4

The Shipmaster's On-Shore Responsibilities

Credit

The borrowing and lending of money by participants in the fourteenth- and fifteenth-century maritime industry has to be viewed in the light of contemporary mercantile practices. There was widespread use of credit, in the form of extended repayment terms, in all branches of English home and overseas trade from the thirteenth century onwards. Chaucer's remark, in 'The Shipman's Tale', about the merchant 'Ther wist no wight that he was in dette, / So estatly was he of his governaunce' suggests a generally recognised lack of solvency amongst merchants around 1400. Further, as Sloth confesses in *Piers Plowman*, written about the same time: 'If I bigge and borwe aught, but if [unless] it be ytailed [recorded] / I foryete it as yerne [immediately], and if men me it axe / Sixe sithes [times] or sevene, I forsake it with othes [deny it with oaths]', not all debts were repaid in time. Edward I's and Edward's III's legislative attempts to protect creditors by the registration of debts led to the enrolment of many agreements. These registrations, and the records of litigation against debtors, in a variety of court rolls and fourteenth- and fifteenth-century letterbooks and recognisance rolls, are evidence of the wide use of credit. Since many less formal credit arrangements were made and agreed with only a handshake, the tally stick, an exchange of earnest money or the giving of 'God's penny' (all in the presence of witnesses), the full extent of the use of credit cannot be known.[1]

Fourteenth-century wool merchants traded in wool futures as well as from stock in hand, buying anticipated clips up to three years ahead against credit extended for six or more months. Final payment was not made until the proceeds of overseas sales had been received, and was subject to the liquidity of the Calais mint and the availability of bullion. Sales credit was also common for other commodities; the account book of the London ironmonger, general merchant and shipowner Gilbert Maghfeld, shows that in the 1390s over 75 per cent of his trading

[1] *Statutes*, 11 Edward I, Statute of Acton-Burnell; 27 Edward III, st. 2, Statute of the Staple, c.; *Denarius ad deum* gave divine sanction to a transaction, accepted as validation by the *Carta Mercatoria* of 1303.

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was against deferred payment, often with renewed letters of obligation extending the credit beyond six months. In the fifteenth century, the accounts of the Celys, a merchant family who also owned a ship, show that they sold wool on credit in all of their recorded transactions. These merchants' arrangements were, of course, only the visible links in the chains of credit and there may well have been unrecorded cash sales. Although it is not possible to quantify the overall ratio of cash to credit, nor to be sure of the prevalence of credit offered for different commodities, by the late fourteenth century the amount of business done on credit extending to several months was considerable.[2]

Because credit sales were so common in all trades, it is probable that much of a ship's cargo of wool, cloth or agricultural produce for export, and wine, salt, textile chemicals and other goods for import, had been bought on deferred payment terms. Shipmasters also offered extended credit by requiring only part, 25 per cent upwards, of the freight charge on lading, the rest to be paid either immediately on arrival at the destination or within a specified time after unloading. With the cargo and much of the freight cost caught in this web of credit, doubts about title to the goods in marine exigencies such as lost cargo, a call for contribution to general average, or a lien on the cargo for outstanding freight payment, must have led to many broken credit chains and the ruin of the financially stretched. The astute shipmaster could retain the initiative in such cases by refusing to unload his ship until he was satisfied or had sold the cargo for his own profit.

Financial and commercial instruments

For shipmasters, freighting agreements (or 'charter-parties') made with shipping merchants constituted a complete record of the service and financial obligations of both parties; they are discussed in detail below, pp. 78–93. For merchants offering and demanding credit and giving and taking loans, a formal legal procedure for the registration of debts together with recognised negotiable instruments for the transfer of funds in the same or different currencies were also required. In the fourteenth century, when a line of credit was formally arranged, the terms of repayment with dates and locations were commonly recorded as a debt in an obligatory, or in effect, a promissory note, a *scriptum obligatorium*. Any interest agreed between the parties was concealed in the transaction by falsifying the sales price, or by adjusting the rate of exchange between currencies, to avoid accusations of usury. A *scriptum* concerning a loan, produced as evidence and accepted at merchant law in the London mayoral court in 1386, demonstrates a general acceptance of

[2] E. Power, *The Wool Trade in English Medieval History* (Oxford, 1941), pp. 41–57. Lloyd, *Wool Trade*, pp. 295–313. James, *Wine Trade*, p. 203–4. Postan, *Medieval Trade*, pp. 21–2. Hanham, *Celys' World*, p. 137.

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scripta and their remarkable flexibility. The loan had been effected in Zealand by representatives of the lender and borrower but was pursued by the principals in London.[3] Alternatively loans could be registered as debts under the several provisions of the *Carta Mercatoria* (1303) and the Statute of the Staple (1354) with its various additions. Such statutory bonds were less formal than obligatory letters but were recognised nationally; although valid only within England, they were, in effect, the forerunners of bills of exchange. However, the number of disputes concerning statutory bonds in the plea rolls perhaps indicates that the traditional enrolment of debts continued to be used for trade debts and loans.[4]

Bills of exchange evolved from the *scriptum obligatorium*, perhaps in the light of experience with statutory bonds, for credit or loan transactions. For international money transfers, *scripta* were sent with instructions to an associate of the borrower for him to recognise the *scriptum* and to repay the debt to the creditor in the required currency. The 'letter of payment' which accompanied the *scriptum* gave the details of the act or bond which had formalised the debt, and it was this letter which evolved into the bill of exchange. Bills of exchange were also used as security for an agreement which otherwise might be considered unsure. Although they were negotiable and could change hands several times, such bills required authorisation by notaries public or some other empowered official, and generally had to be backed by sufficient security. The earliest known reference in England to their use is a delivery of bills of exchange to Antwerp for Flemish merchants in 1303. Despite opposition from the Crown, who saw bills of exchange as a means of exporting bullion, they became increasingly popular. By 1330 bills of exchange were fully developed as part of what de Roover has described as a commercial revolution, and from that time bills were freely used in foreign transactions whenever greater flexibility and security than that offered by cash were required. Transferable *scripta* and bills became, in effect, paper money; they relied on the continuation of commerce to ensure their value and at the same time facilitated and therefore encouraged commercial transactions.[5]

Initially the bills were for the genuine transfer of money but it was soon discovered that, as they generally did not show the rates of exchange used, such transfers offered convenient cover for illegal interest on loans or sales credits. By buying and selling bills, lenders could receive more money abroad than they had lent at home. The Celys frequently used bills of exchange, sometimes with a bearer clause, and very variable rates of interest can be seen in their records, for example: a rate

3 *CPMR, 1381–1412*, p. 125.

4 *Statutes* 27 Edward III st. 2 and 28 Edward III cc. 13, 14 and 15. Gross and Hall, *Law Merchant*, III, p. xii.

5 PRO C 47/13/3 is an obligatory letter detailing repayment in another currency: 2,430 Florentine florins and 15d. sterling with an exchange value *pro precio et cambio* of 600 marks sterling – which may have concealed interest. Marsden, *Select Pleas*, I, p. xxxi. R. de Roover, *Lettre de change*, p. 40. Bolton, *Medieval English Economy*, pp. 302–5.

