Canterbury charter (860-866), we meet with a 'cghalda gildan'. Thus we find this fraternity in three of the most important cities of England.

loeci illius per manum Normanam Prorsus, qui eos et predecessores suis in societate super tuctum sanctum recept. Et vt firma et inoncusa (?) staret hic eorum donacio cartam sancti Edwarde cum alias cartis prescriptis quas inde haberat super altare optulerunt, etc. (Liber Dunlorn, 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, 4, 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 renuntiavit totum clanium suum de predicta terra, vt patet per cartam sequentem.' He gives to Holy Trinity 'molem dinua suxuta turrim et totam terram extra turrim quod pertinebat ad Eglicose cnhiten gildam cum suphifelida el homunbus et omnibus alius rebus edem pertinentibus' (Letter Book C, fol. 135 b.)

1 Cf above, pp 78 80. Loftie advances no proof to maintain his assertion that 'the governing body of London was the Knightengild' (Loftie, London, 30).

2 Domesday Book, iv 531. 'Alwardus chentenu tenebit domum tem pore regis Edwards,' etc. (ibid., iv 532.)

3 Ibid., iv 533.

4 Kemble, Cod Dip., ii 83, Thorpe, Dip Angl., 118. See also Kemble, Saxons, ii 335. Cf vol. i p. 37. 'Cnhitian on Cantonwerg,' etc., circa 1100. Green ('Comment on England, 440 speaks of a 'cghalda gild' at Norwich, probably founded his statement upon Domesday (i 250), which mentions 'equites of Norwich, 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 'cghalda thorn,' the court or gildhall of the burgesses (Parker, Wycombe I). 'Knaue (cf German 'knabe' 'knappe') and cnhit originally had the same signification. In playing cards we still use knave for knight. See Skeat, Dict. s.v. 'knight' and 'knaves,' Etymology, 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 Gilds of the Calendars of Bristol was founded before the Norman Conquest. This information is probably as untrustworthy as that given by Trussel regarding a Winchester gild, which he affirms, was in existence in 856. In 956 and again in 958 the 'three gilder scipas' of Canterbury occur among the witnesses of a charter. This expression may refer to gilds, and it is commonly so construed. But a later copy of the charter of 958 states explicitly that these three 'gilder scipas' were three monastic bodies. 'Pet ut al se hird at Cristes cherche and Seynt Austynes and at Seynt Gregories.' Domesday Book speaks of a gild hall ('gihalla') at Dover. King Edgar's Canons (959-975) and the 'Leges Henrici Primi' refer in a general way to the 'gild scipe' and the 'gild.'

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1 Taylor, Book about Bristol 227, 228, English Gilds, 287.
3 Thorpe, Dip Angl., 510, Somner, Cant., i 178, Kemble, Cod Dip., ii 335.
5 Ibid., iv 532.
7 And we enjoin that no priest deprive another of any of those things which appertain to him, neither in his munster, nor in his shire district, nor in his gildship (on his mystere, ne on his scrip scour, ne on his gild scope), nor in any of the things appertaining to him (Thorpe, Laws, 396) a d 979-1015. Athelmar 'dux' bequeathed 11 pund in to maestresse gylde, and 1 pund in to diacona gylde, at Winch flash (Liber de Hyde, 754). Perhaps 'gild-scope' 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 Withard's laws. Cf above, p. 177, n 4.
8 'In omni potitione, distantia vel eptionis vel gildae, vel ad quodlibet in hunc modum praeponerem primo pax, Dei et Domini inter eos qui convene rint' (Schmid, Gesetze, 478, Thorpe, Laws, 256). Cf the passage in Walter Map, De Nivis, 79: 'Quales Anglici in singulars singularis 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 burgware' of Canterbury, which Kemble calls 'a burghers' club or gild', 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) 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. The 'gebeor-scipe' or 'gebur-scipe,' which Thorpe feels inclined to make 'a club resembling a gild,' is, in most cases, simply equivalent to 'compo-tatio' or 'convivium', and which Thorpe (Laws, Gloss, i. 238-245; Spelman, Gloss, i. 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 another place makes the 'frith-borh' a public, compulsory union (L. 239, ii. 309).

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. 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 ('sumnum convivium') became the governing body, or constituted the town corporation, in Anglo-Saxon boroughs. This one example is the thanes' gild of Canterbury, 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.

1 Moke, Morns, i. 190.
2 Above, pp. 77-85, 170.
APPENDIX C.

THE ENGLISH HANSE. 1

ALTHOUGH the word ‘hansa’ is clearly un-English, the name of the Hanseatic League is often supposed to have been derived from England; 2 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. 3 Professor Pauli’s essay on the ‘Auftraten und Bedeutung des Wortes Hansa in England,’ consists merely of a few vague conjectures concerning this institution. 4 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 5 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 meagerness 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 the enfranchisement of the villein: ‘si nativus . . . fuerit in gilda et hansa,’ etc. 6

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

<table>
<thead>
<tr>
<th>Name</th>
<th>Date</th>
<th>Authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aberystwyth</td>
<td>1277</td>
<td>Above, p. 16</td>
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<td>Athboy</td>
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<td>Beaumaris</td>
<td>1296</td>
<td>Vol. ii. p. 16</td>
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<tr>
<td>Berwick</td>
<td>1502</td>
<td>Cal. Doc. Scot., ii. 334</td>
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<td>Beverley</td>
<td>1119-35</td>
<td>Vol. ii. pp. 21-22</td>
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<td>Bridgnorth</td>
<td>1227</td>
<td>Eyton, Shrop., i. 303</td>
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<tr>
<td>Built</td>
<td>1278</td>
<td>Vol. ii. pp. 355; 356</td>
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<td>Caerwys</td>
<td>1290</td>
<td>Vol. ii. p. 357</td>
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<tr>
<td>Cardigan</td>
<td>1388</td>
<td>Merew. and Stephens, 778</td>
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<td>1284</td>
<td>Above, p. 16</td>
</tr>
<tr>
<td>Conway</td>
<td>1284</td>
<td>Above, p. 16</td>
</tr>
<tr>
<td>Criccieth</td>
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<td>Above, p. 17</td>
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<td>Denbigh</td>
<td>1379</td>
<td>Williams, Denbigh, 119</td>
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<td>Drogheda</td>
<td>1229</td>
<td>Vol. ii. p. 58</td>
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<td>Dundalk</td>
<td>1379</td>
<td>Munic. Corp. Com., Irel., 891</td>
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<tr>
<td>Dunwich</td>
<td>1200</td>
<td>Rot. Chart., 51, 211</td>
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<tr>
<td>Exeter</td>
<td>Hen. VIII</td>
<td>Vol. ii. p. 86</td>
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<tr>
<td>Flint</td>
<td>1284</td>
<td>Taylor, Flint, 31</td>
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<td>Gloucester</td>
<td>1227</td>
<td>Vol. ii. p. 374</td>
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<tr>
<td>Grimsby</td>
<td>1324</td>
<td>Swinden, Yarm., 28</td>
</tr>
<tr>
<td>Harlech</td>
<td>1284</td>
<td>Above, p. 17</td>
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<tr>
<td>Hedon</td>
<td>1348</td>
<td>Vol. ii. p. 108</td>
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<tr>
<td>Hereford</td>
<td>1215</td>
<td>Rot. Chart., 212; vol. ii. p. 110</td>
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<tr>
<td>Hope</td>
<td>1351</td>
<td>Vol. ii. pp. 375; 376</td>
</tr>
<tr>
<td>Ipswich</td>
<td>1200</td>
<td>Vol. ii. p. 115</td>
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<tr>
<td>Lambert</td>
<td>1332</td>
<td>Above, p. 17</td>
</tr>
<tr>
<td>Liverpool</td>
<td>1229</td>
<td>Harland, Mamec., 198</td>
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<td>Ludlow</td>
<td>1461</td>
<td>Charters of Ludlow, 11, 12</td>
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<td>Montgomery</td>
<td>1227</td>
<td>Above, p. 17</td>
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<tr>
<td>Newborough</td>
<td>1303</td>
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<tr>
<td>Newcastle</td>
<td>1201</td>
<td>Rot. Chart., 86</td>
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<tr>
<td>Newton</td>
<td>1363</td>
<td>Vol. ii. p. 386</td>
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<td>Oswestry</td>
<td>1398</td>
<td>Vol. ii. p. 191</td>
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<tr>
<td>Overton</td>
<td>1291-2</td>
<td>Above, p. 17</td>
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</tbody>
</table>

1 The substance of this Appendix was printed in the Revue Historique, vol. 33, pp. 296-303.
2 Sartorius, Gesch. der Hanse, i. 73; von Maurer, Stadtverf., ii. 254; Stubbs, Const. Hist., i. 411, 422.
3 The O-English word is hós found in Béowulf, 924, but apparently not used in prose.
4 Hans. Geschichtsblatter, 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.
5 Hist. of Boroughs, 1040. Cf. also Blount, Dict., i. 20. ‘hanse.’
6 See above, pp. 8, 59.
7 See also vol. ii. p. 19.
8 See also Brand, Newc., ii. 131, 132.
9 Harland, Mamec., 182, thinks that
The term 'hanse' was most commonly used to denote a mercantile tribute or exaction, either as a fee payable upon entering the gild 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 gild, were directed to contribute their hanse to the common treasury or exaction, either as a fee payable upon entering the town, or in the form of a quitus on the former payment of the hanse. For more light we must turn to other records.

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

In a document relating to the use of the word 'hanse' in one of the senses mentioned above, i.e. that of entrance-fee.

3. 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, munagio, panagio [i.e. passagio], pontagio, stallagio, hansenagio, anchengio, terragio, kayagio, passagio et selagio, nobis ibidem de eiusdem bonis et mercimoniis pretiis quos esse permittatis.' (Swinden, Yarm, 28.)

4. Madox, Firma Burgi, 94 (2 Edw. 1). Turner (Oxford Records, 23) thinks that 'hanasteria,' the term applied to

free men or gildsmen at Oxford, was derived from 'hanse.' See vol. ii. p. 52.

8. Ibid. de eisdem shall be cleared by each respective treasurer in whose time the said Debts shall be paid. In one case we find 'quietantiam de introitu et de hansis.' In one case we find 'quietius de introitu, et de anis per totam Angliam.' Here hanges 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 thaloneo et passaggio et pontaggio et de anse et de omnibus alius consuetudinibus per totam terram nostram.' A charter of Edward II allows the burgesses of Grimsby to be quit, throughout the realm, of tolls, pontage, lastage, 'hansagio,' etc. At Oxford a similar prestation bore the name of 'hanseria': 'uno redditi qui vocatur basket stallagio, piscaria, coquinaria, et hanseria, qui valent per annum xi. 2.' 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, and the 'customa mercatorum,' called 'gild-silver,' at Henley.

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.
Hanse was also sometimes employed in the middle ages as a synonym for 'gilda mercatoria.' Thurstan, Archbishop of York, granted to the burgesses of Beverley a 'hans-hus,' which term is superseded in the confirmation charters of Archbishop William and King Henry I by 'gilda mercatoria.' In the sixteenth century the gild-hall of Beverley was called the hanse-house. At Ipswich 'gilda' and 'hanza' or 'hansa de gilda' were sometimes used synonymously. In Liber Winton a gild-hall of Winchester bears the name 'hantachensele,' which looks like a corruption of 'hansesele' (German, 'hansa-saal'). 'Hantachensele' was also in later days seen as yt ys termed.

The gild, or company, of Merchant Adventurers of England was also in later days called 'haunce.' England shall pay at suche his admission ye he come in one the old hanse, as yt ys termed, 6s. 8d. sterling, And ye he come in one the new hanse, ten marks sterling, according to the Rate of the Exchange.' (Circa 1560—ibid. f. 23.) See also Schanz, Englische Hansepolitik, ii. 557, 558, 561; Anderson, Origin of Commerce, i. 233; Malynes, Center of Circle of Commerce, 89.

1 This is the view of Stubbs, Constitut. History, i. 411, 416; Dobson and Harland, Preston Guild, 5; Pauli, Auctores et Deaestudium des Wortes Hansa, 17; Lappenberg, Engl. i. 611; Herbert, Liv. Comp., i. 11; Thompson, Essay on Provincial History, 99; Owen and Blakeaway, Shrewsbury, 105. But they do not give any example of the synonymous use of the two terms.

2 Vol. ii. pp. 21, 22. 'Hans-hus' is here the equivalent of 'hanse,' just as 'domus' or gild-hall frequently stands for gild. See English Gilds, 60, 167, et pass.; Richards, Lynd, 457, 458; and vol. ii. pp. 5, 12, 159, 154, 162, 203, 207, 208, 271, 272.

3 See Poulsen, Beverlac, 314, 339, 332. 'The attempt of John Truslove, late mayor of the town of Beverley within the County of York, of all the rents, revenues, yasses, profittes, and comodities perteyning to the hanse house and commynaltye of the same towne, etc.' (Ibid., 330, 27 Eliz.) Poulsen regards 'hanse-house' thus used as a synonym for gild-hall. (Ibid., 332.)


5 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 saille' (Notes and Queries, First Series, v. 532). For 'thol-sel,' see above, p. 82, n. 1. There was also a merchants' hall or 'Schel' in Winchester called 'cheppane-sela' (Pipe Rolls, 3 Hen. II., 109; 5 Hen. II., 48; 6 Hen. II., 49; and other early Pipe Rolls; Archaeol. Journal, vii. 381).

6 Liber Albus, 535, 540; Sartorius, Hanse, i. 42; Campbell, Materials for History of Henry VII, i. 476.

7 Rep. MSS. Com., 1874, p. 203 (A.D. 1553).—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 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 'queta,' the sense of the passage being simply that the burgesses are to be quit of mercantile imports in England and Normandy. The plural 'hansas' also occurs in charters of Hedon and Scarborough (vol. ii. pp. 108, 388).

8 Vol. ii. p. 134; and above, p. 59, note.


the 'Assise Regis Willelmii I' — 'item statutum quod mercatores regni habent gildiam suam mercatoriam et sua gau deinat in pace, cum libertate eendem et vendeand infra limites liberta tum burgorum.' (Acta Parle Scot., p 383) The Gild 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.

1 Du Cange Gloss, s v 'apprenticius,' and 'hansa.'

2 Hohlbauern Urkundenbuch, ii 408 553, Du Cange, Gloss, s v 'hansa,' Giry, St Omer, 375, and Documents, 47, Wauters, Lib Com., 586, and Freues, 354, 355, Von Munster, Stadtewyn, 1 194, 1 279, Savorius, Hanse, 1 75, ii 9, Wurm, Fland., Flond., 1 329, and No civ, Grimm Worterb., s v 'hansa,' Kemble, Saxons, ii 529.

3 Mercatorum societatis [of Brackel] nec vulgenter hanse dicetur.' (A.D. 1309) Gengers, Codex, 267 of ibid, 96.) There was also at Brakel a 'hansa pistorum' in 1315 (ibid., 267).