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of 8.5 per cent for a five-month loan (an APR > *c*.19 per cent) and 7 per cent for an eight- or nine-month loan (an APR of *c*.9.5 per cent). Interest rates were influenced by the reliability of the borrower, the stability of the money markets, the political situation, the amount borrowed and so on. Currency exchange rates were also manipulated for profit alone without any commercial transaction, as the merchant in Chaucer's 'Shipman's Tale': 'Wel koude he in eschaunge sheeldes selle', to profit from illicit currency deals. Shipmasters were, of course, accustomed to working in several currencies, for example in overseas payments of crew's wages, victualling, repairs, various dues, and in receipt of freight payments and they, no doubt, similarly played the currency markets.[6]

Loans

To what extent shipmasters became involved in loans in the course of their business cannot be quantitatively assessed from the information available. To buy a ship, or a share in a ship, shipmasters would often necessarily have to borrow money, unless they had entered a partnership agreement with financiers prepared to put up the capital required, as discussed in chapter 3. When buying a ship without the support of partners, a shipmaster could use the ship herself as security, the loan becoming, in effect, a mortgage. Although no documentary evidence for this has been found, such loans, which should not be confused with sea loans or bottomry, would have been enrolled in a local court with details of the security and the period of the loan, probably with one or two guarantors.

Sea loans were a specialised form of bills of exchange against which a shipmaster or merchant borrowed money at the port of lading and undertook to repay the loan at the ship's destination in the currency of that place, the interest perhaps being lost in the rate of exchange used to calculate the amount to be repaid. Such loans are discussed below under 'Insurance' (p. 75).

An important factor in such transactions was that the risk was borne by the lender; if the ship failed to arrive, the loan was not repaid. Sea loans given under those terms, therefore, were a form of insurance against loss at sea, and the rate at which the loans were offered had to reflect not only the interest but also the element of risk for the lender. Bottomry, a mortgage taken out against the security of the hull and to be repaid on arrival of the ship, was only for those *in extremis*. It had no insurance element; if the ship were lost, the loan went too, and if the ship returned safely, the loan was repayable at a high rate of interest which, on the grounds of necessity, was not seen as usury. As mentioned in chapter 3, in 1486, the *Margaret Cely* was delayed in Plymouth for 11 weeks with a partially unloaded

[6] Hanham, *Celys' World*, pp. 190–2and 194–202. Chaucer, *Complete Works*, 'The Shipman's Tale', p. 156. *Statutes*, 25 Edward III, st. 5.

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cargo of wine belonging to Tibbot Oliver. To pay for repairs, William Aldridge, the purser, borrowed 25s. 8d.; using the ship as collateral, he accepted the risks of bottomry rather than sell part of the cargo, although the risks were reduced by the ship remaining in harbour. The wine was eventually unloaded and the loan repaid. As the arrangement of such a loan contravened *Oleron*, it appears that Aldridge had authority from the owners, the Celys.[7]

Accountancy

Throughout most of the fourteenth century, accounts were kept in narrative or diary form; dealings being entered as they occurred, whether debits or credits, for each venture. The use of roman numerals, which are not easy to employ in calculations, compounded the problem; every arithmetical process of any complexity had to be made on an abacus or other calculating device. The lack of transparency of the accounts made it extremely difficult to assess the liquidity of a business and calculations of such fundamental ratios as profit to capital employed were probably never made. Chaucer describes the merchant (incidentally cuckolded) in 'The Shipman's Tale' laboriously balancing his books:

> And up into his countour-hous gooth he
> To rekene with hymself, as wel he may be,
> Of thilke yeer how that it with hym stood,
> And how that he despended hadde his good,
> And if that he encressed were or noon.
> His bookes and his bagges many oon
> He leith biforn hym on his countyng-bord.

Later his wife asks '"what, sire, how longe wol ye faste? / How longe tyme wol ye rekene and cast / Youre sommes, and youre bookes, and youre thynges?"' and later still urges, '"Com doun to-day, and lat youre bagges stoned."' Bookkeeping was clearly an intricate operation and recognised as such by Chaucer and his audience.[8]

Towards the end of the fourteenth century, arabic numerals began to be used in commercial accounting and later the diary type of record evolved into a single column ledger. In this the transactions were separated into groups by customer or supplier, by credits or debits, and by venture. Slowly, with Italian examples to copy, double entry bookkeeping came to be adopted, until, with systematic and readable accounts available, it became possible for the first time to calculate accu-

7 Hanham, *Celys' World*, pp. 370–1 citing File 13, fo. 32; the merchant, Tibbot Oliver, was unsurprisingly 'nott well content that sche tarryth soo longe'. Appendix 1, *Oleron*, article 3.
8 Chaucer, *Complete Works*, 'The Shipman's Tale', p. 156.

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rately and quickly the surplus earned from a venture and to measure the return on the capital employed.[9]

Gilbert Maghfeld used arabic numerals in his accounts (except for the month in the date) in the 1390s, but his bookkeeping consisted only of day-to-day journal-type entries. He merely cancelled the debts due to him after settlement – if he remembered or wanted to – and there was much clearing up to do after his death. John Balsall, purser of the *Trinity* of Bristol, drew up the ship's accounts for a seven month voyage to Oran via Irish and Spanish ports in 1480–81. They are divided into sections for payment and issues of clothing to the crew, purchase of equipment and victuals for the ship, and running expenses such as pilotage and gifts to local dignitaries. The cash sums are entered in roman numerals (as late as 1480) in sterling or Spanish *maravedis* converted from Spanish *reales*, *enriques* and *castellanos*, Portuguese *cruzados* and gold florins. Although the accounts are not compiled chronologically, it is possible to construct an approximate chronology from the occasional inclusion of dates. Even by the late fifteenth century it was not always possible to assess the liquidity of a business from the accounts available; the decline and failure of the Cely family enterprise was partly due to an unawareness of the dangers of expensive money bought through ever increasing loans, although the major factor was probably the difficulties they encountered in releasing funds in Calais and Bruges.[10]

The widening interest in investment in shipping, which was probably the most capital-intensive medieval enterprise, is usually explained by there being a more general availability of funds. Access to meaningful accounts may have been the catalyst that encouraged people who had little or no interest in investment in land to look at ships as alternative financial opportunities, in addition to merchants looking to expand their interests.

Insurance

Insurance, the covering of risk, should not be confused with the dilution of risk, commonly effected by the distribution of a merchant's goods, or the spread of a shipowner's investment over several ships. The rationale of cargo-spreading was summarised by Shakespeare two centuries later in the *The Merchant of Venice* in which Antonio says: 'My ventures are not in one bottom trusted … Therefore my merchandise makes me not sad.' The Staplers loaded an average of only two

[9] Edward Peragallo, *Origin and Evolution of Double Entry Bookkeeping* (New York, 1938), *passim*.

[10] James, *Wine Trade*, p. 204 citing Maghfeld's ledger PRO E101/509/19 fo. 23r. *The Accounts of John Balsall, Purser of the Trinity of Bristol, 1480–1*, ed. T.F. Reddaway and Alwyn A. Ruddock, Camden Miscellany, 4th series, XXIII, 7 (London, 1969), pp. 1–27. Hanham, *Celys' World*, pp. 398 ff.

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sarplars of wool per ship: William de la Pole shipped his 1337 wool export in 12 separate lots from Hull and two from Boston, and in 1365–66, 217 merchants sent 1359 separate shipments in 178 shiploads from London. The 1319–20 wine loading arrangements of Philip Lovecock and other importers are discussed on pp. 58–9.[11]

A shipmaster, with only his skill and strength as protection against *risica gentium et maris* when caught at sea by enemies, storms, tidal currents or the consequences of poor navigation, had no means of spreading his risk. Losses due to enemy or piratical action were often the subject of claims for compensation, and could lead to authorised or unauthorised reprisal seizure of property belonging to co-nationals of the perpetrators. Although not insurance, when such compensation was arranged in a legal manner, it was a form of state aid. An alternative for a shipmaster was collaboration, perhaps partnership, with someone able and willing to accept the financial risk in exchange for a high proportion of the profits. The financial partnership of the type seen in the 1292 arrangement by Geoffrey le Norton and Walter le Mounier, discussed in chapter 3, p. 52, might be described as an early example of insurance for the active partner who had invested less in the venture. Similarly, a shipmaster who chose not to buy the whole of his own ship could take advantage of the financial cover of his investing partner. For a shipmaster participating in a shipowning partnership in consideration of a labour-only contribution, insurance cover for financial loss was irrelevant. For the shipping merchant with credit liabilities for cargo and transport and for the partner with money invested in a ship, her loss might well threaten both with bankruptcy; for them, insurance cover of any sort, rather than merely a spreading of the risk, would have been of great interest.

Other possibilities that existed for insurance cover for merchants and perhaps for shipowners included various forms of contingency loans, exploitation of currency exchange differences, false or adjusted sales contracts, port town municipal arrangements and premium insurance. All of these may have been used, but there is little surviving evidence of any before the early fifteenth century. A modification of the straightforward loan was the 'sea loan' which made use of a specialised bill of exchange valid for the single or return voyage of a ship. If she or her cargo failed to complete the voyage, then the bill was not repayable, but if all went well, the loan had to be repaid in the currency of the intended place of arrival. An example of such a deal, known because it went wrong, is that of *Gaspar Sculte*

[11] PRO, E 122/55/5 and 6. Distributing consignments over several ships is described in H. Bradley, 'The Datini Factors in London, 1380–1410', in *Trade, Devotion and Governance*, ed., D.J. Clayton, R.G. Davies and P. McNiven (Stroud, 1994), p. 67. Hanham, *Celys' World*, pp. 129–30. E.B. Fryde, 'The Wool Accounts of William de la Pole', in *Studies in Medieval Trade* (London, 1983), pp. 3–31 citing PRO E101/457/9 and E122/7/6. Vanessa A. Harding, 'The Port of London in the Fourteenth Century, Topography, Administration and Trade', unpublished PhD thesis, University of St Andrews, 1983, pp. 259–60 citing PRO E122/70/18.

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et al. v. *William Long et Thomas Hoo Esq.*, Sculte being the shipmaster-owner of *Le Berie*.[12]

To avoid any accusations of usury, the mechanism of the loan would be the advance of an amount less than that registered, the whole declared loan being repayable on successful completion of the venture. The lender then recovered not only his capital but also, as compensation for risk, the concealed interest on the bill and any profit arising from a good rate of exchange on the currency of repayment. The danger for the shipmaster or merchant taking out a sea loan was that the rate of exchange could be so low that it took up all the profits of the venture whether earned by the resale of the cargo or from the freight charges levied by the shipmaster. A further disadvantage for those with sufficient funds, but who wished to arrange insurance against certain risks by a sea loan, was that they were obliged to accept the expense and risks of borrowing unnecessarily.

Repayable loan arrangements may have been the earliest form of marine insurance; such cover was known to classical Greek and Roman traders. No evidence has been found of overt insurance loans in England in the fourteenth and fifteenth centuries, but the necessarily clandestine nature of the transactions required effective and impenetrable camouflage.[13]

In contrast to sea loans, bottomry, which has been discussed above, was terminal, repayable at the end of the voyage, and inevitably carried high interest. Mortgaging of the ship in this way was a hazardous arrangement for both lender and borrower and did not offer insurance for either party. If the ship were lost, the lender had no redress on the loan and the shipowner lost the ship without compensation; if she returned safely, the lender received back the sum ventured plus a high premium justified by the risk, and the shipowner retained his ship, but at the high cost of the loan.

Premium marine insurance was probably developed in Italy in the late thirteenth or early fourteenth century by merchants trading overseas who required cover but were disenchanted with the available types of loans and bills. The risks involved were calculable empirically from their experience over long periods and, provided the premiums offered sufficient return to the insurer, it would not have been impossible to find financiers prepared to accept the risks. The earliest known premium insurance contracts, excluding those disguised as *in mutuo gratis et amore* (interest-free loans), date from 1350 and were drawn up in Palermo. Since that port was one of the less important commercial centres, marine insurance was probably already being practised in the more important centres of Pisa, Florence and Venice. The contemporary Genoese form of insurance appears to have resembled a loan or a sea loan but, instead of the insured promising to repay the loan if

[12] PRO C1/26/193 and *Year Book* 21 Edward IV, Pasch., pl. 23.

[13] A.D.M. Forte, 'Marine Insurance and Risk Distribution in Scotland before 1800', *Law and History Review*, 5 (1967), p. 395, footnote 8.

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he arrived safely, the insurer promised to pay him if he did not arrive safely; a true insurance policy disguised as a loan only by name. This pseudo-loan gave way in Genoa after 1365 to a contract of purchase and sale; the insurer undertook to buy any goods lost at sea, thereby obtaining undisputed title to anything that might be found later, except perhaps at English common law, where right of title was less clearly defined than in merchant law, a subject discussed in chapter 1.[14]

The earliest premium marine insurances in England were probably underwritten by Italians using the Florentine or Genoese formulae described above. A surviving example of a Florentine-type policy is that taken out by Alexander Ferrantyn in 1426 for his ship *Seint Anne* of London, master John Starling, which was then lying in Bordeaux laden with wine. For a premium of £22 (8.8 per cent), cover was arranged for £250, of which £200 was for the ship, until she had anchored in the Thames. She was captured at sea by Spaniards who took her to Sluys and there sold her to two Flemings. Ferrantyn claimed the £250 from the 17 Venetian, Genoese and Florentine merchant underwriters according to merchant law and the 'manner, order and custom' of the Florentines under which the insurance had been arranged. He did not deny that he had bought back the ship and her cargo through the agency of a certain John Waynflete. The underwriters refused payment on the grounds that, again according to the manner, order and custom of the Florentines (although those were not included in the bill of contract), if the owner brought back the ship and merchandise at 'second, third, fourth or thousandth hand' then those who had assumed the risk were 'quit and absolved therefrom'. In court Ferrantyn stood on the plain terms of the contract, and the defendants on the unwritten custom of the Florentines; in the end the insurers failed to produce written proof of their defence and forfeited both the £250 and a further bond of £100. A later example of premium insurance may be seen in a hearing before the mayor of London in 1480, by which time such business was probably better organised. John Pecok, attorney for the Genoese Antonio Spynule, a merchant, formally acknowledged receipt of £6 13s. 4d. from Marco Strozze, due under a bill of assurance for goods recently loaded as cargo in *Le Francesse*. Pecok claimed that his copy of the bill was lost and could not be cancelled. Those cases may have been only the tip of an iceberg of premium insurance in England in the fifteenth century but no further evidence has been found.[15]

The premiums for insurance cover would have depended on an assessment of the perceived risks of the voyage, including the type of ship, distance and season, the state of war or peace prevailing, the incidence of piracy along the route and, perhaps, the reputation of the shipmaster and his crew. It is not known how much 'historical performance' information was available to the insurers, nor with what accuracy the risks were calculated. Ferrantyn's premium was 8.8 per cent of the

[14] F. de Roover, 'Marine Insurance', pp. 183–4.
[15] *CPMR, 1413–1437*, pp. 208–10, and 1458–82, p. 139.