The 'handicraftsmen's hanse' of Duyburg is spoken of in 1345 'de der handwerk'em hanse wemt,' etc. (Ibid. 96.) See also Hohlbauern Urkundenbuch, in 553, De Lettenhove, Flandre, 1 272, Van Meurs, Groot Chartiebok, 1 356, Nitzsch, Nieder German, 22, Wauters, Lib Com., 586, Von Munster, Stadtewyn, 1 254, 358, Fortuny, Specimen, 18, Grimm Worterb., s v 'hans.' For the hanse of Paris see Warnong., Fland., 1 329, 331, Apple 81, 86, Varenberg, Relations, 145 155, Giry, St Omer, 282, 283, Ashley, Econ Hist, 104, 105, 109, and Artevelde, 17 20, Opera, 114 16, Giry, St Omer, 283, De Freville, Commerce de Rouen, 1 102, 252.) Many Flemings settled in Scotland and formed a powerful element in the Scotch burghal life. (Above, p 109.)

APPENDIX D.

THE SCOTCH GUILD MERCHANT

§ 1 Inception and Distribution

Though Scotland seems to have borrowed some of her early burghal laws from England, 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, 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.

1 Below, p 257.

2 The central government was much stronger in England than in Scotland or on the Continent. This greatly influenced the growth of English municipal institutions. (Ibid., pp 106, 109.)

3 In 1353 the Gild Merchant of Scotch burghs was regulated according to the laible form of judgment visit in all the gild towns of France and Flanders, and the burghs erected and constituted, and specialized in Paris, Rouen, Bicetre, and Rochell (Acta Parle Scot., iv 30.) For the close political relations between Scotland and France in the middle ages, see Moncreif, Memoirs of ancient alliances between French and Scots, and Misc Scotia, vol. iv Active commerce was also carried on by the Scots in France and the Low Countries (Rec of Conv of Royal Burghs, passim, Hohlbauern, Urkundenbuch, in 58 62, 64, 194, 472, 522, 531, Libell of Engl Polisy, 33, 34, Warnkong, Fland., 1 146, Giry, St Omer, 283, De Freville, Commerce de Rouen, 1 102, 252.) Many Flemings settled in Scotland.
As it is commonly asserted that the development of the burghal polity was the same in Scotland as in England, 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 barony, and burghs of regality—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.’ 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. In England there

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 burgesses from each of the King’s burghs south of the Spey should assemble annually ‘ad trautandum, ordinandum et determinandum super his omnibus que ad viditatem republicae burgorum universorum dicti domini nostri Regis et ad eorum libertates et Cuman dignoscendur pertinere’ (Acta Parl. Scot., i. [399], 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., xi, 23.) In 1578 a statute enacted that the Convention was to meet four times every year each borough sending one commissioner, except Edinburgh, which could send two (Ibid., ii, 102). The Convention acted as a high court of appeal or arbitration, deciding disputes between different burghs or between the burgesses and their magistrates; it also frequently framed or altered the ‘setts’ or written constitutions of burghs; it made general regulations relating to commerce, foreign and domestic, it sent commissioners to, and negotiated treaties with, foreign countries 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, Mun. Corp. Com., Scot., 1835, Rep. 15, 16, 17, 18, 1836, App. 10-21, Acta Parl. Scot., xi, 462, 367; Innes, Scot., 170, Sets, Jour., Documents, 75-77, Chalmers, Caledonia, i. 777, McDonell, Laws, 1579, Howard, Treatise, 467-469, Register of Privy Council, vi, 52, Black, Royal Burrows, Pref., 37-159, Mackay, Conv. of Royal Burghs, Burton, Scot., ii, 90, 91, Mac. Records Soc., Pref.

Above, p. 106

Robertson, Scot. under Early Kings, 1. 303, Irving, Dunbartonish, 5, Colston, Guildry of Ed., 62.


Acta Parl. Scot., xi, 330, Mac kenzie, Roman Law, 40, 41

821329
The Gild Merchant.

[APP. D.]

The Scotch Gild Merchant.

A few royal burghs were without a Gildry. 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.

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<thead>
<tr>
<th>Name</th>
<th>Date</th>
<th>Authorities</th>
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<td>*Aberdeen</td>
<td>1222</td>
<td>Below, p. 219, n 3.</td>
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<td>*Annan</td>
<td>1538</td>
<td>Misc., 228; Groome, Gaz. i. 51; Munic. Corp. Com., Scotl., 1835, p 61.</td>
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<tr>
<td>Anstruther-Easter</td>
<td>1583</td>
<td>Constitution of Burghs, 104</td>
</tr>
<tr>
<td>Anstruther-Wester</td>
<td>1587</td>
<td>Ibid., 85.</td>
</tr>
<tr>
<td>*Arbroath</td>
<td>1599</td>
<td>Ibid., 89, 194, Hay, Arbroath, 306-313; Sets, 52, Misc., 279, 293.</td>
</tr>
<tr>
<td>*Ayr</td>
<td>1428</td>
<td>Dickson, Gild Court of Ayr, 225; Acta Parl. Scot., i 180, 181; Sets, 71; Charters of Ayr, 195.</td>
</tr>
<tr>
<td>*Banff</td>
<td>1592</td>
<td>Constitution, 90, 198; Sets, 55; Munic. Corp. Com., Scotl., 1835, p. 110; Imlach, Banff, 77.</td>
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<td>Berwick</td>
<td>1249</td>
<td>Below, p 211, n 1.</td>
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<td>*Banchory</td>
<td>1601</td>
<td>B.ack, Banchory, 46-48; Reg Privy Council, vi 391; Constitution, 115, 185; Misc., 195, 291.</td>
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<tr>
<td>Bemidland</td>
<td>1541</td>
<td>Constitution, 115, 182; Sets, 61.</td>
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<tr>
<td>*Campbeltown</td>
<td>1700</td>
<td>Constitution, 124, 216; Sets, 72.</td>
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<tr>
<td>Cullen</td>
<td>1617</td>
<td>Constitution, 203; Sets, 64; Misc., 226; Annals of Cullen, pass.</td>
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<tr>
<td>Culross</td>
<td>1588</td>
<td>Constitution, 89; Misc., 216, Beveridge, Culross, i 296, 316, 116, Rec. of Conv., v. 135.</td>
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</table>

1 Below, p 206, n 2, p 207, n 1.  
2 Black, Royal Burrows, 29; Misc. of Scot Burghs Rec. Soc., p xxvi, MacKenzie, Works, i 65. A few burghs of barony and regality had a dean of Gild (Dunkeld, Fraserburgh, Kilislay, Maybole, Rosshearty, etc.)  
3 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.  
4 A 'Gildry and Gildrymen' were not introduced in Arbroath until 1725, though the privilege had been granted in 1499 (Rec of Conv., v 161, 359, 373). Likewise in Culross in 1668 and in Banchory in 1658, though the grant had been made in 1588 and 1601 respectively (Ibid., ii 464, 468, 575, 588, 653-656). 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, 1835, p 68).
### The Gild Merchant

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<thead>
<tr>
<th>Name</th>
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<th>Authors</th>
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<tbody>
<tr>
<td>*Cupar</td>
<td>1369</td>
<td>Acta Parl. Scot., i. 509 [176]; Charters of Cupar, 7; Constitution, 177; Sets, 42.</td>
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<tr>
<td>*Dingwall</td>
<td>1497</td>
<td>Constitution, 98, 212; Sets, 57; Muníc. Corp. Com., Scotl., 1835, p. 190.</td>
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<tr>
<td>*Dornoch</td>
<td>1648</td>
<td>Misc., 293; Constitution, 105.</td>
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<td>*Dumbarton</td>
<td>1699</td>
<td>Constitution, 87, 190; Sets, 45.</td>
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<td>*Dumfries</td>
<td>1827</td>
<td>McDowall, Dumf., 310, 311, 651.</td>
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<tr>
<td>Dunbar</td>
<td>1603</td>
<td>Constitution, 117; Miller, Dunbar, 250; Rep. of Com., 1793, p. 18.</td>
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<tr>
<td>*Edinburgh</td>
<td>1403</td>
<td>Below, p. 216, n. 1.</td>
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*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. 448; 537, 559.

*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 Scotia liberii aut quicquid habuerunt aut possederunt, videlicet in nudilinis, in mercato, in libero portu, cum accessu navigantium, oneracione et exoneracione eandem, cum gilda mercatoria et aliis libertatibus universis sicut liber burgenses.' (Muníc. Corp. Com., Scotl., 1835, p. 538.)

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### The Scotch Gild Merchant

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<tr>
<th>Name</th>
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<tr>
<td>Forfar</td>
<td>1372</td>
<td>Hist. MSS. Com. 1871, p. 206; Talbot, Case of Forfar; Constitution, 123; Muníc. Corp. Com., Scotl., 1835, p. 444.</td>
</tr>
<tr>
<td>*Fortrose</td>
<td>1708</td>
<td>Constitution, 215; Sets, 49; Misc., 213.</td>
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<tr>
<td>Galloway, New</td>
<td>1629</td>
<td>Constitution, 94.</td>
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<td>*Glasgow</td>
<td>1605</td>
<td>Hill, Merchants' House, 15; and below, p. 221, n. 4.</td>
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<td>*Haddington</td>
<td>1655</td>
<td>Williamson, Old Greenock, 181.</td>
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<tr>
<td>Greenock</td>
<td>1797</td>
<td>Muníc. Corp. Com., Scotl., 1836, p. 68; Miller, Lamp of Lothian, 486; Rec. of Conv., iii. 381, 423, 452.</td>
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<tr>
<td>Inverary</td>
<td>1648</td>
<td>Constitution, 96.</td>
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<tr>
<td>*Inverbervie</td>
<td>1709</td>
<td>Ibid., 210; Sets, 52.</td>
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<td>*Inverkeithing</td>
<td>1598</td>
<td>Constitution, 121, 183; Sets, 36.</td>
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<tr>
<td>*Inverurie</td>
<td>1619</td>
<td>Constitution, 209; Davidson, Inverurie, 206.</td>
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<tr>
<td>*Irvine</td>
<td>1371</td>
<td>Robertson, Index, 95; Sets, 71; Constitution, 109, 184.4.</td>
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<td>*Kilmarnock</td>
<td></td>
<td>Groome, Gaz., iv. 376.</td>
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<tr>
<td>Kinghorn</td>
<td>1611</td>
<td>Constitution, 85.</td>
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*The royal charter of 1371 contains the following:—'quod burgenses de Iriyne teneant illud burgum in liberum burgum, absque exactione cujuscumque tollendi, seu alterius cujuslibet servitutis; et quod gaudebunt Gylda, et omni Gylda libertate qua aliique regni burgenses hactenus sunt gavis.' (Robertson, Index of Charters, 95.)
The Scotch Gild Merchant.

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<th>Name</th>
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<tr>
<td>Kirkcaldy</td>
<td>1644</td>
<td>Constitution, 114; Sets, 60; Munic. Corp. Com., Scotl., 1836, p. 158; Misc., 176, 276; below, p. 223.</td>
</tr>
<tr>
<td>*Kirkwall</td>
<td>1712</td>
<td>Constitution, 217; Sets, 55.</td>
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<tr>
<td>*Lochmaben</td>
<td>1612</td>
<td>Constitution, 110; Sets, 75.</td>
</tr>
<tr>
<td>Maybole</td>
<td>1589</td>
<td>Munic. Corp. Com., Scotl., 1836, Hist. MSS. Com., 1871, p. 206; Sets, 50; Documents on Reform, 78–90; Misc., 178, 287.</td>
</tr>
<tr>
<td>*Montrose</td>
<td>1372</td>
<td>Constitution, 100; Misc., 292.</td>
</tr>
<tr>
<td>*Nairn</td>
<td>1589</td>
<td>Charters of Peebles, 85; Constitution, 196; Sets, 46.</td>
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<tr>
<td>*Perth</td>
<td>1165–1214</td>
<td>Constitution, 88; Sets, 42.</td>
</tr>
<tr>
<td>*Rutherglen</td>
<td>1617</td>
<td>Charters of Peebles, 85; Constitution, 196; Sets, 46.</td>
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1 Montrose, whom we'ra town surpasses
For growing Guild and ruling asses.1

1 In 1621 James VI granted the burgh of Peebles power frequentandi, viendi et exercendi mercaturas, trade and trafficque of merchandise, emendi, transigendi, vendendi et revendendi omne genus mercaturarium, tam peregrinarum quam conternarum, non solum infra libertatem et territorium ac jurisdictionem dicti nostri burgi sed etiam infra omnes alias partes infra integras bondas vicecomitatus nostri de Pehbis tam regalis quam regalis... ac infra eundem burgum et territorium eiusdem pro perpetuo mercatorum gilda gaudenti, freendi et possidendi, cum gildarum curis. concilio, membrib et jurisdictione eadem pertinetibus, libertatibus et privilegiis suismodi, similiter et adeo libere sicut per nos aut predecessores nostros quibusuis letumorum nostrorum regalium infra dictum regnum nostrum Socie concessa sunt. (Charters of Peebles, 85.)

2 In 1692 there were 65 royal burghs in Scotland. (Munic. Corp. Com., Scotl., vi. 276.) Of these 65 appear in my list of Gild Towns.

3 Item, statuit quod mercatores regni habeant gildam suam mercatoriam et sua gildam in pace cum libertate emendi et vendendi ubique infra limites libertatum burgonum etc. (Assise Regis Willie, e. 39. Acta Parl. Scot., i. 383) [51]; Innes, Anc. Laws, 60.) See also above, p. 197.


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.2 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...
were to be arrested by the officers of the Gild and punished.\footnote{1} 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.\footnote{2} According to a law made by the Court of Four Burghs in 1495, no Templar was to buy or sell merchandise pertaining to the Gild, unless he were a Gild brother.\footnote{3}

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,\footnote{4} they could not retail cloth or other wares,\footnote{5} nor purchase certain articles, above all, wool and hides.\footnote{6} 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.\footnote{7}

\footnote{1} ‘Et si aliquis extraneus mercator faciens in contrarium reperatur, captatur per uninominis de gilda et deportatur et puniatur tanquam defensores regnum confingens’ (Ibid, p 41, Acta Parl Scot, i 383, Innes, Anc Laws 61.)

\footnote{2} ‘Lex bona de frateribus gilde — Si aliquis de fratres gilde deuenet pauper frater gilde ipsum aduenus de bonus gilte, aut facient collectam per ville communiam vogue vagiunt se hidos, et si obiit ipsum venerabiliter facient sepelum’ (See Innes, Anc Laws, 161, Acta Parl Scot, i 719 [365].)

\footnote{3} ‘Item, quod nullus Templarnus debet se intromittere cum aliquibus merci monis vel bonus pertinentibus ad gildam emendo vel vendendo infra terraram suum vel extra si fuerit confriter Gilde’ (Ibid, i 704 [340], Innes, Anc Laws, 158.)

\footnote{4} ‘Nullus enat coram, lanam, aut pelles lanaturas ad revendendum, aut pannos scindat, nisi fuerit confriter gilde nostre’ (Berkwick Gild Statutes, c 23, Acta Parl Scot, i 435 [93], 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.

\footnote{5} Acta Parl Scot, i 1 pp 509 c36, 537, Charters of Dundee, 9, Mackie, Dundee, 207, 208, Colston, Gild of Ed, 63, Extracts from Ed Records, 1528-1557, p 147.