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value of his ship and cargo for the journey from Bordeaux to the Thames at an unknown time of year (since the cargo was wine, it could have been autumn or early spring). Known Florentine rates include 8 per cent from Cadiz to Sluys or Southampton in August 1384 and 12 to 15 per cent for London to Pisa in 1442. Neapolitan rates were 9 per cent for English wool ships sailing from Southampton to Leghorn and 10, 12 and 14 per cent from Southampton to Pisa, Piombino and Talamone. All of those rates are high and reflect the hazards to which the insured were exposed in their slow, fully laden and vulnerable ships.[16]

An evolving descending line of cover against risk may be traced from financial partnerships, particularly those of a terminal nature, to sea loans, bills of exchange, the Genoese purchase system and finally to premium insurance. All required a financier to place his capital at risk in exchange for a consideration – but only in the last two, the most evolved, did the merchant or shipowner have to pay for his cover in advance, leaving the financier with no outgoings unless and until the venture failed. A further type of insurance, although not known to have been practised in England, was that offered municipally or nationally. As early as 1293 Dinis, king of Portugal, ordered the merchants of Oporto to contribute to a fund to cover losses incurred through weather or enemy action when sailing to foreign parts. The premium was 20 *soldos distillis* for each ship of more than 100 tons, and half that for ships under 100 tons. Sometime before 1380, king Fernando ordered by *carta régia* the setting up of a Companhia das Naus, first in Lisbon and then in Oporto, to which every ship had to pay two crowns per cent of the profits of every voyage, in return for which they were completely covered against shipwreck or capture. Unfortunately, the fund in Oporto was found to have an 'activity, irregular or in some way ephemeral' (!) and in 1397 the council and *homens bons* asked for authority to revert to the earlier fixed premium scheme, which appears to have continued for some time. Municipal insurance of that type clearly worked; it is curious that no similar scheme is known to have been attempted in English port towns.[17]

Charter-parties and freighting agreements[18]

An agreement to ship goods which do not fill the entire vessel is, in current English, a freighting agreement, while a charter-party is a contract to hire the whole ship either for a fixed period (a time charter), or for a specific voyage (a

[16] F. de Roover, 'Marine Insurance', p. 190.

[17] António Cruz, 'Quadros da vida social e económica da cidade do Porto no sêculo quinze', *Anais da Academia Portuguesa de História*, 2nd series, 26, 2 (Lisbon, 1980), pp. 202–13.

[18] Much of the material in this section may be found in two papers by R.M. Ward, 'A Surviving Charter-Party of 1323', *Mariner's Mirror* 81, 4 (1995), pp. 387–401 and 'English Charter-Parties in the Fourteenth and Fifteenth Centuries', Association for the History of the Northern Seas, *Yearbook 1999*, pp. 1–22, in both of which there are more detailed discussions.

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2 A 1323 charter-party. Recto and verso of MS AML/M/1, reproduced with the kind permission of the National Maritime Museum, Greenwich.

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terminal charter). In the late Middle Ages, a charter-party was a contract between a merchant and a shipmaster to deliver a quantity of goods to a certain port at an agreed freight rate, whether the goods filled part or the whole of the ship. An individual merchant's ventures were unlikely to fill the whole cargo space of a ship, but several merchants acting together could justify the cost of chartering a ship, the voyage being covered by one charter-party. In this chapter the term 'charter-party, is used generically for all types of medieval shipping contract.

Although they were not mandatory, written agreements were sensible precautions for transactions between merchants and shipmasters. The signatories to fourteenth- and fifteenth-century English charter-parties expected them to be recognised as legal documents and a late fourteenth-century cynical Dutch jingle demonstrates the need for such recognition: 'It lasted a while, but not long, as I heard, because it was an Englishman's word.'[19]

Charter-parties were written out twice on a membrane of parchment or vellum, or later on paper, and separated by a cut along a sinuous line into a pair of indentures, sometimes with an inked doodle across the cut for added security. They were drawn up by a notary, signed or marked by the contracting parties, solemnly witnessed by several others, and often registered with the local legal authority. Each party kept the half with the other's signature, or 'mark manual', until the completion of the undertaking when they signed and exchanged the halves as quittances. In Figure 2, a 1323 charter-party, the mark manual and signatures of the contracting parties may be seen recto, with the signed quittance on the dorse; also visible is the hole made by a filing spike. The formal exchange of halves after completion was often recorded in court records. For example, a memorandum in the London mayoral court notes that Henry Field, shipmaster, had received his freight payment from John Waryn, a merchant, for a completed delivery of salt on the cog *Seinte Marie* from Bourgneuf Bay to Bristol, and that all matters between the two men had been cleared up.[20]

By their nature, charter-parties were ephemeral and few original manuscripts have survived. However they were frequently used as evidence in court hearings and copies of disputed agreements have been preserved in court records. Usually only the plaintiff's plea has been recorded, although sometimes, after mid-fifteenth century, the defendant's answer appears. Only rarely can the court's judgment or decision be found in the records, but occasionally the result of a hearing may be seen in subsequent happenings recorded elsewhere, for example, in the confiscation of a ship or cargo or in an order for arrest. Caution has to be exercised when

[19] 'Dit ghedverde ene stont, / Maer niet langhe, als ic verhoerde, / Want het was Ingelsche vorworde':: H.P.H. Jansen, 'Holland's Advance', *Acta Historiae Nederlandicae*, X (1978), referring to the moves of the Staple.

[20] *CPMR*, 1364–8, p. 120: 'Et super hoc liberavit coram eisdem Maiore et Aldermannis in plena Curia cartam bipartitam inter eos de frettagio predicto confectam cancellandam.'

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using court proceedings as evidence of common practice because, although court records throw much light on the law in operation, the cases heard were atypical by their very appearance in court. Further, without a decision, the contemporary understanding of the law may not be precisely known, and an unknown amount of illegal activity might have been going on 'behind the law's back'.

As attested legal documents, charter-parties could be used by shipmasters as evidence of their commercial bona fides. John Berthe, shipmaster of the *Gracedieu* of Brittany, his ship, cargo and crew were seized and taken to Dartmouth by John Hawley, jnr, in 1413 despite the fact, as he said in evidence, that he had produced his safe conduct, his papers of ownership under the seal of the mayor of Bristol *and* his copy of the charter-party to establish that he was going about his lawful business.[21]

The wording of 'terminal' charter-parties was largely fomulaic, setting out the agreed terms of the contract for a particular voyage. The earliest contracts contain little more than an invariable minimum but with time and the growing complexity of the commercial world, there was an accretion of detail in the agreements with many variations to suit individual situations. Appendix 4 is a transcription and translation of the 1323 charter-party shown in Figure 2, the earliest English example known to have survived. By the end of the fifteenth century charter-parties had become considerably more comprehensive, containing some or all of the clauses listed below; those marked with an asterisk were invariably included.

legal clauses:	names of the contracting parties*
	name of the ship*
	date and place of the agreement*
	relevant code of law
	names of witnesses*
financial clauses:	freight rate and discount*
	advance payment
	terms for final payment*
	currency to be used*
	penalties for various failures
	distribution of finds, salvage and prizes
voyage:	route and ports to be visited, optional destinations*
	specification of master
	pilotage, provision and payment
	maximum time to be taken and penalty for delay
	towing, cargo handling, port and other charges

[21] Gardiner, *West Country Shipping*, no. 16, pp. 18–19: from PRO C1/6/123.