\footnote{6} The following is from the records of the Ayg Gild, A D 1428 ‘Curia gilde coram preposito et decano gilte — elect fuerunt v personas, qui utile gilde, xii [five names follow], qui electo eodem die et pràter fuerunt ad emendum omnium merci moniaris intrantia portus maris ad comodum gilte, et equaliter debent participare sine fraude’ (Dickson, Gild Court of Ayg, 225, 226) See also Extracts from Ed Records, 1403-1528, pp 4, 37, Skene, Royal-

\footnote{7} Burgis, 141-143, Thomson, Dundee, 255, Acta Parl Scot, ii 373, Dun-
barton Burgh Records, 14, Misc, xxxv, cf above, pp 136 137. The deacon of a craft sometimes made similar purchases for the craftsmen (Bann, Ab, Guild, 273).

No inhabitants of a royal burgh could engage in foreign trade unless they were brethren of the Gild.\footnote{1} 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.\footnote{2}

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 eye all the names of the burgesses, ‘the names of the Gild brethren by themselves and those of the other burgesses by themselves’\footnote{3} A manuscript volume compiled early in the fourteenth century gives the oath of admission to burgesship, and then states that after the oath was taken by the new burghe he ought to kiss the provost and townsmen (‘vicini’), in case he were a brother of the Gild.\footnote{4} It is evident from this passage that there were burgesses 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 burgesship.\footnote{5}

\footnote{1} Bannerman, Guildry of Ab 15, Chalmers, Dumfries, i 389, 390, Hay, Arbroath, 298, Mackenzie, Works, 165, Muncie Corp Com, Scotl, 1835, pp 89, 90.

\footnote{2} See above p 201, n 3.

\footnote{3} ‘Item, petantur in scriptis omnium nomina burgessium infra habitantium et extra, vilicibus et sex patriis gilde per se, et allorum per se’ (Acta Parl Scot, i 603 [131], Innes, Anc Laws, 135.)

\footnote{4} ‘In purumum burgessium et confratres gilde. Quod erit lece et feel dominio Regi et communitati illius burgi in quo factus est burgensis et quod abat Regi firmam fideliter pro terra quanfam defendat. Et quod ovo ob diem in licitum preposito et ballius. Et quod celet archanmum consilium communitatt. Et si damnum eorum nonuert premuniue, eis vel in hoc quoniam remedium si potest. Lt quos quons re-

\footnote{5} requisitum fuerit pro communi necogo fidele consilium et auxilium eis abat pro posse suo. Et quod liberatet, leges et consuetudines dicti burgi duram vida securitatem postua suam manu et nebet — Et facio hypocondi sacramentum occa-

lari debet prepositum et vicinos si frater gilde fuerit’ (Acta Parl Scot, i 683 [310], Innes 127.)

\footnote{1} Hist sketch of Ed Const, xx For other illustrations of the distinction between gild men and burgesses, or gild and borough, see below, p 212, Ban-
nerman, Guildry of Ab, 7, 15, 19, 21, Muncie Corp Com, Scotl, 1835, Rep., 11 Ewing, Guildry of Glasc, 8, Hill, Merchants’ House, 6, 7. This distinc-
tion continued to exist down to recent times See Hill, Merchants House, 95, Mattland, Edinb, 234, Extracts from Ed Records, 1403-1528, p 113, 1528-1557, p 148, Crawford, Trades’ House, 305, 304, Sketch of Ed Const, 16, Hay, Arbroath, 307, Misc, 190, Muncie Corp Com, Scotl, 1835, pp 89, 90, 184, 427, 421, 1836, pp 53, 132, 130, 190, 228, 205, 382, 409, and below, p 212. In 1583 the council of Edin-
burgh expressly calls attention to the ‘distinctiun betux anc gilde brother and vther singill burgessis,’ and also speaks of those who are ‘namelie gild brother nor burgess’ (Extracts from Ed Records, 1573-1589, pp 277, 278).
There were in Scotland, as in England, non-resident as well as resident gildsmen. 

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. 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 statuti of the gild of Scotland.' Moreover, town charters occasionally refer to the Berwick Gild as an exemplar.

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). Innes's edition differs very materially from the older ones. Not to speak of important variants 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; 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, 382, et pass. About the year 1431 there were nineteen 'confratres gilde extra ma- nentes' connected with the Gild of Ayre. (Dickson, Gild Court of Ayre, 229.)

See also Rec. of Conv., i. 98; above, p. 209, n. 3, and below, p. 240. The latter edition differs very materially from the older ones. Not to speak of important variants 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; but that they constitute several separate bodies of enactments made at long intervals extending from about 1249 to 1294.

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2 See also Rec. of Conv., i. 98; above, p. 209, n. 3, and below, p. 240.

3 Innes, Anc. Laws, 64.


5 They are also printed in Colston's Guildy of Edinburgh, 91-114; Houard, Traites, ii. 467, ef 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.

6 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. xxii.) calls 'the most incompetent editor of a not unlearned age and country.' Innes's text is printed below, pp. 227-240.

7 See below, p. 212, n. 1.


9 They are also printed in Colston's Guild of Edinburgh, 91-114; Houard, Traites, ii. 467, ef 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. xxii.) calls 'the most incompetent editor of a not unlearned age and country.' Innes's text is printed below, pp. 227-240.

10 Most writers speak as though these statutes were all made in 1283-1284. See, for example, English Gilds, pp. xxix., 346; Colston, Guildy of Edinb., 30, 37; Wilda, Gildenwesen, 254; Walford, Gilds, 27, 30; Thierry, Récits, Pièces Justif.; Ashley, Econ. Hist., 67; Drioux, Assoc., 159; Von Maurer, Stadteverf., i. 109.

The preamble states that these Statutes (i.e. the first of them) were made by Robert de Bernham, 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').

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.

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.

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

1 Robert de Bernham was mayor of Berwick in 1248-1249. (Acta Parl. ii. p. 231.)

2 Cf. the Southampton Statutes (vol. i. 44 [38]; Scott, Berwick, 61.)

3 Above, p. 208, n. 5.
the original Gild Merchant, united with the latter to form a single fraternity\(^1\). 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' \(^2\) or 'communitas' \(^3\) to the other.\(^4\) The alderman, dean, and ferrymen presided over the Gild; the mayor and bailiffs presided over the borough as such.\(^5\) Certain fines and forfeitures fell to the Gild, others to the bailiffs of the town.\(^6\) Gildsmen and burgesses are distinguished even more clearly than 'gilda' and 'burgus', 'burgensis' being used with preference when matters of general interest were at stake; and 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 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.\(^7\)

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.

\[\text{§ 3. Later History. Conflict with Crafts.}\]

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 Burorum' 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.\(^8\) 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.\(^9\)

At Aberdeen, Stirling, and Perth the fuller and weavers seem to have been excluded from the Gild Merchant as early as the thirteenth century.\(^10\) Nothing, however, indicates that

\[^1\] See below, pp. 214-224; and the references given above, p. 209, n. 5.


\[^3\] Kennedy, Aberdeen, i. 11; Acta Parl. Scot., i. 86, 87; Charters of Stir- ling, 6-9; Irving, Dunbartonsb., i. 5; Mun. Corp. Com., Scotl., 1836, App. 6. The charter granted by William the Lion to Perth, about 1210, has the following: 'Concedo etiam burgenis etiam etiam ma- dor salutis et quod celeberrimum et in gilda quae habet gildam omnes com- merciantes et excepit de Aquilone et de Aqulone.'

\[^4\] Statuimns quod communita de Berwico gubernentur per viginti-quatnor probos homines... una cum majori et quatuor probos homines... una cum majori et quatuor probos homines... (cc. 2, 17, 23, 25). See also c. 21, 35, 39, 40. Note also such expressions as 'frates Gilde et burgenses ville' (cc. 2, 35); Statuimns quod maiores et prepositi eligantur per visum et considerationem tocius com-

\[^5\] C. 41.
The Gild Merchant.

craftsmen as a class were excluded from either the Gild or burgesseship, 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 cause of contention during the sixteenth centuries was the craftsmen's claim of the right to deal 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. 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 'decree arbitral,' or through the mediation of the Convention of Royal Burghs, 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 ascendency in the burgh councils, and the magistrates were chosen exclusively from their ranks.

In 1424 an Act of Parliament gave them this privilege, but it was afterwards repeatedly repealed and re-enacted. 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. 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...
The Gild Merchant. [APP D.

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. It was evidently composed of the merchants, or better class of burghesses, who exercised a controlling influence in the administration of municipal affairs during the fifteenth century. In 1518 the Gildry was reorganized 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 'half power to put ordour to all maner of merchandice or stapill gudis pertenyng to the gildry,' and to punish all those trespassing against the privileges of the brethren, and 'to half power to hold courtis qhilliks 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 bailies of the burgh on taking their oaths of office were always to swear to maintain the privileges of the Merchant Gild or Gildry.

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

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. But they continued to quarrel with the merchants on various matters. The conflict reached its climax in 1582. On October 29th of that year the crafts protested that it was illegal for the town assessors to vote for the chief civic officers. These assessments had evidently voted in harmony with the merchants. The protest of the crafts being disregarded, 'ane gritt multitude of pepeil of the crafts assemble to the number of 200 persones or therby,' the multitude anuing with tumultuous words mening, as appent, to sedition. thereafter the said people escht and brak in per force at the said counshalous dur, invading and persowing the said bailles and counsaille with contumious and dispuffly words.' 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.

According to this 'Decret Arbitral' of 1583, 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

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1. Extracts from Ed Records, 1423-1528, pp 118
2. Sketch of Ed Constit, xxxvii. Extracts from Ed Records, 1557-1571, pp 83, 122, 185
3. In 1552 the council consisted of ten merchants and two craftsmen (Masc, lxvi.) The crafts continued to be thus represented by only two of their number until 1583.

The document is printed in Acta Parl Scot, iii 300-304. Sketch of Ed Constit, 1-49. Documents on Reform, 28 38. Extracts from Ed Rec, 1573-1589, pp 262, 275. Masc, 162-164, Mainland, Ed, 229-235, also printed separately under the title, 'The Sett or Decret 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 bailies, 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 controversys for the gildrie, it is finaliss with commoun consent appointit, agregit and concludit that alswell craftsmen as merchandis salbe ressaut and admittit gild brother, and the ane not to be refusit nor secludit thairfra mar nor the vther, thay being burgesses of the burgh als met and qualsift thairfuir, and that gild brodor to haft libertie to vse merchandis, their admisstoun and tryell of thair qualificatoun to be in the power and hands of the provost, bailies, thesaurare and counsell with the deane of gild and his counsell, quhilk sall consist in equal numner of merchants and craftsmen gild brother, not exceeding the nowmer of sex persons 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 bailies 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 merchants and craftsmen of this burgh ar now to be incorporat in ane societie and to make ane hailt town 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 Arbital. 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. In 1729 the Earl of Islay was chosen arbitor, and in 1730 issued his decree arbital, which regulates various matters in dispute, defining the powers of the deacons of crafts, etc. He recognized the office of convener.

1 Sketch of Ed Const., xxxi
2 Ibid., xxxi, 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 Guild 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., xxviii, Munie Corp Com., Scotl., 1835, p 390, Colston, Guildry, 79.
4 Bain, Aberdeen Guilds, 76, 77.

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 uncontrollable power in the election of their deacons. Other conflicts took place between the merchants and craftsmen, 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. 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.

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 exercise all manner of merchandize within our said Realme, and outwith the same, as they shall think most expedient.'
notwithstanding the Act of Parliament of 1466. But the brethren of the Gild compelled the craftsmen to renounce the privileges granted in this charter.

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, bailieis, counsaill and brefthrene 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 amang 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 craftismen sall aspyre thereto unto the time that they be promootit 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 merchants bretheren of gild allenarily.'

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 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. The

1 Bain, Aberdeen Guilds, 79, 80; Register, 1570-1625, p. 128; Rec. of Conv., L 460.
2 Ibid., 81-84, 331-336.
3 Ibid., 85-88; Extracts from Council Facies; Extracts relating to River Clyde; Senex, Glasgow, i. 1-21; Misc., 171-174, 261-266, 205, 287; Extracts from Gl. Records, p. 64; Glasgow Archaeol. Soc. Trans., 1859, i. 29-37.
4 Bain, 42, 76. Bain (pp. 44-45) gives a list of the deacon-convener of Aberdeen from 1587 to 1866. See also ibid., 122-142.
5 Ibid., 90-97. In a contest that took place in 1638 the crafts convened 'with swords, pistols, and lang wapynnes.' (Extracts from Council Reg., 1625-1642, pp. 125-127.) See also Records of Conv., i. 312-383; Misc., i xii.; Aberdeen Descriptio, 20.
6 Bain, 84, 90.
7 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, Cordner; Gordon, Glasgow

1 A convener of deacons is first heard of when the crafts had to combine for their common interests against what they considered encroachments by the merchant class of burgess. (Bain, 42, 76.) Bain (pp. 44-45) gives a list of the deacon-convener of Aberdeen from 1587 to 1866. See also ibid., 122-142.
2 In a contest that took place in 1638 the crafts convened 'with swords, pistols, and long weapons.' (Extracts from Council Reg., 1625-1642, pp. 125-127.) See also Records of Conv., i. 312-383; Misc., i xii.; Aberdeen Descriptio, 20.
3 Bain, 84, 90.
4 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, Cordner; Gordon, Glasgow

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Contests between the Gildry and crafts continued to occur even in the present century. 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.

We do not meet with any mention of the Gildry of Glasgow until the beginning of the seventeenth century; it probably did not exist long before that period. 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-brest, strife, and contention' between the two bodies. 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 convener.' The
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Dean of Gild shall always be a merchant, and shall be chosen yearly by the provost, bailies, council, and deacons. The dean of Gild's council shall be composed yearly of eight persons, four merchants and four craftsmen and gild brother. 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 lifetime. 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 burgess 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 best 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 burgess, who enters hereafter to be a burgess, 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 convener, who shall ever be of the rank of craftsmen.' He shall 'always be an ordinary counsellor of the town's great council.' He shall convene 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.

The Glasgow Letter of Gildry was ratified by Parliament in 1672. It remained the basis of the civic constitution down to 1833, though some alterations were made in 1747 and 1754. 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 were not confined to Edinburgh, Aberdeen, and Glasgow. Other examples are found in the history of Dundee, Stirling, Perth, Dumfriesshire, Brechin, St. Andrews, Inverness, Inverkeithing, Montrose, Banff, Burntisland, Haddington, Kirkcaldy, Elgin, Culross, Lanark, Dunbar, Cupar, Kirkcudbright, and Dunfermline.

Disputes took place between the nine crafts and the Gildry of Dundee early in the sixteenth century. Their differences were settled by a Decretal Arbitrator 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 crafts of Dundee in 1604, because the latter wished to have four representatives in the burg council instead of two (Maxwell, Dundee, 235-236). See also Rec of Conv., ii., 582, ii., 297.

Register of Privy Council, 1602, vi., 391, Blak, Brechin, 47, Rec of Conv., ii., 602, 596.

Register of Privy Council, 1593, vi., 11, 65, vi., 276, 277, Rec of Conv., i., 460.

Documents on Reform, 76-77, Colston, Gildry of Edinb., 36, Sets, 15, 19, Misc., 183, 192, Rec of Conv., iv., 569, 560, 513.

Documents on Reform, 76-77, Misc., 360.


1 Crawford, Trades' House, 46-48, 295, 315, Hill, Merchants House, 20, 22, 26-31, Fung, Guildry, 73, 92, Campbell, Condors, App. In 1605, there were 576 burgesses of Glasgow, 213 of them being merchants and 365 craftsmen (Crawfurd, 59).

2 Hill, Merchants' House, 22, 23, Fung, Guildry, 13, 94, 98. Some amendments of the Letter of Gildry were also made in 1623, Extracts from GL Rec., 1651-1642, pp. 569, 343. For some conflicts between the crafts and merchants after 1605, see ibid., 2, 8, 382-84; ibid., 1630-1662, pp. 353-355, 497.

3 Hill, Merchants' House, 22, 23, Fung, Guildry, 13, 94, 98. Some amendments of the Letter of Gildry were also made in 1623, Extracts from GL Rec., 1651-1642, pp. 569, 343. For some conflicts between the crafts and merchants after 1605, see ibid., 2, 8, 382-84; ibid., 1630-1662, pp. 353-355, 497.
In fact, this struggle seems to have been common to most of the principal burhs 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 burhs'.

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 1.

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 2, 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 3. This court of the dean of Gild 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 4.

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 5.

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 burgess of such burgh, or a guild brother, or a member of any guild, craft, or incorporation 6.

1 Bain, Aberdeen Guilds, 76, 350; Memorabilia of Perth, 323-336; Wardens, Burgh Laws, 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.)

2 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 burgesses were divided into two well-defined classes, gildrymen or merchants, and craftsmen. See the works referred to in the notes, above, p. 123.

3 The maritime jurisdiction of the Gildry was superseded by that of the Admiralty Court, temp. Charles II. (Acta Parl. Scot., 1651, c. 16.) The jurisdiction of the Gildry in disputes between merchants and merchants gradually vanished in the seventeenth and eighteenth centuries. (Epskine, Inst., bk. i. Tit. iv. § 24; Hill, Merchants' House, 30.)

4 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; Munirc. Corp. Com., Scotl., 1835, pp. [54], 4, 19, 91, 205, et pass.; 1836, pp. 27, 158, 307, 300, et pass.; Black, Royal Burgbs, 30, 31; Skene, Royall-Burgbs, 140-144; Extracts from Conv. Reg. of Ab., 1618-1642, p. 48; Extracts from Gl. Rec., 1573-1592, p. 388; Chalmers, Dunferm., i. 399; Sketch of Ed. Const., xxiv, xxv; Hill, Merchants' House, 14, 29-30; Senex, Glasgow, i. 21; Crawford, Trades' House, 299; Colston, Guildry, 18, 37, 115; Chalmers, Book of Scot., 65, 66; Hay, Arbroath, 309; Brown, Selk., ii. 183; Maxwell, Dundee, 597; Rec. of Conv., i. 12, 14, 308, 322; ii. 4; iii. 381, 488.


6 Statutes of the Realm, 3 & 4 Wm. IV, c. 76, §§ 19-23.

7 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. 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.

1 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.)

Colston, Guildry, 18; Hill, Merchants' House, 31.

STATUTA GILDE.

HIC INCIPIUNT STATUTA GILDE APUD BERWICUM FACTA.

In nomine Domini Dei et indiviudae 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 lco congregata sequatur et vnica voluntas et vna eorumdem in relacione vnus ad alterum firma et sincera dilectio, ne particulaeriter aliqui Burgensium nostrorum congregati in aliquo [lco] generalis Gilde libertatem vel 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 proveniat 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, juri uel libertati communi prepositorum spectantia, huic Gilde exhibeantur.

1 These Statutes are here reprinted 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 testamento-
torum tertio loco secundum quod eis libuerit de parte eos tangente
huic Gilde delegent nisi ex neclegencia 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 predicte Gilde eidem concilium
nostrum et auxilium concedimus.

V.

DE DELICTO CONFRATRIS GILDE CONTRA CONFRATREM.

Item Statuimus insuper quod si quis confratrum nostrorum verbo-
tenus 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 corumdem satis-
faciat 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 satisfaciat 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 satisfaciat secundum delicti quantitatem; nec debet
aliquid de emendis istis prece aliqui 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 mutulauerit secundum arbitrium
Aldirmanni condempnetur.

X.

DE FORISFACTO PERTINENTE AD LUMEN GILDE.

Item si quis minixerit 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 VEIL MORBO.

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

DE FILIA CONFRATRIS GILDE.

Item si quis confratrum nostrorum Gilde post obitum suum relinquat filiam suam ex eis uxor coniugata que sit laudabilis conversationis et bone fame et non habens de proprio unde 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 uxor pro uderi poterit de viro vel de domo Religionis sibi prouiderat.

XIV.

ORDINACIO SUPER EXEQUIAS FRATRIS GILDE IN PAUPERATE.

Item si confrater Gilde nostre moriat 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 vnius bolle ordeacei brasei.

XV.

DE CONFRATRE CALUMPNIATO QUOMODO VICINI CUM EO LABQRABUNT.

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 uatis receudendo super expensas Gilde; si vero ultra duas dietas cum ipso laborauerint reus tunc propris expensis suis eos cum ipso adducet et reduket. Similiter si necesse fuerit vIterius super expensis rei cum eo laborabunt, Si per aliquem super aliquo facto inuste vexatus fuerit. Si vero iuste vexatus reus adducet super propris 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 verbo vel facto infra Burgum uel extra ministrabit. Et si etiam super vita et membris placitatus fuerit uel in aliqo honorem terrenum tangente vexatus fuerit non ei succurremus.

XVII.

ORDINACIO QUALITER VICINI AGGREGARI DEBENT.

Statuimus etiam ut quoquescumque Aldirmannus et Ferthing-manni et ceteri probi congregare voluerint confratres ad negoci Gilde tractanda omnes confratres Gilde conveniant indilate audita campana super forisfactum xij. denariorum.

XVIII.

CONSTITUTIO DE LEPROSIS.

Statuimus quod nullus leprous ingrediatur limina portarum Burgi nostri, et si quis casualiter ingressus fuerit per seruientes Burgi nostri statim eiciatur. Et si contra hanc prohibicionem nostram aliquis leprous portas Burgi nostri consuetudinarie ingredi presumperit, 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 FlIMUM PONATUR IN FORO NEC IN COMMUNI VIA.

Statuimus ut nullus presumat uel audeat apponere fimum uel aliquod puluerulentum uel cineres in via 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 vtiriusque partis. Set tam actor quam reus ad consilium suum
vnumquemque indifferenter poterit euocare. Et si quis contra hanc
prohibicionem nostram venire presumperit 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 priatus 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 MANUALES.

Statuimus quod nullus frumentum, mastillionem uel ciligenem ad
molas manuales molere presumat nisi magna tempestate cogente
uel penuria molendidorum hoc faciente, et si quis in tali casu
moluerit ad molas manuales dabit pro multura xiiij. vas. Et si quis
hanc prohibicionem nostram contraire presumperit a molis manu-
alibus priuetur imperpetuum et braseum suum molet ad molendina
ad xxiiij. vas.

XXIII.

DE LIBERTATE CONFRATRIS GILDE.

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

XXIV.

ORDINACIO DE SUTORE TANNATORE.

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

APP. D.]

The Scotch Gild Merchant.

XXV.

DE ALIENA PECUNIA NON MERCANDA.

Statuimus ut si quis confrater nostre accipiit denarios alicuius
mercatoris alienigene ad negotiandum et de hiis super forum certum
larcum capiat de sacco lane uel lasta coriorum aut de pellibus uel
aliis mercioniiis, condempnetur primo et secundo in xl. solidis.
Et si tertio super hoc convixtus fuerit anmittet Gildam in perpetuum;
Nisi Aldirmannus et confratres Gilde sibi gratiam concedere volu-
erint.

XXVI.

ORDINACIO SUPER EMPIONE ALLECIUM ET PISCUM.

Item statuimus quod nullus emat allec [ nec] pisces alicuius qui
per nauim deferuntur ad villam ante quam nauis iacet super siccam
terram et remus foris mittatur; Nec aliqua alia mercimonia scilicet
de blado, fabis, pisis, uel sale. Et si quis convixtus fuerit super
hoc dabit vnum dolum vni 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 nauis uel
aliaquod de consimilibus mercimoniis non negabit vicino suo partem
quantum voluerit emere ad cibum suum ad sustentacionem domus
sue pro foro quod [ i.e. quo ille emerit. Sin autem condempnabitur
in suo plenario forisfacto vnius doli vni 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 optimuerit. Et quod quarta pars tocius rei empte
semper remaneat emptori. Et quod soluat infra bordam cum
optimuerit 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, pacabat mercatori a quo
821359
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.

XXXIX.

CONSTITUCIO DE MERCATURA BONA SUPER ET DETERIORA SUBQUAM.

Item statutum est si contigerit quod emptor alicuius rei viderit aliquid 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 BROCCARIH ELIGI DEBENT.

Statuimus quod Broccarii sint electi per visum communitate ville Berwici qui dabunt singulis annis vnum dolum vini communitate ville predicte ad festum sancti Michaelis sine vteriori dilacione. Et nomina eorum per commune consilium inbreuientur.

XXXII.

CONSTITUCIO DE REGRATARIIS QUOD NON EMANT ANTE CERTAM HORAM.

Statuimus etiam quod nullus regratarius emat pisces, fenum, auenas, caseum uel aliquid aliud quod ad Burgum differatur vendedum ante pulsacionem campane in berfredo. Et si quis vero contra hanc prohibicionem nostram venire presumpsisset, res empta capiat 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 commodo 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 aliquid burgensis habeat tantummodo vnum garcionem ad lanam uel coria emenda. Et si quis irrationaliter emat lanam uel coria vltra statutum mercatorium in deteriorationem communitate ville, dicta lana vel coria capiantur et ad commodo 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 vnius dolii vini sine fauore vel prece leuandi.

XXXVI.

CONSTITUCIO FACTA DE CONSPIRATORIBUS.

Item statuimus si aliquis faciat conspirationem aliquum retro communitate 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 communita de Berwico gubernentur per xxiiiij. probos homines de melioribus et discretioribus ac fidedignioribus eiusdem Burgi ad hoc electos vna cum maiori et quatuor prepositis. Et quandocunque predicti xxiiiij. homines fuerint citati ad commune negocium tangendum, qui non venerit ad citacionem sibi factam ultra noctem dabat 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 controversia fuerit in electione maioris uel prepositorum fiat tunc electio eorum per sacramenta xxiiiij. proborum hominum predicti Burgi electorum ad eligendum vnam personam ad dictam communittatem regendam.

XXXIX.

DE CONSILIO OSTENO CONTRA SACRAMENTUM.

Statuimus insuper si aliquis Burgensis contra sacramentum suum prestitit consilium uel secreta Gilde nostre ostendere presumperit prima vice secundum considerationem Aldirannii et aliorum fidedignorum Gilde nostre puniatur. Si vero secunda vice in tali caso deliquerit libertatem Burgi nostri per annum et diem amittet. Et si tercia vice super talia conuictus fuerit libertatem Burgi amittet pro termino vite sue. Et sciendum est ultro quod infra illud Burgum nec in aliqua 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 cyrotecarius 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 dabat vnum dolum vini ad Gildam.

XLII.

CONSTITUCIO FACTA DE TRACTAGIO VINI.

Item statutum fuit die Mercurii proxima ante festum sancti Marci Anno domini mccc xxx 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 dabat duos denarios et obolum, videlicet vnum denarium ville et denarium et obolum pro Beriuagio. Et pro uno dolio ad potum suum dabat denarium pro Beriuagio.

XLIII.

DE AVENIS 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 tercia 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 alium 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 MCCCCLXIIII. octogesimo quarto quod quandocunque Aldirmannus et Ferthingmanni propter commune negotium tractandum voluerint confratres Gilde congregari, campana per vices pulsata in berfredo scilicet primo, secundo, et tercio, debet per interualla pulsari. Et quicunque confrater Gilde hoc audierit et ad locum congregationis possit accedere et noluerit unire 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 MCCCCLXIIII. ordinatum fuit quod nullus confrater Gilde nostro debet habere lotte neque cauyl 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 MCCCCLXIIII. nonogesimo 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- qued 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 convicctus fuerit dabit vnum dolium vini fratibus 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 pertinente debent fratribus Gilde et Burgensibus ville exceptis illis que pertinent ad dominum Regem que sibi de iure sunt reseruit.
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 audet nec presumat aliqua mercionia 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 convictus fuerit dabit vnum dolium vini ad Gildam nostram.

APPENDIX E.

THE AFFILIATION OF MEDIEVAL BOROUGHS.

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 gheselscap bi,
Waer ic allene, soo wee mi.'

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, 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.

1 This paper appeared in the Antiquary, 1885, vol. xi. I now reprint it with many additions.
2 Van der Lore cited by De Vigne, Recherches sur les Gilde, Introd., p. ix.
3 For example, Pappenheim (Schutzgilden, 184) describes a federation of eighteen Danish gilds which held general synods at Skanor 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. Even in recent times Russian peasants have resorted to a very similar expedient. 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 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 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

1 The newly-founded villages often remained dependent upon the mother community. For the whole subject, see Von Maurer, Einl., 175-181, and Gesch. der Markenverf., 19-22, 352, 353.

2 Systems of Land Tenure (Cobden Club), 355; Cunningham, English Commerce, 52. In North America, likewise, ofshoots 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 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).

3 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.

4 In 24 Edward I a writ ‘de civilibus eligendis pro quodam 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.

5 Plac. de quo War., 384.

6 ‘Omnis illis libertates et liberas consuetudines quas alicuius 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; Music. Corp. Com. 1835, p. 823; Merew. and Stephens, 413.