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cargo:	description and weight of goods*
	time limit for loading and unloading and penalties for delay
	specification of stowage, dunnage and protection
	specification of acceptable damage and loss
	provision of lighters in port
crew:	payment and feeding of the crew
	compensation in case of delay
	provision for defence
other items:	accommodation, food, water and light for passengers
	individual idiosyncrasies of shipmaster or merchants
	distribution of finds.

The contracts usually ended with a statement of trust and good faith all round and were signed with great solemnity by the contracting parties, the notary who had drawn up the agreement, and normally two to four witnesses.

From the available evidence, time charters, as described in chapter 3, pp. 63–4, appear to have been rare. An unusual example occurred in 1439 when a waterman, Roger Pye, chartered his whole ship and her equipment to William Payne, an ironmonger, for a year and a day 'according to the law of *Olroms*' (although *Oleron* has no article concerned with charters). It is not known if the shipmaster accompanied the ship or if the charter was 'bare board' but the intention of the agreement was clearly to hire the whole ship for a fixed period to undertake any voyages and carry any cargoes the charterers wished.[22]

Legal clauses

Once signed and sealed before a notary, charter-parties were usually, but not always, recognised at law – although there could be confusion over which law was relevant. Because of the differing views on commercial matters held by common, merchant and maritime law which have been discussed in chapters 1 and 2, situations could arise in which the appellant saw some advantage to himself in one code while the defendant preferred another. Competition between the courts compounded the problem and even the legal validity of the agreement itself could be argued between courts. Problems may have been fewer when pleas were submitted to an admiral's court, since they were frequently referred for arbitration to two or more experienced *aimables compositeurs*, both the parties in dispute lodging bonds with the court.[23] As has been discussed in chapter 1, the 1393–94 case of *John Copyn* v. *William Snoke et Thomas Saylyngham* (hereafter, the *Copyn* charter) demonstrates the potential for trouble even when an admiral's court was involved. Copyn, master of the *Gabriel*, brought a cargo of wine from Bordeaux, where the charter-

[22] *CCR, 1435–41*, p. 287.
[23] Twiss, *Black Book*, I, p. 275.

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party had been signed, to Gadeness in Essex, but Snoke and Saylyngham, who owned the wine, refused to pay the freight. The shipmaster sued first at common law, and then in the Admiralty Court of the North at maritime law, but without result because both courts held that they had no jursdiction. He then tried the Court of the Constable and Marshall, where the judge also denied jurisdiction but nevertheless gave judgment against him with heavy damages. With remarkable spirit, Copyn then appealed to the king who appointed judges to hear the appeal; unfortunately the final outcome is not known. Copyn's tribulations illustrate the confusion which could arise over disputed charter-parties, but as they coincided with the period in which the admirals' courts were being criticised by their competitors it may be that he was the victim of a political struggle.[24]

Because of anticipated problems, disputes over frustrated charters were frequently referred directly to the Court of Chancery rather than to lower courts, even although that incurred greater expense and more delay. In 1453 a plea was heard in Chancery in which Clement Bagot, defendant and owner of the ship *Julian*, and the appellant, John Heyton, a merchant shipper, differed in their opinion of which law was relevant (the *Bagot* charter). Bagot claimed that his plea could be heard at common law but Heyton submitted that there was no recourse for him in that code, presumably because there was no writ suitable for his requirements. In 1467 a London draper sought the chancellor's intervention against a Southampton merchant and shipowner who had covenanted to bring his wine from Spain but had failed to do so. Although other merchants' wines had been shipped, the draper claimed that his had been left behind, and he had had to sell his wine at a loss in Spain because there were no other ships available. Interestingly, whereas the *Bagot* charter plea asked the chancellor to define the relevant law, in the draper's case that was not in dispute; it was a straightforward mercantile quarrel, both parties were English, and common law had by then recognised the obligations of service contract.[25]

Even when complications might be expected there was not always doubt about the law or the court. In 1393 the London mayoral court heard a plea of debt by Robert Normant, a shipmaster, against John Lotolli, a merchant of Bordeaux (the *Normant* charter), alleging that the latter had contracted to load his ship with wine for delivery to London, Southampton, Sandwich or Middelburg, but had failed to do so. Normant further alleged that Lotolli had bound himself to pay half the freight (£30) in default of the cargo, but had not done so, denying that the signature on the agreement was his, despite there being five witnesses and the seal of the mayor of Libourne on the agreement. The case, which involved an alien, a complex charter-party and allegations of forgery and breach of contract, might be expected to have caused trouble. In the event however, the jury, who

[24] *CPR, 1391–1396*, pp. 340 and 378.
[25] PRO C1/24/211–217; PRO, C1/44/160.

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were half Gascon (as was then customary when hearing cases involving aliens), found the case proved and awarded the shipmaster his claim and damages. The plea was heard at merchant law, as a frustrated commercial transaction, with no apparent problems.[26]

The rôle of witnesses was no sinecure since, to substantiate the signing of a disputed agreement, they could be called upon at any time in person or by deposition. That is illustrated in a successful plea by Bernard Bensyn, merchant of Bordeaux, who accused Bernard Brennyng, merchant and shipowner of Bristol, of delivering his wine to Bristol instead of to Ireland, as had allegedly been agreed in the charter-party. Brennyng denied all knowledge of the wine and of the charter-party, which was produced in evidence by Bensyn; the court accepted written statements from the three witnesses to the charter-party, which had been signed in the church of St Peter, Bordeaux, and found for Bensyn.[27]

Freight rates and payment

The freight rate, discounts and terms of payment were agreed in advance by the shipmaster and merchants for each voyage, and were always confirmed in the freighting agreement. The wide fluctuations of rates within a background of steady increase during the period under examination, reflect the effect of enemy and piratical activity on the availability of ships and crews, often a national political issue. There was an English shipping monopoly for English-owned goods in 1382, modified the following year to allow alien ships to be used if no English ships were available, and then a further period of English monopoly from 1390.[28]

When things were relatively quiet in the Bay of Biscay and the Channel, the rates dropped to 7s. or 8s. per tun (for example in 1416) while in times of open warfare they rose to 22s. (in 1372, 1414 and 1487). There was also a variable subsidy to be paid for convoy defence against *risicum gentis* which amounted, for example, to 6d. per tun in 1340, 1s. in 1350 and 3s. 4d. in 1360. Within each year there was also a seasonal variation in rates, reflected in the specified crews' wages and 'portages' in *Queenborough* for the vintage and rack wine deliveries from Bordeaux, but no doubt applicable on other routes. James gives examples of summer and winter rates, too few to analyse statistically, which she felt were significantly different, but it is difficult to discern the seasonal effect amongst the much larger perturbations due to hostile activity.[29]

It is clear that with changing circumstances in the shipping market, the commercial initiative oscillated between the shipmasters, when they could raise the freight

[26] *CPMR, 1381–1412*, pp. 199–200.
[27] PRO C1/26/474/2.
[28] *Statutes*, 5 Richard II, st. 1, c. 3; 6 Richard II, st. 1, c. 8 and 14 Richard II, c. 6.
[29] James, *Wine Trade*, pp. 128–33 and appendix 18, pp. 151–3: freight and subsidy rates from the King's Butler's accounts E101/77/2, also p. 145, citing E364/54/4. Appendix 2, *Queenborough*, article 5; vintage wine transport was in late summer, rack in early spring.