7 Cf. above, pp. 5, 6.

APP. E.] The Affiliation of Medieval Boroughs. 243

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. If the petitioners found a favourable hearing, they received a charter containing some such clause as the following:—‘Scias nos concessisse . . . burgenses nostris de Derby omnes illas liberas consuetudines quas burgenses nostri de Nottingham habent,’ etc. 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. Thus the phenomenon of affiliation will often explain certain remarkable resemblances existing between charters of different boroughs. A town could have two or more models at the same time, or could change from one to another. 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. Not infrequently a
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, guilds, 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:

<table>
<thead>
<tr>
<th>Borough</th>
<th>Mother Town</th>
<th>Date</th>
<th>Authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aberystwith</td>
<td>Montgomery</td>
<td>1277</td>
<td>Placita de q. W., 417.</td>
</tr>
<tr>
<td>Abingdon</td>
<td>Banbury</td>
<td>2-3 P. &amp; M.</td>
<td>Brady, Treas Te., 1777.</td>
</tr>
<tr>
<td>Agarslee</td>
<td>Stafford</td>
<td>51 Edw. III</td>
<td>Petry MS., i. 259.</td>
</tr>
<tr>
<td>Altrincham</td>
<td>Macclesfield</td>
<td>1290</td>
<td>Tate, Alm., i. 96, ii. App.</td>
</tr>
<tr>
<td>Andover</td>
<td>*Winchester</td>
<td>Hen. II</td>
<td>Above, p. 9; vol. ii. p. 3.</td>
</tr>
<tr>
<td>Arbroath</td>
<td>*Breachin</td>
<td>1725</td>
<td>Misc., 279, 282; Rec. of Conv., v. 57.</td>
</tr>
<tr>
<td>Athboy</td>
<td>*Dublin</td>
<td>1407</td>
<td>Merew. and Stephens, 810; Cal. of Pat. and Close Rolls, ii. 453.</td>
</tr>
<tr>
<td>Athlone</td>
<td>*Wexford</td>
<td>1606</td>
<td>Ibid., 125.</td>
</tr>
<tr>
<td>Athlone</td>
<td>*Dublin</td>
<td>1606</td>
<td>Ibid., 125.</td>
</tr>
<tr>
<td>Bala</td>
<td>Carmarvon</td>
<td>1324</td>
<td>Rec. of Caern., 174.</td>
</tr>
<tr>
<td>Banagher</td>
<td>Carisfort</td>
<td>1628</td>
<td>Cal. of Pat. and Close Rolls, iii. 364.</td>
</tr>
<tr>
<td>Bandon Bridge</td>
<td>Armagh</td>
<td>1613</td>
<td>Liber Mancrum, 8.</td>
</tr>
<tr>
<td>Barnard Castle</td>
<td>Richmond</td>
<td>[Stephen]</td>
<td></td>
</tr>
</tbody>
</table>

1 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 indicates that not all, but only particular, customs or institutions of the mother town are granted.
<table>
<thead>
<tr>
<th>Borough</th>
<th>Mother Town</th>
<th>Date</th>
<th>Authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carmarthen</td>
<td>*London</td>
<td>1874</td>
<td>Duncumb, Hered., i. 339</td>
</tr>
<tr>
<td>Carrickfergus</td>
<td>*Drogheda</td>
<td>1878</td>
<td>Mun. Corp. Com., 1835, p. 203</td>
</tr>
<tr>
<td>Cashel</td>
<td>*Bristol</td>
<td>1876</td>
<td>Ibid., 2; Mun. Corp. Com., i., 745</td>
</tr>
<tr>
<td>Chester</td>
<td>*London</td>
<td>1840</td>
<td>Baines, Lanc. and Chesh., i. 645</td>
</tr>
<tr>
<td>Clitheroe</td>
<td>Chester</td>
<td>1878</td>
<td>Harland, Manec., 1877</td>
</tr>
<tr>
<td>Clonmel</td>
<td>*Wexford</td>
<td>1872</td>
<td>Mun. Corp. Com., Irel., 479; Chartae Hib.</td>
</tr>
<tr>
<td>Cork</td>
<td>*Dublin</td>
<td>1809</td>
<td>Mun. Corp. Com., Irel., 479; Chartae Hib.</td>
</tr>
<tr>
<td>Coventry</td>
<td>Lincoln</td>
<td>1876</td>
<td>Liber Mun., 17; Dugdale, Warwick, 137</td>
</tr>
<tr>
<td>Criccieth</td>
<td>*Hereford</td>
<td>1884</td>
<td>Rec. of Caern., 197; Lewis, Wales, i. 267</td>
</tr>
<tr>
<td>Denbigh</td>
<td>*Rhuddlan</td>
<td>1879</td>
<td>Williams, Denb., i. 119</td>
</tr>
<tr>
<td>Derby</td>
<td>*Nottingham</td>
<td>1808</td>
<td>Duncumb, Hered., i. 336</td>
</tr>
<tr>
<td>Devizes</td>
<td>*Oxford, Winchester</td>
<td>1874</td>
<td>Waylen, Devizes, 188</td>
</tr>
<tr>
<td>Dinglecoushe</td>
<td>*Drogheda</td>
<td>1585</td>
<td>Cal. of Pat. and Close Rolls, ii. 105</td>
</tr>
<tr>
<td>Drogheda</td>
<td>Dublin</td>
<td>1529</td>
<td>Gilbert, Doc., 94; Chartae Hib., 20, 63</td>
</tr>
<tr>
<td>Drokesdale</td>
<td>Bristol</td>
<td>5 Rich. I</td>
<td>Rec. Office, Pat. Roll 14 Edw. III, p. 2; m. 26</td>
</tr>
</tbody>
</table>

1 Henricus rex Anglie, salutem. Scias me dedisse et concessisse et presenti carta confirmasse hominibus meis de Bristol civitatem de Duvelina ad inhabitandum. Quare volo et firmiter precipio ut ipsi eam inhabitent et teneant illum de me et de hereditibus meis bene et in pace, libere et quiete, integre et plenarie et honorificae omnibus libertatibus et libris consuetudinibus quos homines de Bristol habent apud Bristowad et per totam terram meam. Teste, etc. (Chartae Hiberniae, i.) Cf. ibid., 12.

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

3 Cf. Hardiman, Galway, App., xviii, xxvi.
<table>
<thead>
<tr>
<th>Borough</th>
<th>Mother Town</th>
<th>Date</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Gloucester</td>
<td><em>Kilkenny</em></td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td>Kilmacrenny</td>
<td>Bristol</td>
<td>1251</td>
<td>Cal of Pat. and Close Rolls, App. 17</td>
</tr>
<tr>
<td>Kilkeadian</td>
<td>Bristol</td>
<td>1230</td>
<td>Cal Doc. Irel., 1292, No 1179</td>
</tr>
<tr>
<td>Kingston upon-Thames</td>
<td><em>Guildford</em></td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td>Kinsale</td>
<td>Cork</td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td>Kirkby Johannon</td>
<td>Skyburg</td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td>Lampeter</td>
<td>Cardigan</td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td>Lancaster</td>
<td>London</td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td>Laughtame</td>
<td>Carmarthen</td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td>Leeds</td>
<td>Pontefract</td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td>Leighbin, Old</td>
<td>Bristol</td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td>Lichfield</td>
<td><em>Bristol</em></td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td>Lafford</td>
<td><em>Exeter</em></td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td>Limerick</td>
<td><em>Bristol</em></td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td>Lincoln</td>
<td>London</td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td>Lasecard</td>
<td>Launceston</td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td>Llanfyllin</td>
<td>Hereford</td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td>Llantraient</td>
<td>Cardiff</td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td>Longfard</td>
<td><em>Brougham</em></td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td>Longford</td>
<td><em>Banagher</em></td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td><em>Kilkenny</em></td>
<td>Bristol</td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td><em>Gloucester</em></td>
<td>Bristol</td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
<tr>
<td><em>Waterford</em></td>
<td>Bristol</td>
<td>1230</td>
<td>Cal of Pat. and Close Rolls, App. 85</td>
</tr>
</tbody>
</table>

1 Cf. Archaeologia Camb., Oct 1878, p. xxxvii
2 Confivamus eis et heredibus suis
3 Inuperptuum quod habente omnes libertates, queluntias et libera consuetudines
4 quas predictas eaves nostros Wintoni habent
5 [et] quod sa alcuca aures dictat vel vexato contra libertates Wintoniae, deducantur et judicentur per cartam preditorum civium Wintoniae (Rot Chart, 130.)

1 See also Cal of Pat. and Close Rolls, App. 85
2 *Johannes Comes Moretoni omnibus francis et anglicis salutem Scatisses me concessisse et hac presenti carta mea confirmasse Burgensi mens Lauchastie omnes libertates quas Burgensi Bris-
### APP. E. The Affiliation of Medieval Boroughs.

<table>
<thead>
<tr>
<th>Borough</th>
<th>Mother Town</th>
<th>Date</th>
<th>Authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nottingham</td>
<td><em>Coventry</em></td>
<td>1 Hen. IV</td>
<td>Munic. Corp. Com., 1835, p. 1986</td>
</tr>
<tr>
<td>Oswestry</td>
<td>Shrewsbury</td>
<td>Rich. I</td>
<td>Eyton, Shrop., x, 345; Madox, Firma B., 250</td>
</tr>
<tr>
<td>Overton</td>
<td><em>Rhuddlan</em></td>
<td>21 Edw. I</td>
<td>Madox, Firma B., 39</td>
</tr>
<tr>
<td>Oxford</td>
<td>London</td>
<td>Hen. II</td>
<td>Stubbs, Charters, 167; Liber Cust., 672; vol. ii, p. 386</td>
</tr>
<tr>
<td>Petersfield</td>
<td>Winchester</td>
<td>1488</td>
<td>Vol. ii. 387; Case of P., 202; Merey, and Stephens, 308</td>
</tr>
<tr>
<td>Plympton</td>
<td>Exeter</td>
<td>1241</td>
<td>Brady, Treatise, 46; Cotton, Plympton, 4</td>
</tr>
<tr>
<td>Poole</td>
<td>Southampton</td>
<td>1433</td>
<td>Patent Roll, 1 Edw. IV, p. 3; m. 30; Merey, and Stephens, 1239-42; Sydenham, 161; Hutchins, l. 72, 73-74; Madox, Firma B., 1835, p. 1986.</td>
</tr>
<tr>
<td>Portsmouth</td>
<td>Winchester</td>
<td>1194</td>
<td>Rot. Chart., 77; Foe dern., l. 63; Liber Cust., 655</td>
</tr>
<tr>
<td>Preston</td>
<td><em>London</em></td>
<td>1635</td>
<td>Abiam, Memor., 41; 42; Dobson and Harl., 66</td>
</tr>
<tr>
<td>Pwllheli</td>
<td>Newcastle-under-Lyme</td>
<td>Hen. II</td>
<td>Vol. ii, p. 194</td>
</tr>
<tr>
<td>Ruthcoole</td>
<td>Bristol</td>
<td>Hen. III</td>
<td>Chartae Hib., 33; Gale, Inquiry, Apple. p. 33</td>
</tr>
<tr>
<td>Ravenspurne</td>
<td>Scarborough</td>
<td>26-27 Edw. I</td>
<td>Madox, Exch., i, 423</td>
</tr>
<tr>
<td>Redcliff</td>
<td>Bristol</td>
<td>1104</td>
<td>Hunt, Bristol, 39; Nichols and Taylor, l. 91</td>
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</table>

2. Dorset.
<table>
<thead>
<tr>
<th>Borough</th>
<th>Mother Town</th>
<th>Date</th>
<th>Authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rhuddlan</td>
<td>Bristol</td>
<td>1086</td>
<td>Domesday, i. 269; Record of Caern., 179; below, p. 258.</td>
</tr>
<tr>
<td>Rosbercon</td>
<td>Kilkenny</td>
<td>1300</td>
<td>Chartae Hib., 39.</td>
</tr>
<tr>
<td>Ross, New</td>
<td>Wexford</td>
<td>1414</td>
<td>Munic. Corp. Com., Irel., 559.</td>
</tr>
<tr>
<td>Ruthin</td>
<td>Tenby</td>
<td>1507</td>
<td>Merew and Stephens, 1086.</td>
</tr>
<tr>
<td>Rye</td>
<td>Hastings</td>
<td>1191</td>
<td>Foedera, i. 53.</td>
</tr>
<tr>
<td>Salisbury</td>
<td>Winchester</td>
<td>1200</td>
<td>Rot. Chart., 54; Ant. Sariah, 78.</td>
</tr>
<tr>
<td>Seaford</td>
<td>Hastings</td>
<td>1543</td>
<td>Merew and Stephens, 1132.</td>
</tr>
<tr>
<td>Shrewsbury</td>
<td>London</td>
<td>1199</td>
<td>Ibid., 287, 288.</td>
</tr>
<tr>
<td>Sligo</td>
<td>Younghal</td>
<td>1621</td>
<td>Liber Munerum, 35.</td>
</tr>
<tr>
<td>Sodbury</td>
<td>Bristol</td>
<td>Hen. II</td>
<td>Atkyns, Gloucestershire, 347.</td>
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<tr>
<td>Stockton</td>
<td>Newcastle-upon-Tyne</td>
<td>17 Edw. III</td>
<td>Hutchinson, Durham, iii. 127.</td>
</tr>
<tr>
<td>Swords</td>
<td>Dublin</td>
<td>1196</td>
<td>Chartae Hib., 9; Munic. Corp. Com., Irel., 459.</td>
</tr>
<tr>
<td>Thomastown</td>
<td>Kilkenny</td>
<td>1 Mary</td>
<td>Munic. Corp. Com., Irel., 573.</td>
</tr>
<tr>
<td>Totnes</td>
<td>Exeter</td>
<td>1086</td>
<td>Below, pp. 259, 264.</td>
</tr>
</tbody>
</table>

1 I. e. Sunderland.
2 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.

<table>
<thead>
<tr>
<th>London</th>
<th>Manchester</th>
<th>Liverpool</th>
<th>Hull</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barnstaple</td>
<td>Bath</td>
<td>Beverley</td>
<td>Whitby</td>
</tr>
<tr>
<td>Bedford</td>
<td>Bristol</td>
<td>Canterbury</td>
<td>Maidstone</td>
</tr>
<tr>
<td>Chester</td>
<td>Clitheroe</td>
<td>Exeter</td>
<td>Plympton</td>
</tr>
<tr>
<td>Cork</td>
<td>Dunstable</td>
<td>Gloucester</td>
<td>Lancaster</td>
</tr>
<tr>
<td>Newton</td>
<td>Northampton</td>
<td>Oswestry</td>
<td>Preston</td>
</tr>
<tr>
<td>Shrewsbury</td>
<td>Tamworth</td>
<td>Taunton</td>
<td>Wilton</td>
</tr>
<tr>
<td>Winchester</td>
<td>Andover</td>
<td>Bath</td>
<td>Boston</td>
</tr>
<tr>
<td>Bedford</td>
<td>Beverley</td>
<td>Gloucester</td>
<td>Cambridge</td>
</tr>
<tr>
<td>York</td>
<td>Beverley</td>
<td>Guildford</td>
<td>Kingston-upon-Thames</td>
</tr>
<tr>
<td>Hull</td>
<td>Whitby</td>
<td>Hasting</td>
<td>Rye</td>
</tr>
<tr>
<td>Scarborough</td>
<td>Hasting</td>
<td>Hastings</td>
<td>Rye</td>
</tr>
<tr>
<td>York</td>
<td>Beverley</td>
<td>Hasting</td>
<td>Rye</td>
</tr>
</tbody>
</table>

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

- Andover
- Bath
- Boston
- Devizes
- Gloucester
- Guildford
- Winchester
- Newcastle-upon-Tyne
- Petersfield
- Portsmouth
- Weymouth
- Salisbury
- Southampton
- Poole
- Wallingford
- Wilton
- Francheville

- Lydd
- Romney
- Rye
- Seaford
- Winchelsea

- Athboy
- Athlone
- Cork
- Kinsale
- Carrickfergus
- Dinglecussie
- Galway
- Naas

- Dundalk
- Maryborough
- Naas
- Dungarvan
- Youghal
- Kilkenny
- Limerick
- Londonderry
- Swords

- Clonmel
- Cashel
- Naas

- Fethard
- Gowran
- Kilmallock
- New Ross
- Rosbercon
- Thomastown
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 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. I have not found...
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'. The Cinque Ports also
form a group by themselves. The constitutions of the boroughs
composing this federation were quite homogeneous. They
were all subjected to the same court of appeal (at Shepway, afterwards
at Dover). An 'unincorporated member' was under the jurisdic-
tion of its 'head-port'.

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 Here-
ford and Bristol. Exeter 'gelled' when London, York, and Win-
chester 'gelled.' Totnes, Lidford, and Barnstaple regulated their
military service according to the custom of Exeter. 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 in-
quiry, 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 inter-
course 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 in-
surmountable 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; Lancaster and Grimsby from Northampton; Preston
from Newcastle-under-Lyme; Newborough from Rhuddlan; Cork
from Bristol; and Limerick from Dublin.

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:

1 At a courte holden for the citty of Hereford, on the first Wed-
nesdaie after the feast of the Epiphany, in the first yeare of
the reign of king Henrye the Second, the men of the towne of Drusselan
[Rhuddlan] in the Welsh partes, brought the kings writte, directed
from Bristo16 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:

2 Domesday, i. 100. Totnes gelded only when Exeter gelded 'ibid., i. 108 b.
4 Thompson, Essay, 131.
6 Dobson and Harland, Preston Guild, 79.
to the men thereof, to hould to them and their heires, by the same
lawes and customes as the cittizens of the citty of Hereford doe hould;
and that they should enquire of theire lawes and customes from the
men aforesaid; see 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 seal of the citty, in case of disherson,
otherwise not. Whereupon the said bailiffs warned six of the Kings
bailiffs, three of the Bishops bailiffs, two of the Dean and Chapters bailiffs,
and one of the master of the hospitals bailiff, to appeare on the
morrow 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 citty with them. . . . And they declared the lawes
and customes which they have heard from their ancestors, and
were approved and used in their tyme, to bee as followeth.’

Quite a complete outline of the town constitution is then pre-
bented by the twelve jurymen.

‘John le Gaunter, chief bailiff 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 bailiff, having called unto him
twelve cittizens, sent by waye of certificate to the men of Hareford
[Haverford-west] upon theire petition and for an hundred shillings,
which the said men have given, certain customes, in these words:
To all bailiffs, burgesses, and other the men of the towne of Hare-
ford, unto whom these present letters shall come, Robert Durewarde
and his fellow bailiffs of the kings citty of Hereford wish health.
Upon a certaine petition of yours sent unto us and our fellow citti-
zens, 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 bayliff of Hereford, calling unto him
twelve cittizens, required from them certaine customes to be observed
duringe his tyme, and which, in former tymes, were there used and
approved of, which they should send and certifie to the men of Kerdiffe [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 discreet fellow cittizens, unto the customes required
of them did declare: That although the kings cittizens of Hereford
who have the custodye of his citty, (in regard that it is the principal1
citty 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 hould 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 tyne, who paie to theire 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
theire 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 waye of purchase, to be performed to our capitall bay-
liff as they can agree between them, at the pleasure and to the benefitt
of the citty aforesaid. And such persons shall not have our common
seele without a greate reward, or upon the speciall supplication of
our fellow cittizens. As touching the customes now required of us,
we say,’ etc.

Laws regarding debtors, fines for trespasses, the quarterly courts,
etc., follow 1.

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

1 The original, of which this is a
translation, is lost. For this and other
transcripts, see Duncumb, Herif., i.
317-344; Archael. 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 1, Montgomery, Denbigh 2, and Netherwere 3. The ancient book in which the customs given to Druselan, 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 4 and the Customal of Chester probably originated in this way. Both of them contain much of the form and flavour of the Hereford record, both were communicated, on application, to affiliated towns, the Chester document to Clitheroe 5, 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 Mayor and Bailiff and other honest men of the town of Stockton, the Maior and Superintendant of Chester probably originated in this way. Whereas our beloved and special friend William Browne, your neighbour and fellow Burgess, upon your behalf hath

1. Consuetudines Herefordiae. "Ma
2. Et quod habebant legem et consae
tudinem Herefordiae, prout scriptum est
dicta burgensis de Netherwerre ex com-
am assensu omnium Burgensis, qui pre-
dicta Herefordin cum eorum sigillis.
Charter of Edward I [to the burgesses
of Netherwere (Rec Office, Patent
Roll, 6 Hen V, mem 20, cf. Petry MS,
ii 241-242.)
3. For some extracts from this docu-
ment, see vol. ii pp. 182, 183.
Harland, Mamec, iii p. xv, Charters
of Clitheroe, 27. This is probably only
an English transcript of an older certi-
ificate 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 docu-
ment, of which the Clitheroe record is
but an imperfect translation, in Har-
ley MS 2057, ff. 63-65. Cf. vol. ii pp
43-44.

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

1. Brewster, Stockton, 82-85; Hutch-
inson, Durham, ii 127; Sarthees, ii 172.
2. An ancient translation contains
these words 'Quharfor it is asked at
us burges of ye New Castell,' etc. (Acta
Parl Scot, i [40] 352.)
3. Lege quatuor burgorum,' c. 99
Acta Parl Scot, i [40] 352; Innes,
1 722, 723 [358, 359]; Innes, 168.
4. Innes, Anc. Laws, 179, Acta Parl
Scot, i 723 [359]. Cf. ibid., 724
[360]; Innes, 172.
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.

In the ancient burghal records of Melcombe Regis 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.'

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 judicio aliquo quod facere deberant, mittant nuncios suos Oxenfordiam et quod de hoc Oxanford (sic) cives Oxefordie judicabunt, illud sine dubio firmum et ratum et certum habeant et faciant . . . Quia ipsi et cives Oxefordic sunt de una et eadem consuetudine et lege et libertate.'

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

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1 Schedule of Bedford Records, 6; Hist. Soc., Trans., 1880, viii. 65.
2 Moule, Cat. of Charters, 95.
3 Chanter, Barnstaple Records, No. 36.
4 Plac. de quo War., 17.

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APP. E. The Affiliation of Medieval Boroughs.

Henry II enjoins the latter in turn to appeal to the citizens of London.

But the mother town in England never became a court of appeal in the full, legal acceptance 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:

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1 Rot. Chart., 138; Stubbs, Charters, 167; vol. ii. p. 386.
form 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 tenendarum juravimus ad usus et consuetudines Tornaci, sicut eam tenendum nostris juraverunt antecessores, tali videlicet modo, quod aliquo casu emergente de quo jurati per se definire nescient et judicium dicere, apud Tornacum ire deberent, judicium inquisi tur et per inquisitionem quam de Tornaco retulerint, casum predictum diffinire debent et querelam illam terminare.’

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 Merthen dicitur, liberam facimus, conferentes, sub virtute praestiti juramenti, eamdem libertatem per omnia, quam conterrent praedecessores nostri opido Lovaniensi, et ad majorem hujus rei evidemiam et expressionem prae senti cartae nostrae inserimus transcriptum cartae concessae a praedecessoribus nostris praefato opido Lovaniensi, super suam libertatem, cujus forma talis est... Volumus insuper ut quotiescunque in opido de Merchten emerserit aliqua dubietas aliquibus ferendi vel similibus, recursum habeant illi de Merchten ad opidum Lovaniense, tanquam ad caput suum, ut secundum sentenciam et consilium scabinorum Lovaniensium sentenciae eorum ferantur, et dubietates omnes sive ambiguitates illorum sopiantur.’

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 aulchun establissement, loy et escha-

1 Wauters, Lib. Com., Preuves, 58. A chart to Calais granted by the Count of Boulogne in 1210 contains this passage:—‘Si auncenascini vel quere mannii super se judicium habuerint quod dicere nesciant et diffinire, apud Merc de judicio illo suam facient inquisitionem; et si auncen Merc super hoc docti esse non poterunt, judicium illud inquirerent apud Brabon.’ (Ibid., 67.)

2 During the same year 1210, Count Arnoul de Guines, having received grants from the three towns of Leuven, Bruges, and Lauwerik, made in his chart to Merchten in 1251, a copy of the following:—

3 Giry, Établ., i. p. xxii. St. Omer, 199. In 1303 Bruges was the ‘hoofd’ of twenty-seven towns. (Coutume de Bruges, 381.)

4 Warnakosig, Fland., i. 382; Giry,
vinage de la ville de Saint Aumer, et que si l’il leur en faut aucune chose, qu’il le doivent enquire as eschevins de le hale de Saint Omer'.

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

'Scabini de Alneto ad kerkm seu sensum ad hallam ipsorum majorum et scabinorum apud Sanctum Audomarum, quando ipsi scabini kerka seu sens indigent, venire tenentur'.

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 pooot 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 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 pooot 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 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 pooot 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 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 pooot 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 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 pooot 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 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 pooot apieler devant jugement de ceaus dou Dam a ceaus de Brouges, comme a leur kief')

The Affiliation of Medieval Boroughs.

For Italy, one striking example of affiliation will suffice. Giovanni Villani informs us that in the year 1338 Eternal Rome, the illustrious 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.

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:

'Scuo enim quod in Castella, in Navarra, et in alis terris solent venire Jacam per bonas consuetudines et fueros ad discendos, et ad loca sua transferendos.'

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 vostros esse volumus participes et consortes.'

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.'

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 Pist., p. ix; cf. Hist. Review, 1888, p. 555.)

1 Lembke und Schäfer, Spanien, ii, 418-428; iii, 178-202, et pass.
2 Moret, Investigaciones, 535.
3 Lembke und Schäfer, iii, 390.
4 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.

The parent community, to which the daughter towns appealed—i.e. to which they had their 'Rechtszug'—was called their superior court, their 'Oberhof.' The oldest and most renowned of these 'Oberhöfe' were Cologne for the Rhine district; Soest and Lubeck for the northern provinces; Magdeburg for the east; and Frankfurt-on-the-Main for the south-west. To these may be added Regensburg and Nuremberg for Bavaria, Dortmund for Westphalia, Eisenach for Thuringia, Strasbourg 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').

The following table by no means purports to be complete:

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These lists are based on materials furnished by Michelsen, Oberhof, Vorrede, and pp. 1–83; Von Maurer, Stadtverf., i. 189–197, iii. 760–782; Thomas, Oberhof zu Frankfurt, 49–68, 117–174; Gaupp, Stadtrechte, passim; Taezehoppe und Stenzel, Urkundensammlung, 169–117; Harprecht, Diss. de caris superioribus. See also Gengler, Codex, i. 28, 193, 156, 173, 190, 234, 375, 394, 404, 432, 610, 621, 649, 681–687, 712, 764, 875, 904, et pass.; Hohlbaur, Urkundenbuch, iii. 1, 194, 198, 513, et pass.; Gaupp, Das alte Magdeburgische und Hallische Recht; Hasse, Das Schleswiger Stadtrecht; Tomaschek, Der Oberhof Glaub in Mahren; Loersch, Ingelheimer Oberhof; Nitsch, Uebertragung des Soester Rechts auf Lubeck; Franklin, Magdeburger Weisthumer für Breslau; Huber, Das Kohn. Recht in den Zehring, Stadten.

1 'Omnis sententiae de quibus dubitatur, requirendae sunt apud nos [i.e. Dortmunder] intra Rhenum et Wisarem de omnibus civitatibus Teutoniae, quae sunt in romano imperio ex ista parte Alpium, in hunc modum: evitas illa, ubi talis sententia dubitativa vertiun et super illa ad nos Tremoniam appellatur, in scripto debet ad nos transmittere sententiam illam, ut ipsam definitivam feramus,' etc. (Michelsen, S. 5; Gengler, Codex, i. 875.) See also Friedloff, Dortmunder Statuten und Urtheile.

2 These lists are based on materials furnished by Michelsen, Oberhof, Vorrede, and pp. 1–83; Von Maurer, Stadtverf., i. 189–197, iii. 760–782; Thomas, Oberhof zu Frankfurt, 49–68, 117–174; Gaupp, Stadtrechte, passim; Taezehoppe und Stenzel, Urkundensammlung, 169–117; Harprecht, Diss. de caris superioribus. See also Gengler, Codex, i. 28, 193, 156, 173, 190, 234, 375, 394, 404, 432, 610, 621, 649, 681–687, 712, 764, 875, 904, et pass.; Hohlbaur, Urkundenbuch, iii. 1, 194, 198, 513, et pass.; Gaupp, Das alte Magdeburgische und Hallische Recht; Hasse, Das Schleswiger Stadtrecht; Tomaschek, Der Oberhof Glaub in Mahren; Loersch, Ingelheimer Oberhof; Nitsch, Uebertragung des Soester Rechts auf Lubeck; Franklin, Magdeburger Weisthumer für Breslau; Huber, Das Kohn. Recht in den Zehring, Stadten.

3 'Dis sint die Stette die iu recht nement heиз zu Friiburg.' Thirty names follow. See Gaupp, Stadtrechte, i. p. xxvi; Gengler, Codex, i. 764. The document belongs to the beginning of the fifteenth century.

4 'Nota diss hernach geschriben stett, marktett vnd dorff hollent tu urttel vnd recht allie zu tuwingen.' About seventy-five names follow. ('Stadt- recht,' 1493; Von Maurer, Stadtverf., iii. 769.)
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 Lubeck — "ut tali jure, prout civitas Lubecensis utitur, at a civitas praesens libere et quiete perpetuo perfruat". Not many years later Northeim is endowed with the law and institutions of Gottingen:—"tale jus . . . quale burgenses nostris de Gotinge actenus habuerunt ut . . . truantur simulbus institutis." 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. In the year 1286 the laws of Lubeck are conferred upon the city of Massow.—

"Quemadmodum idem jus in alius nostris civitatibus observatur, ubi si necesse fuerit propter causas decedendas exigent et requirant."

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 discordaverunt, jus oppidi Fr [i.e. Frankfort on the Main] querent, et nos illo contente esse debemus."

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 pertinient ad domum nostrum et principatum, ex antiquo jura sua requirant apud praefatos eves nostros de Ysenach, et recursum ad ipsos habeant, aliquas percipienti sententias difficiles et obscuras."

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 servandur, porrigimus et donamus, ita quoque, ut super omnibus causis, tam parvis quam magnis, civibus predicte civitatis incumbentibus in omni jure ad

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1 Michelsen (pp 47-82) enumerates more than a hundred towns affiliated with Lubeck. See also Dreyer, Emile, Lübeck, 260 270, Friedenstorf, Das Lübecker Recht, and Verfassung Lübeck’s, Hause, Quellen des Ripener Stadtrechts, Hohlsaum, Urkundenbuch, i pp xiii, xiv, in 513. 2 Thomas (pp 119-162) mentions some three hundred daughter towns of Frankfort. 3 There were thirty three communities, many of them mere villages, in final relation with Hohe Mark (Thomas, 141). 4 Dass Stett und Dorffer alter Frh-
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, contradiccione qualibet relegata’ (1302)

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

‘Nos scabiti civitatis Magdeborch lucide protestamur, civitatem Wratislaviam longevo tempore, cujus memoria aput nunc viventum non extat, jure opidano seu civili Magdeburgensi fuisse subjectam, ita videlicet, quod, quandocunque ambiguitatis quid super jure civili Magdeburgensis aput vel inter cives Wratislavor civitates eorum fuerat, recurrendo ad nostram civitatem distinctam sentenciam ab antecessoribus nostris et a nobis hucusque obtinebant’.