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rates, and the merchants, when they could force them down. The volatility of the rates also indicates that there was good communication within the separate communities of shipmasters and merchants and that both received a flow of intelligence about hostile activity at sea, ship availability and the current freight rates and discounts. Such exchanges of information between shipmasters may be seen in the alliterative poem *Morte Arthure*: 'Thane the marynerse mellys [mixed], and maysters of chippis, / merily iche a mate menys tille other [chatted to another], / of theire termys thay talke, how thay ware tydd [what had happened to them]', and undoubtedly the merchants did the same.[30]

The *Coutumier* specifies a discount on the freight rate of 21 tuns for the price of 20 (5 per cent), for Oléronais merchants shipping in Oléronais bottoms, but discounts appear to have been fairly common, although not invariable, away from Oléron. For example, the 1323 charter-party shows that Walter Giffard offered his shipping customers 7.5 per cent discount for carrying wine and flour from Bordeaux to Newcastle (the *Giffard* charter), and in 1485 Tibbot Oliver was given 5 per cent discount on his 50 tuns of wine on the *Margaret Cely*. In the 1453 *Bagot* charter any discount is expressly ruled out 'paying for every ton and tonlode accomptyng j ton for j ton'. Not all merchants lading a ship were offered the same freight rate and *Queenborough* stipulates that varying rates have to be averaged for the calculation of payment to members of the crew who had opted for their portages to be *au fret de la nef* (see chapter 5, pp. 107–8). The owners and their favoured customers enjoyed reduced rates; other merchants negotiated the best rate they could, presumably based on the volume of their cargo. The Celys' accounts for their ship on the Bordeaux run show that when they and the purser paid 18s. per tun, other merchants paid 20s., and when the 'in-house' rate was 19s., the others paid from 20s. to 24s.[31]

The terms of payment of the freight charges varied. In times of peace and low piratical activity, shipmasters generally did not expect their shippers to pay the freight charge until the end of the voyage, except for an advance to victual the ship or to pay a proportion of the crew's wages. Part-payment to the crew at the outboard port enabled them to buy goods for their own ventures utilising their freight-free portages, but it would appear that shipmasters were generally too illiquid to put up the money before receiving an advance on the freight. In the 1323 *Giffard* charter, £7 2s. (13.25 per cent of the total charge) was paid in advance at Bordeaux; in 1387, 40s. (26.2 per cent) was advanced to William Prophet, a mariner, before a coastal passage from Fossdyke to London by William Jay, a sum

[30] *Morte Arthure*, lines 3652–4.

[31] Appendix 3, *Coutumier*, chapter 55. Ward, *Surviving Charter-Party*, pp. 389–391and 395. Hanham, *Celys' World*, pp. 372–3 citing File 13, fo. 52. The terms portage*s* (a crew perquisite) and *au fret de la nef* (profit sharing amongst the crew) are explained in chapter 5, pp. 107–13, and in Appendix 2, *Queenborough*, article 18. Hanham, *Celys' World*, pp. 372–3.

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which was said to be borrowed (the *Prophet* charter); and in 1392 Thomas Lynne, shipmaster, received 200 francs (29.6 per cent) at Seville, also described as a loan, before departure (the *Lynne* charter). In the 1453 *Bagot* charter, a payment of 20 marks was to be made to the crew from the freight money, within six weeks of arrival at whichever Irish port was chosen by the merchant. When the dangers of enemy or piratical action at sea were higher than usual, for example after the start of the Hundred Years War, it was not unknown for shipmasters to require payment of the freight and pilotage charges in advance.[32]

The timing of the final payment of the freight was generally related to the ship's arrival or to the completion of unloading. While for both the shipmaster and the merchants it might appear that the sooner the ship was unloaded the better, the situation became complicated if the merchant had neither local agent nor warehousing. To use the ship as a warehouse from which to sample and deliver, provided that he could persuade the shipmaster to agree to a reasonable charge for the delayed unloading, was an ideal solution for the merchant. In Sanlúcar in 1478, Philip Wawton sold his cloths from the *Mary Asshe*, the ship in which the delivery had been made, using her as a travelling showroom. Unfortunately, the shipmaster had not agreed to such a course and took his complaint to Chancery.[33]

For delayed payment, or protracted unloading which led to delayed payment, there was often a stipulated penalty in the charter-party and, if it came to the worst, the shipmaster always had the possibility of refusing to allow unloading until cash or pledges to cover the freight were given. A very large pledge combining the freight charge and a penalty for delayed payment may be seen in a dispute over a 1485 agreement. This had been signed by a group of merchants who undertook to pay £86 12s. if they had not paid the freight charge within 21 days. In the event, they paid neither freight nor penalty and the shipmaster, a Breton, had to plead in Chancery for his money.[34]

A typical contractual penalty was the payment of the shipmaster's expenses while waiting for the late completion of unloading at a rate of, for example, half a silver mark per day. In the 1387 *Prophet* charter, the merchant was contracted to pay within seven days after coming alongside in London, with a penalty of 3s. 4d. per day thereafter. Neither the freight nor the penalty were paid and the shipmaster asked in court for the arrest and sale of the remainder of the cargo of salt to meet his debts. In the *Lynne* charter of 1392, the merchants were to pay a 300 *doubles* penalty plus expenses for any delay beyond four weeks in loading at Seville, beyond four days in partially unloading at Southampton and beyond 25 days in unloading at London, where payment of the freight charge was due on arrival. In the question of cargo-handling and payment times, no doubt the same

[32] *CPMR, 1381–1412*, pp. 133–4 and pp. 194–8. PRO E101/78/19(3) (a butlerage account).
[33] Childs, *Anglo-Castilian Trade*, p. 170 citing PRO C1/66/430–1.
[34] Appendix 1, *Oleron*, articles 22 and 23 concern delays. PRO C1/59/70.

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market forces that controlled freight rates were in operation; when conditions were more competitive for one party than the other, there was scope for negotiation for the latter.

Shipmasters were themselves occasionally put under pressure to effect a speedy turn-round. For example, a group of Chester merchants who chartered a ship in 1393–94 to go to Bordeaux to load wine for Ireland, stipulated that she should not be in Gascony more than than 21 days. To place those and Lynne's time allowances in context, information from customs accounts indicates that two days in harbour appears to have been possible, two weeks was about average and five weeks was not unusual. Longer delays were occasioned by a need for repairs or re-fit or simply waiting for cargo.[35]

The currency to be used was always specified in a charter-party. In the 1392 *Lynne* charter signed in Spain between Genoese merchants and an English shipmaster, the currencies used were neither Genoese nor sterling but gold francs and Spanish *doblas Moreskes dor*.[36]

The *Giffard* charter signed in Bordeaux in 1323 specifies payment in *bons esterlins corones dAngleterra* and not in the local *solidi burdegalenses*. Merchants probably carried up-to-date tables of rates of exchange, but varying currency values (not to mention the necessary arithmetic) may well have posed problems for shipmasters. Suitably adjusted rates of exchange were almost certainly used as cover for interest on loans or on credit, and as a form of non-premium marine insurance, as discussed above under 'Insurance'.[37]

There were several different, and changing, sets of rules in operation for the distribution of prizes and finds in the fourteenth and fifteenth centuries. It is not surprising, therefore, to find in a charter-party a specific allocation of finds: in the 1392 *Lynne* charter, which covered a voyage down the Guadalquivir then to Southampton and finally round to London, all finds at sea or in fresh water were simply to be divided into three, one share each for the merchants, the ship and the shipmaster.[38]

Concerning the voyage

The time allowed for the voyage was generally, but not always, left unspecified in charter-parties, presumably on the assumption that the shipmaster would complete the voyage as quickly as possible. An example of an agreed time clause

[35] James, *Wine Trade*, pp. 134 and 137 citing *Chester Recognizance Rolls*, 2/66, m. 3 and 2/74, m. 2d. Harding, 'Port of London', pp. 268–9: figures for London, July–September 1384, citing PRO E101/71/8.