In 1345 Baldwin Bishop of Paderborn granted the townspeople of Drincburg, among other privileges, that they should ‘seek their law’ at Paderborn whenever the magistrates of Drincburg could not decide any legal dispute for them —

‘Voedemer worden de borghere vor deme richte scclafich vnder sich vmme recht eder vmmeorde, dat scolden se vor iren rath bringen, 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’.

The magistrates of Magdeburg endow Schweidnitz with their burgal constitution, and then speak of their ‘auctoritatem ut alius civitatis juris sententia valeram ammistare’; they also permit the ‘scabmi’ of Schweidnitz to transmit to other towns the laws and judgments received from Magdeburg —

‘Si scabmi civitatis Suidencensis alius civitatus et villis, circa se situatis possunt et valent just Magdeburgenses et sentencias juris a nobis datas utenius distilhate’.

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.,

1 Tschoppe und Stenzel, 416
2 Ibid, 441
3 Ibid 586. 587
4 Gaupp, Stadtrecht, p 175
5 Freiburger Stadtodel, A D 1200-1250
6 Michelsen, 16
7 Harprecht, Codex, 1432
8 Michelsen, 5
9 Gengler, Codex, 1686. 1687

Concerning the ‘Oberhof’ at Frankfort, 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 vnum appellations quam consultationes’. Thus the citizens of Buchhorn are to appeal to Ueberlingen, whenever they are dissatisfied with a judicial decision at home —

‘Item statuumus quod quicumque civium de Buchhorn ab aliqua appellat sententia, illam appelationem justa est et statuta civitatis de Ueberlingen prosequetur, et quocum sententiam fuerit a civibus de Ueberlingen, illud ratum a partibus est servandum’.

The burghers of Freiburg may appeal to Cologne (‘Colomam appellabunt’), if either party in a suit rejects the judgment —

‘Si super aliqua sententia fuerit inter burgenses orta discordia ita quod una pars illum vult tenere sententiam, ala vero non,’ etc.

In like manner Hohenstein appeals to Osterode (‘Gescholden Ortheyl und alles recht sollen sy haben in der Stadt Osterode’). Burg receives the laws of Lubeck. The ‘Radludes’ 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 wende dat nicht behaget, de mag dat schelden vor den Rath tho Lubeck’.

Speaking of Culm Gengler refers to —

‘Die anordnung eines regelmassigen Rechtszuges von den Ordensstaden ans den culmer Rath, welchem die zweifache Befugniss, dunkle Rechtspunkte durch Weissthumer zu erlaubern und angefoetchte Urtheile oberrichtlich zu bescheiden, eingerumt wird . . . Diese jungeren Stadte wurden dann auch meistens in ihren Fundationsbriefen entweder indireckt durch Bewidmung mit dem jus Culmense oder direct durch die Anweisung, “ir gestraften (gescholden) vrtel czu holen czu dem Colmen’ mit letztgenannter Stadt in die fragliche communication gebracht.’

1 Michelsen, 16, 17
2 Harprecht, Codex, 1432
3 Charter of Rudolph I, 1275
4 Gaupp, Stadtrecht, p 33
5 Freiburger Stadtodel, A D 1200-1250
6 Michelsen, 5
7 Ibid, 14
The Gild Merchant.

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 sufficient, tunc ad consules Wladislavienses pro sentenciae hujusmodi declaratione recurreretur.

In 1597 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:—

'C. quipus rei gracia dilectos nostros de loco minori, licentiam habeant appellacionem faciendi ad majorem locum, a quo minor locus justicei sui leges acceperat.'

Thus there can be no doubt that Lubeck and many other German mother towns were real courts of appeal, 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.' Some of these have been printed. 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 Königgratz. Hans von der 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 judicibus 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 ir in eym rechyn urteil alz uns das recht weysyt und lert, daz der czu seynen jarn kummen ist seym 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) vurnmundschaft.'

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 zufiele, bei den nächsten hohen Schulen, Städten, Communen ... Rath zu suchn schuldig sein.'

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. In the year 1721, Lübeck, one of the most long-lived of the 'Oberhöfe,' exercised its functions for the last time.

Many towns of Switzerland were affiliated with those of Germany, especially with Freiburg in Breisgau. 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 leges acceperat.'

In England, affiliation involved only the interpretation of law.
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, is not meaningless; the
most potent of the English boroughs were at 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 ‘Oberhof’ 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; 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
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 ‘Oberhof’
gradually lost their influence, as the central authority in the various
principalities grew more powerful (in the sixteenth and seventeenth
centuries). 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.

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 en-
vironment; 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 institu-
tion 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?

2 In the year 1377 Count Katzen-
elbogen entered a plaint in the
imperial court against the town of Lim-
burg. 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, Stadteverf., iii. 771). One

1 ‘Seitdem die Landeshoheit fester
begrundet war, seitdem wurde das Zug-
recht an die Oberhofe beschränkt, oder
auch ganzlich verboten, und statt dessen
eine Berufung an die Laudsherrn oder
an ihre Hofgerichte eingeführt.’ (Von
Maurer, iii. 776; cf. Michelsen, 29;
Thomas, 201.)
2 Giry, St. Omer, 201; Flammer-
mont, Instit. de Senlis, 22, 23.
APPENDIX F.

THE CONTINENTAL GILD MERCHANT.

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. 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. Now if this fraternity was not the germ of the English municipal, 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. It doubtless origin-

ated in the eleventh century when a renaissance of commerce began in the western countries of Europe. 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; it more commonly received a separate charter of its own, 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. 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. 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, Stadt- und Marktrecht, i. 226, ii. 261-265; Hüllmann, i. 323; Lattes, Diritto, 39; cf. ibid., 36. Wauters speaks of a Gild Merchant at Thiel in 1012 (Lib. Com., 246); 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 ‘Handsfolgen’ (Stadteverf., ii. 338); 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 (1027-1028). Below, pp. 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.

1 There is no good general account of this subject. I understand that Professor Hohlbaum of Cologne is preparing a treatise on ‘Die älteren Kaufgilden von West-Europa.’ He is eminently fitted to deal with the subject.

2 See the preceding notes; and Drioux, Assoc., 138; Sartorius, Hanse, p. xvi.

3 Above, p. 4, n. 2; Pigeonneau, Commerce, i. 114, 114, 238; Ceulener, Communes, 161, 162; Nitzsch, Kaufgilden, 370, et seq.; Arnold, Freistädte, i. 253. 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 cases of this kind it is difficult to distinguish the two.

4 For some references to it in town charters, see Giry, St. Omer, 372; Wauters, Preuves, 67, 68; below, pp. 290-294.

5 Below, pp. 294-299.


7 Von Maurer, Stadteverf., ii. 254-279, 357; Götz, Stendal, 97-119; Hohlbaum, Urk., ii. 25, 26, 168, 169, iii. 385, 414, 415, 404, 465, 477; Arnold, Studien, 203; Nitzsch, Kaufgilden, 384, 398, 401; Sartorius, Hanse, p. xvii; Gengler, Codex, i. 139, 220, 267, 472-473, 680, 923, 968, and Stadtrechtsalt., 490-493; Wilda, Gildenwesen, 263-288; Pigeonneau, Commerce, 111-115, 118-123; Rambaut, Civil. Franc., i. 909; Chéruel, Rouen, i. 245; Wauters, Lib. Com., 205, 385, 586; Fortuyn, 221, 222, et pass.; Gierke, Genoss., i. 344-349; Levasseur, Classes Ouv., i. 385-396, 510; Schles. Urk., p. xxiv. In many of these towns the chief mercantile Gild was connected with the cloth trade ('Gewandschneider-Gilde,' 'Laken- guile,' 'Passeniiide,' etc.).
craft associations. In Italy the Gild 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

The following are the most common names of the Gild Merchant and its officers:—in Germany, Koplule Gilde, Koplule Innung, Kopmanns-Gilde, Kopgilde, Hanse, Geldmeister, Alderman, Decan; in the Netherlands and parts of north France, Gilda Mercatoria, Fraternitas Mercatorum, Comansgulde, Commannen Gilde, Hanse, Oldermann, Decani; in Denmark, Convivium, Holy Trinity Gild, St. Nicholas Gild, etc.; Alderman; in Italy, Mercanzia, Universita (Societa or Community) de' Mercanti, Consoli (less frequently a Podesta) assisted by Notarii, Camerarii, Missi, Nuncii, etc. In some towns of Germany its meetings were called 'Morgensprachen'.

As regards the relation of the crafts to the Gild Merchant, it is clear that in some places the craftsmen or artisans were freely admitted into this body in the twelfth century. In many towns they were excluded from it in this and the following century, especially from mercantile fraternities engaged in foreign trade. On the whole, this exclusion seems to have been more frequent

1 Lattes, Diritto Com., 23, 24, 38, et pass.; above, pp. 118–121.
2 Holhbaum, Urk., i. 86, 87, 259, ii. 25, iii. 414; Schmidt, Urkundenbuch, i. 178, 184; Hans. Geschichtsblatt, 1878, p. 22; Nitzsch, Kaufgilden, 370, 372, 387; Sartorius, Hanse, p. xvi; below, pp. 294, 295, 299.
3 Wauters, Lib. Com., 584–589, and Preuves, 68, 233, 255, 266, 268; Miraeus, Opera Dip., i. 1025, 1027; W. Konig, Fland., i. 351; ibid., Gheldolf, ii. 239; Vanderkinderde, Artevelde, 64; Fortuny, 197, 203, 228; Holhbaum, i. 449, iii. 418, 477; Sartorius, Hanse, 74; below, pp. 290–298.
For a bibliography of French gilds, see London Liv. Comp., v. 390; this Report, v. 385–396, also gives a sketch of the modern history of continental gilds.

1 Wilda, Gildenwesen, 271–288.
2 Lattes, Diritto, 23–51; Reasacco, Dizionario, 215, 219, 286, 296, 614; Helge, Stadteverf., ii. 257; Ficker, Forch, iv. 357.
3 Götze, Stendal, 103, 109; Holhbaum, ii. 25, 26; Nitzsch, Genossenschaften, 26; Schles. Urk., p. xxvii.
5 Wauters, Lib. Com., 278, 279, and Gildes, 721; Giry, St. Omer, 283; Van Mieris, Charterboek, i. 356; Holhbaum, Urk., i. 244, 245; Nitzsch, Kaufgilden, 372; Götze, Stendal, 103; Gengler, Codex, 472, 473; Wilda, Gildenwesen, 274, 264; Moke, Moeurs, i. 192; below, p. 296. Cf. Papenhein, Schutzgilden, 236–238; Wauters, Preuves, 265, 268. A craftsman was generally admitted to a mercantile fraternity if he agreed to renounce his work and more rigorously enforced than in England. The craft societies first appear on the Continent, as in England, early in the twelfth century. 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 'Scheidungsprozess' in Germany. 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. True there were popular uprisings in England; but they were generally class conflicts between the poor and the rich, the 'burgenses minores' and the 'maiores,' 'potentes,' etc., the crafts as such seldom taking part in these tumults. 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.'
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.

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. 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. \footnote{1} Die Vorliebe für die Gildetheorie nimmt in demselben Grade ab, in welchem die Kenntniss der deutschen Verfassungsgeschichte vorschreitet. In Germany the gildsmen were not identical with the burgesses, nor the Gild administration with the civic administration. The meetings of the municipal council sometimes took place in a gild hall, but this circumstance may be as easily explained as the

\footnote{1} What Gervinus in 1835 said of Wilda applies to many modern writers. In der ganzen Zeit vor dem vierzehnten Jahrhundert, vor dem Aufkomm der Handwerkgilden, wo ein Patriziat sich in allen Städten von Europa in den ausschüttelten Besitz der Regierung setzt, sieht er unter diesen adeligen Geschlechtern Alles von Gilden und Genossenschaften wimmeln.  

\footnote{2} V. Below, Stadtgemeinde, 96. Cf. what Heusler wrote in 1872. Mir scheint es, dass eigentlich diese Auffassung jetzt als antiquiert zu betrachten sei (Stadtverf, 111).

\footnote{3} Item decreverunt quod quocumque pro hoc delicto reacaquiret a dominibus consulibus \footnote{4} civis cunctis elve Stendal} civilitatem, simulat a magistris gilda confraternitatem reacquiretur deberet, si eam ante non habuisset (Hohbaum, Urk., n 26, A.D. 1304.) See also V. Below, 29, 31, 33, 45, 66, 68, 70, 73, 79, 93, 95, Codex, 220, Fennel and Eckertz, Koln, 148, 149, Emen, Koln, 1, 233, 234, Hegel, Chroniken, 94, 241–141, 149, Holbaum, Urk., n 141, 415, Nietzsche, Kaufgilden, 278, 279, 382, 386, Heusler, Basel, 116, Gotte, Stendal, 102.

\footnote{4} Vandenpeereboom, 98, 101, 102, 114, 143. D'Hermsart, 12, De Lettenhove, Flandre, 1, 147, Frendorff, Dortmurn der Statuten, pp 114, Warkonig und Stein, Franz, n 280 (but cf. ibid. 126, and Warkonig, Fland, 1, 33-335).

\footnote{5} V. Below, Stadtgemeinde, 96. Cf. what Heusler wrote in 1872. 'Mir scheint es, dass eigentlich diese Auffassung jetzt als antiquiert zu betrachten sei (Stadtverf, 111).

\footnote{6} Item decreverunt quod quocumque pro hoc delicto reacaquiret a dominibus consulibus \footnote{7} civis cunctis elve Stendal} civilitatem, simulat a magistris gilda confraternitatem reacquiretur deberet, si eam ante non habuisset (Hohbaum, Urk., n 26, A.D. 1304.) See also V. Below, 29, 31, 33, 45, 66, 68, 70, 73, 79, 93, 95, Codex, 220, Fennel and Eckertz, Koln, 148, 149, Emen, Koln, 1, 233, 234, Hegel, Chroniken, 94, 241–141, 149, Holbaum, Urk., n 141, 415, Nietzsche, Kaufgilden, 278, 279, 382, 386, Heusler, Basel, 116, Gotte, Stendal, 102.

\footnote{7} Vandenpeereboom, 98, 101, 102, 114, 143. D'Hermsart, 12, De Lettenhove, Flandre, 1, 147, Frendorff, Dortmurn der Statuten, pp 114, Warkonig und Stein, Franz, n 280 (but cf. ibid. 126, and Warkonig, Fland, 1, 33-335).

\footnote{8} V. Below, Stadtgemeinde, 96. Cf. what Heusler wrote in 1872. 'Mir scheint es, dass eigentlich diese Auffassung jetzt als antiquiert zu betrachten sei (Stadtverf, 111).

\footnote{9} Item decreverunt quod quocumque pro hoc delicto reacaquiret a dominibus consulibus \footnote{10} civis cunctis elve Stendal} civilitatem, simulat a magistris gilda confraternitatem reacquiretur deberet, si eam ante non habuisset (Hohbaum, Urk., n 26, A.D. 1304.) See also V. Below, 29, 31, 33, 45, 66, 68, 70, 73, 79, 93, 95, Codex, 220, Fennel and Eckertz, Koln, 148, 149, Emen, Koln, 1, 233, 234, Hegel, Chroniken, 94, 241–141, 149, Holbaum, Urk., n 141, 415, Nietzsche, Kaufgilden, 278, 279, 382, 386, Heusler, Basel, 116, Gotte, Stendal, 102.

\footnote{10} V. Below, Stadtgemeinde, 96. Cf. what Heusler wrote in 1872. 'Mir scheint es, dass eigentlich diese Auffassung jetzt als antiquiert zu betrachten sei (Stadtverf, 111).

\footnote{11} Item decreverunt quod quocumque pro hoc delicto reacaquiret a dominibus consulibus \footnote{12} civis cunctis elve Stendal} civilitatem, simulat a magistris gilda confraternitatem reacquiretur deberet, si eam ante non habuisset (Hohbaum, Urk., n 26, A.D. 1304.) See also V. Below, 29, 31, 33, 45, 66, 68, 70, 73, 79, 93, 95, Codex, 220, Fennel and Eckertz, Koln, 148, 149, Emen, Koln, 1, 233, 234, Hegel, Chroniken, 94, 241–141, 149, Holbaum, Urk., n 141, 415, Nietzsche, Kaufgilden, 278, 279, 382, 386, Heusler, Basel, 116, Gotte, Stendal, 102.
of the Gild, 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 Handelsinsinn auch in deutsche Städteverfassungen übergegangen.' Nitzsch, whose essays throw much light on the history of German Gilds, 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 Gild was only one of various factors that aided in the development of the communal or civic constitution. In Italy the 'consoli de' mercanti' and the 'consoli del comune' were distinct officers; the Gild Merchant was not co-extensive with the whole area of municipal administration or with the totality of the burghers. There is evidence to show that the same is true of the Netherlands and Denmark.

The omission of all mention of the Gild in most of the charters (Städteverf., i. 166). Hensler also rightly observes: 'Sobald man den Begriff der Schutzgilde für die Frage der Entstehung der Stadtverfassung verwerthen und bestimmmt fassen will, zer- rinnt er unter den Händen' (Städteverf., i. 13).—There is a tendency to identify this so-called 'Altburgergilde' with the Gild Merchant (Gierke, i. 343; Nitzsch, Genossensch., 24; Brentano, ch. iii) but these two categories of Gilds are not to be confused.

1 Genossensch., i. 345.
3 Luchaire, Inst. i. 159-161; Drioux, Assoc., 256, 257, 260, 261. The following writers vigorously combat the theory that the Gild was the basis of the municipality: Vanderkindere, Magistrats, 6-7; Ceuleener, Communues Belges, 155-156, 168; Semichon, Trève 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 'cies' of Rouen. See Chérul, Hist. de Rouen, i. 241-245; Pigeonneau, Commerce, i. 239.

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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 burghers of a town; 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.

1 The civic magistrates of Copen- hagen 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, 183, 185). 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 Guild of St. Omer.** [Twelfth century.]

Haeque sunt consuetudines gilde mercatoria.

Si quis mercator manens in villa nostra vel in suburbio in gildam nostram intrare noluerit et pergens aliqui deturbatus fuerit vel res suas amiserit vel ad duellum fuerit provocatus, omnino nostro carebit auxilio.

Si quis non habens aliquum waram vel corrigia vel alius hujusmodi taxaverit et alius gildam habens supervenerit co nolente mercator quo id ipse taxaverat emet. Si quis vero gildam habens mercatum alicuod non ad victum peractum vel 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.

Advenientes tempore potacionis jus est ut decani capitulum suum submoneant ipso die adstari potacioni ibique precipiant ut hora nona ad sedem nostram ad portum Dichezmude et Gravening et coram decano existentibus quisque unum lotum, quisque propinatores i. lotum singulis noctibus, quisque hostia custodientium unum lotum; si quis de veteri ac novo facto.

Constitutum est ut decani vinum et ea que ad gildam necessaria sunt procurent quousque de accessitis sua recipiant.

In potacione nostra custodes portarum portas levantes burgensibus ad potacionem vel ad capitulum existentibus quosque unum lotum, quosque proprio- natores i. lotum singulis noctibus, quosque hostias custodium sium unum lotum; si quis de gilda infirmitatem et cognitum 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. Sacerdotis vero omnes ad vesperas existentis quisque singulis noctibus unum lotum; iede omnes quorum diversorum parochi- anum sumus. Custos sancti Audomari qui primam sonat per quam ad capitulum nostrum adu- namur et nobis reliquias accommodat singulis noctibus unum lotum. Ideo quatuor pleii sumuntur ut si unus illorum vixerit integre persolvet unum [. . .] omnes pleii existerent. Debitore vero mortuo omnes pleii liberis sunt.

Si quis gildam emerit juvenis vel senex priusquam in cartula ponatur id. notario, decanis vero duos denarios.

Jus vero decanorum est ut duobus diebus ante primam cum notario su[o] comendant de communi in thalamo gildalle et vinum

1 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 cingulum ville sue manent, liberos omnes a teleno facio ad portam Dichez- mude et Graveningis,' etc. (Givy, St. Omer, 372.) For the Haese of St Omer, see above, p. 198.

APP. F. *The Continental Gild Merchant.*

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 percussit, non enim intersunt alia arma, duas uncias dabit.

Si quis a sede sua iracundia contra alium surrexit, unam unciam dabit.

Si quis auditum tintinnabulo clamorem fecerit vel se erexerit, dimi-
diam 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 judice; sic enim definitum fuit tempore Gulurici Rabel castellani 1 ac divisum inter Guluricum et Burgenses.

Constitutum est ut decani vinum et ea que ad gildam necessaria sunt procurent quousque de accessitis sua recipiant.

In potacione nostra custodes portarum portas levantes burgensibus ad potacionem vel ad capitulum existentibus quosque unum lotum, quosque proprio- natores i. lotum singulis noctibus, quosque hostias custodiam unum lotum; si quis de gilda infirmitatem et cognitum 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. Sacerdotis vero omnes ad vesperas existentis quisque singulis noctibus unum lotum; iede omnes quorum diversorum parrochiani sumus. Custos sancti Audomari qui primam sonat per quam ad capitulum nostrum adu- namur et nobis reliquias accommodat singulis noctibus unum lotum. Ideo quatuor pleii sumuntur ut si unus illorum vixerit integre persolvet unum [. . .] omnes pleii existerent. Debitore vero mortuo omnes pleii liberis sunt.

Si quis gildam emerit juvenis vel senex priusquam in cartula ponatur id. notario, decanis vero duos denarios.

Jus vero decanorum est ut duobus diebus ante primam cum notario su[o] comendant de communi in thalamo gildalle et vinum

1 A D. 1072-1083.

2 ? id est.
tunc habeant, aliquod si fici non potest aliquo occupati negotio, quisque decanorum ad hospitium suum per capitulum dimidium sextarium habeat; notarius autem unum lotum pro matutinali prelibacione. 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 detinatur quousque redate vel quousque ab hospite suo aut ab alio sibi noto pacificus usque quieti de omni consuetudine apud Londonium, nisi de vino et iniam nisi de crasso pisce.

Caesarisburgo praecipietlt Ilunegate, moires quod, si in portu illo forisfacto inde depellent, et, unam cordas nemini inde territorialium quibus de specialiter debent annis sancto Vedasto de sua sunt mentarii quatuor solidos, sutores decem, qui utrique quosque alium occupati negotio,

Item, Item, ipsi cives Rothomagi XPO

De caritatibus mercatorum et diversorum ministeriorum.—Verum sunt quedam in ecclesiis beneficia et consuetudines que proprie et specialiter cantantis 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 utrique suum debitum.

2 Granted by Henry Plantagenet, Duke of Normandy

solempniter ad altare sancti Vedasti deferunt. Porro guilda mercatorum debet viginti quatuor solidos, qui dicuntur de canedula, quos scabini solvunt. Quando mercatores ad suam consentient 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 alius refixit in his viget.—(Cartulaire de l'Abbaye de Saint-Vaast d'Arras, 191.)


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 community aliorum hominum nostrorum de terra de Merc separavimus, ita quod jura sua et libertates suas, sicut eas habebant ante quan a predicta community 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 Breborc. Concessimus etiam predictis burgensibus quod quando assiisam suam facient, quod de omnibus
The Hanse or Gild of Utrecht. Dec., 1251.

Nos sculptetus, scabini, consules ac jurati civitatis Trajectensis pro communi utilitate statuimus, ne quis deinceps vendat vas vini vel amplius alciui qui illud velit vendere ad tappum in Trajecto, nisi emptor illius vini in civis Trajectensis, solvens precarias [sive] exactiones, et ad alia onera civitatis sit astrictus. Statuimus etiam, ne aliquis nomine alcius qui non est civis Trajectensis, vel ad opus ejusdem, vinum ad tappum amplius alicui qui haec statuta nostra venerit, ipse tenebit emptor communi utilitate statuimus, ne quis deinceps alicui vendat vinum sit civis Trajectensis, solvens precarias [sive] marcam, unam sive eam recuperet, nisi pro pena annuum unum commerçationem cum eo faciet. Quod si quis fecerit, ipse similiter erit hansa sua privata, non recuperaturus eam, nisi arma data ; et si ipse solus emerit vinum Colonie, hoc nullus fratum hansae 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. —(Forschungen zur Deutschen Gesch., ix. 145.)


Willehelms, Dei gratia Romanorum rex semper Augustus, universis sacri imperii fidelibus, presentem paginam inspecturis graciam suam
catallisque infra banleucam suam erunt que per aspectum (?) scabini-norum debeat suadere, 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 MCCC decimo mense aoosto.—(Wauters, Lib. Com., Preuves, 67, 68.)


In nomine patris et filii et spiritus sancti, amen. Nos Florencius comes Hollandie concessimus hec instituta, que scriptura sunt, confraternitati mercatorum Middelburgensium in perpetuum duratur. Hec igitur, que jam dicti mercatores provida deliberatione et communio 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 eis immutare licet.

In hac ergonullus earum artium, que mechanices dicuntur, esse conceditur officialibus ut sunt fullo, suor calculatores, pellifex, tinctur, textor, faber, carpentarius, piscium carniunque venditor vel ille qui pisces sive carnes assat vel coquit venales ; illi etiam qui casum, butyrum, adipem vel unguentum aut sepum vel hiis similia venalia habent, ab hac fraternitate removerunt ; mercator etiam, qui vulgo mercenariis 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-
orum compositor vel emendator simili modo a dicta fraternitate excluduntur. Quicunque eciam huic confraternitati adjungere se voluerit, nec spoelen nec sceren debet nec barbarum aliquus pro preoccio ut barbitonsor conductivus radere. Nullus eciam mercurorum confraternitatis debet naves inferius quam ad instrumentum, quod semnam mali dicitur, frangere nec eciam proprio collo ligna ad sepem bajulare; nullus quoque ex dictis fratibus debet ligna pro conductiva mercede incidere vel secare, insuper nec oves tendere nec lanam manutenus ad forum vendere nec pisces cujuquam generis per manum ad forum vendere poterunt. Molendinarius vero et illi qui poma vel pira vel alterius cujuquam generis fructus in foro vendunt, modo excluduntur supradicto. Sutoribus licebit tamen ad nudinas ea ferre et referre quod ad officium suum spectant et eis competunt, nec tamen prius talia vendere poterunt quam ea suo officio fuerint adaptata et signata, ut si pelles emergint cujuquam generis, priusquam ab eis venduntur, cornua cum caudis dictis pelibus amputentur. Pellifices et venditores veterum vestium, emendatores caldariae et carpentarii eadem licentia donantur.

Quicunque duas uncias Hollandie vel amplius valens de foro ad forum attulit ex parte orientali de Mase vel ex parte occidentali de Zwene ut compta Flandrie excepta debet hansare.

Quicunque paterna successionem liber confraternitatem istam acquirere voluerit in hoc oppido, sexaginta denarios usuales et legalis monete in Middelburg dabit comiti, hanse duos denarios.

Quicunque iaccatos 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 habeunt. Nulli licet pannos, qui vulgo ghwand dicitur, incidere venales in halle de Middelburg, nisi ibidem confraternitatem mercatorum habuerit, [quod] qui infrigerit, tres libras emendabit, quod in antecedentibus usus similiter convertatur.

De omni autem emenda, que in confraternitate acciderit et que per formatores sive per comitem hanse ad satisfactionem in dicta fraternitate non poterit cohaerere, debet ad pretorium de Middelburg requiri et dupliciter emendari; quidquid tune de emenda ad confraternitatem [precipienda] super [extra manet], nos duas partes et oppidum terciam partem illius emende optinebit.  

1 MS. 'p'coute' or 'p'cante.' The correct reading seems to be 'precaute.'

Perché quando ne' tempi di Carlo I la città si divise in Arti, si dette capo e governo a ciascuna, e si provvide che i sudditi di


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 inferiorius annotatum mercatorum societati, qui vulgariter halne dicitur, damus et dedimus in his scriptis,—sic ilicit ut quicunque de novo societatem eorum intrare voluerit, is dabit societati quindecim solidos denariis in Brakele legalam, de quibus nos sive dominis oppidi Brakele tres solidi cedunt tantum. Insper abit decanus diec societatis, sex denarios et talentum cere, et per hoc solutus est ratione ingressinis hujus societatis a qualibet pensioe dominorum. Fuerit aut horum qui in societatem sunt, si prefatem societatem inrare voluerint, in antiquo jure ipsorum permanebunt. Ceterum cum dicem mercatores fuerint congregati, si in sedibus et congregatione ipsorum aliquis excessus inter ipsos ex furare vel inacundia, qui dicitur vulgariter en uplo aut en est mort, ex casu eveniret, hunc excessum corrigitre poterint, ut per hoc in nostram jurisdictionem sive dominorum oppidi Brakele non excedant. Si eiam aliqui forenses aut de ipsis societate dictos mercatores in eorum arbitriis et statutis niterentur impedire, nos corrigere possint, absque gravamine nostre jurisdictionis, cum multis ab ipsis super hoc positi et statutis. Hec omnia et singula ratificamus pariter et probamus, dantes super eo presens scriptum perpetue valitum, nostris sigillis roboratum. Actum et datum dominica, qua cantatur Oculi mei semper ad dominum, anno ejusdem MCCC. nono.—(Gengler, Codex, 267.)
ciascuna Arte dai capi suoi nelle cose civili fussero giudicati. Queste Arti, come già dicemmo, furono nel principio dodici; dopo col tempo tante se ne accrebbero, che elle aggiunsero a ventuna, e furono de tanta potenza, che 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 co’ 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 dell’ 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.)

1 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 pelter or furriers. The heads of these seven bodies are referred to in a document 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, e pass.; Perrens, Florence, i. ch. iv; and the documents printed in Giudici, Istoria Munici., iv. App.

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