[36] *CPMR*, 1381–1412, pp. 194–8.

[37] George Cely listed the value in francs of English and other coinages: Hanham, *Celys' World*, p. 375.

[38] *Foedera*, 1, part 2, p. 654 (1285) and10, 367 (1426). Appendix 2, *Queenborough*, articles 1, 18. *Rot. Parl.*, 5, p. 59 (1442).

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is in the 1323 *Giffard* charter, in which the ship is to travel from Bordeaux to Newcastle-upon-Tyne in 15 days from departure to discharge, a strangely confident promise by the shipmaster given the uncertainties of a passage of over 1000 miles. The ship did arrive safely at Newcastle but unfortunately it is not known when, as the quittance is undated. Another example, which was perhaps more of a management dispute, concerns Richard Bye's ship the *Gost* of Lynn which in the late 1460s arrived a month late after a shuttle voyage Zealand–Bordeaux–Winchelsea–Bordeaux–Ireland. The delay was allegedly because there had not been a change of shipmaster at Winchelsea as Bye had ordered.[39]

Many charter-parties specified several destination ports, or included provision for a decision of where to go, to be made at some point along the route. As an example, in 1381 a shipmaster agreed to carry wine from Bordeaux to England, the merchant shippers to choose between Southampton, Sandwich and London when they reached the 'Sea of Brittany'. No doubt the merchants expected to meet in St Mathieu, or elsewhere, outward bound merchants from England who would pass on the latest market intelligence. A more complicated list of options was arranged in 1393 by the group of Chester merchants who planned to send a ship to Bordeaux, from where, within 21 days. she was to return reloaded to Dalkey and then, possibly, to Drogheda, a decision to be taken by the merchants within three or four days of arrival at Dalkey. A similar agreement was made between another group of Chester merchants and a shipmaster, but only one day was allowed in Dalkey and the alternative port was to be Chester. This last charter must have been successful because in the following year the same merchants planned a more ambitious voyage from Ottermouth to Ile de Rhé, La Rochelle, Libourne or Bordeaux and then back to Waterford, Dublin, Drogheda, Beaumaris or Chester, the decision about the final destination to be made at Bellisle. In 1449, John Motte of London freighted in Drogheda the *Patrick* of Waterford to sail to Bordeaux and return to either Dublin or Drogheda, the decision to be made *en voyage*.[40]

Clearly, flexibility was an integral part of maritime commerce and much of the success of a trading voyage must have depended on the decision taken by the leading merchant on board (chosen by the value of his cargo) when there were contractual options open to him. Extra-contractual changes of route or of ports of call, perhaps because of weather or in the light of new market intelligence, had to be with the consent of both the shipmaster and the merchant shippers, and could require revision of the freight rate. The *Normant* charter of 1393 lists as possible destinations London, Southampton and Sandwich, all at 15s. freight per cask, or for Middelburg at 20s. In 1465, Arnold Makenham, a merchant, contracted with Sir John Lisle, the owner of the *Anne* of Hampton, to freight cargo from South-

[39] James, *Wine Trade*, p. 134, citing *PRO* C1/45/230.
[40] PRO C1/45/230 and C47/24/9. *CRR*, 2/66, m. 3 and 2/68, m. 2. Timothy O'Neill, *Merchants and Mariners in Medieval Ireland* (Dublin, 1987), p. 50.

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ampton to Bayonne, from where the ship was to return to London in 32 days (the *Lisle* charter). Makenham took the ship on to Spain, claiming to have a second charter, which was disputed by Lisle implying, perhaps, that the shipmaster had been talked into the changed destination by Makenham while at sea.[41]

A charter did not necessarily commence at the port of lading; the agreement could require a ship to sail to the starting point for loading; in such cases the freight rate presumably had to cover the passage to the start. An example of one such pre-loading delivery voyage concerned Mathew Andrewe, owner of the *James* of Ottermouth, who had contracted in 1474 with Harry Denys, grocer of London, to sail under ballast from Topsham to London, there to pick up cargo and return to Topsham, at an inclusive rate of £9 per tun. The details of the charter survive because it went badly wrong, leading to allegations in the Court of Chancery of a non-existent safe conduct countered by a complaint of non-delivery of cargo to the London quay.[42]

Additional charges for pilotage, cargo handling and other items

According to the terms of *Oleron* and the *Coutumier*, additional costs, such as deep-sea pilotage, pier dues, stowage and river tolls should be on the ships' accounts while costs associated with the cargo, such as local pilotage, cranage, special dunnage (wood for supporting and bracing cargo) and unloading were to be charged to the merchants. The allocation of expenses was, however, sometimes specifically listed in charter-parties: in the 1323 *Giffard* and 1392 *Lynne* agreements it was confirmed that *petit lomnage* (local pilotage) was to be charged to the shipper, exactly as specified by law. In 1394 the shipmaster who had agreed with the Chester merchants that he would accept the cost of pilotage from Milford Haven to Beaumaris or from Dalkey to Chester, refused to pay when the time came. It may be that the pilotage charges had been included in the freight rate, a fact which the shipmaster 'failed to remember', or that he changed his opinion about what constituted sea pilotage and felt that the Irish Sea, which was not included in the *Oleron* geographical definitions, should be seen as 'local' and therefore on the merchants' account. A letter to the mayor of Winchelsea in 1350 indicates that the shipmaster may sometimes have paid towage and other charges for the shipping merchants in expectation of repayment later: Gamelin atte Watere, a merchant, freighted salt from Bourgneuf Bay to Winchelsea at 15d. per quarter plus towage and 'petty lading' but failed fully to recompense John Maydekyn, shipmaster of the *Nicholas* of Romene. Although the terms of the charter-party should have ensured that the shipmaster recovered his expenses without argument, in the event, the salt was arrested in Winchelsea to be sold for compensation to

[41] PRO C1/26/300.

[42] Gardiner, *West Country Shipping*, nos 89a, b, c and d, pp. 104–9 citing PRO C1/51/151–153 and C1/45/88.

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Maydekyn. Many important ports, for example Seville, Bordeaux, London and Newcastle, are several miles up-river from the open sea. Towage by oared boats was necessary for taking ships up and down the rivers, and in and out of harbours and docks. In the 1323 *Giffard* and 1392 *Lynne* agreements the merchants accept towing costs, following the precepts of *Oleron*.[43]

What might be seen as an idiosyncrasy of a charterer was the inclusion 'of a doge and a cat with all other necessaryes' in a later charter of 1532. The animals were required ostensibly as ratters but the possibility of their survival from an accident would, in the terms of Edward I's well-known statute defining total loss, circumvent any attempt to write off the ship as a wreck and so preserve title of ownership to anything of the ship or cargo that was salvaged.[44]

A century of charter-parties

The 1323 *Giffard*, the 1392 *Lynne* and the 1453 *Bagot* charter-parties demonstrate how freighting agreements evolved during the 130 years from the first to the last. The *Giffard* contract, which is written in Norman French with Gascon variants, is the oldest known surviving English charter-party; it is shown in Figure 2 with the transcription and translation in Appendix 5. In summary, the contracting parties were Sir Hugh de Berham, acting on behalf of Sir Adam de Limbergue, constable of the castle of Bordeaux who was, in turn, acting on behalf of the king, and Walter Giffard, the shipmaster. The ship was the cog *Nostra Dame* of Lyme (although she had become the *Sainte Marie* on arrival at Newcastle), loaded with 102 tuns of wine, of which three tuns were *vin tint* (possibly red wine cosmetically improved with colouring) and 44 tuns of flour, all destined for the army mustering in Newcastle for an expedition (later abandoned) against Scotland. The freight rate of 9s. per tun was discounted at 21.5 tuns for the price of 20, and payment was to be in sterling crowns. £7 2s. was paid in advance and acknowledged by the shipmaster; the ship was to go straight to Newcastle, and Giffard promised a 15-day delivery. The terms of payment were 'immediate on delivery' without demurrage and the merchants were to pay towage and local pilotage. The charter-party ends, encouragingly, with 'when the ship left Bordeaux the master and the merchants were at peace and in a good relationship and without any quarrel' and everyone, including four witnesses, signed on 23 May 1323, Giffard making his mark manual.

The quittance on the dorse of the charter-party confirms the total freight cost of £53 11s. of which Limbergue had paid £7 2s. in advance. Polhowe (keeper and receiver of the king's victuals in Newcastle), acknowledged receipt of 86 tuns of wine and 43 tuns of flour, although 102 and 44 tuns of wine and flour had been

[43] Appendix 1, *Oleron*, article 13. Appendix 3, *Coutumier*, chapters 76, 95, 97. *CRR* 2/66, m. 3. *CCR, 1349–54*, p. 197.
[44] Marsden, *Select Pleas*, 1, p. 37. *Statutes*, 3 Edward I, c. 4.

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loaded, and paid £46 10s. There appears to have been a loss of 16 tuns of wine and one tun of flour *en voyage*, and the accountancy appears to be awry in that Giffard was underpaid by 7s. Some of the missing wine might be accounted for by spillage, evaporation (ullage) and crew's perquisites, although a 15.6 per cent loss is large. A fuller analysis of the accounts is given in Appendix 4. Because the indenture bears the mark manual of the shipmaster, and the quittance endorsement is signed by the recipient of the cargo, this surviving copy of the charter-party was probably the shippers' and was either given to the shipmaster as his receipt in Newcastle or retained as evidence for later litigation, of which there is no trace. The agent in Newcastle would have received the shipmaster's copy, acknowledging payment and authenticated with his mark.[45]

The 1323 charter-party is a straightforward, uncomplicated agreement with a minimum of clauses and without threat of penalties. In addition to the names of the parties, the destination and the terms of the contract, details are given of the cargo which is already loaded; this charter-party is, in effect, a 'bill of lading' acknowledging receipt of the goods and embodying an agreement to transport them to the destination.

The 1392 *Lynne* charter-party was written in Norman French, and a transcription survives in the records of a dispute heard in the London mayoral court. Two Genoese merchants, acting for themselves and two other partners, contracted with Thomas Lynne, master of the barge *Seintmarie* owned by John Hawley, to ship 150 tons of merchandise down river from Seville to Sanlúcar de Barrameda then to Southampton and finally to London. In court, Lynne alleged that he had not been paid and each party produced a version of the agreement which, although essentially the same, differed in detail and was not acceptable to the other party. The clauses in the charter-party are complex and interesting: the lading at Seville was to be completed within four weeks; the freight rate was 4½ francs per ton amounting to a total of 675 francs; and there was to be a further payment of 25 francs *chaux* (?shoemoney) to the shipmaster (apparently a gratuity, worth 3.7 per cent of the freight). The ship was to remain in Southampton for four days while part of the cargo was unloaded, then she was to sail to London to discharge the rest of the cargo (within 25 days in the defendants' version of the agreement). If the ship were not loaded at Seville within four weeks, through delay by the merchants, they were to pay the shipmaster 300 *doubles Moreskes dor* plus his expenses while there. It was agreed that the merchants would provide (i.e. pay for) a pilot from Seville, presumably for the 60 miles down the Guadalquivir to the sea, and pay for any other local pilotage and towage, an arrangement conforming to *Oleron*. The merchants had to caulk the cabin of the ship, and the shipmaster had to provide a boat equipped, manned and ready to load or unload in any harbour,

[45] Appendix 1, *Oleron*, article 17 for the ration of wine. A loss of *c*.6% of the wine was common.

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and to pay the boat crew. He also had to supply the merchants with fresh water, salt, firewood and lamps fore and aft and be prepared, with his crew, to defend the ship against everyone except compatriots.

The terms of the charter-party are considerably more sophisticated than those in the 1323 *Giffard* agreement in that they include penalties for unloading delays, more than one currency, a gratuity for the shipmaster, a list of the responsibilities of the two parties and a requirement for the crew to defend the ship and cargo. Further, unlike the *Giffard* charter on which the shipmaster /owner had made his mark manual on his own responsibility, the *Seintmarie*'s master signed the agreement acting as agent for the owner. It is not known if he had full authority to engage the vessel or had to work within defined parameters. The voyage was completed but led to claim and counter-claim between the shipmaster and the merchants because of non-payment of the freight. Unusually, the court's interim decision on the question of outstanding payments is recorded – in Lynne's favour – but there was a postponement *sine die* of the other matters, because of a writ of protection for Lynne while he was on the king's service provisioning the town of Cherbourg. Of happenings thereafter, no record has been found.

The 1453 *Bagot* charter-party, written in English, binds John White, the shipmaster, with the assent and agreement of Clement Bagot, the owner of the *Julian* of Bristol, to carry cargo for John Heyton, a merchant of Bristol, on a circuit of ports at which the ship was to be unloaded and reloaded. The proposed route was from Bristol to Lisbon with 'diverse merchaundisez' belonging to Heyton but allowing space for ten tons for Bagot (the owner), six tons for John White (the master) and five tons for Nicholas Mody (the purser). After Lisbon, loaded with 85 tuns of wine, 15 tons of honey and with the remaining space filled with salt, the ship was to sail to one of three ports in Ireland, the selection to be made by Heyton (the merchant). The freight rate from Lisbon to Ireland was to be 20s. per ton without discount, the other units of cargo being defined as two pipes, four hogsheads or five quarters of salt (Bristol measure) to be charged at the wine tun rate. Within six weeks of arrival in Ireland the crew were to be paid 20 marks. In the Irish port the ship was to be discharged and reloaded with hides; she was then to sail to Plymouth, wait there for three tides (*c.*18 hours) then sail on to a port in Normandy, Zeeland or Brittany, again to be selected by Heyton, at a rate of 40s. per last.

According to Heyton, all went well until they left Plymouth when White took the ship to Winchelsea and then to Sandwich where the ship was discharged by order of Bagot. Unfortunately, to Heyton's 'grete losse and undoyng', the price of Irish hides compared to the Welsh was uncompetitive in England at that time. Bagot however, maintained that the unloading at Sandwich was with Heyton's written consent and that the latter owed him the freight and a penalty for delayed loading. The reason for the diversion, as set out in the depositions of John White, Nicholas Mody and other crew members, was that reprisals being exacted by

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the Duke of Burgundy made it too dangerous to sail to Flanders, so they sailed instead to Calais with Heyton's consent, were caught in a storm, almost lost the ship on the Goodwin Sands, broke their best anchor and took refuge in Sandwich. Heyton had then signed a notarised agreement that the ship should be discharged there, leaving on board sufficient of the cargo to cover the freight if that had not been paid within 32 days.[46]

The *Bagot* charter shows further advances in complexity together with a considerable amount of commercial detail. A ship's purser is mentioned; there is a reservation of cargo space for the ship's owner and officers; the destinations are to be decided *en voyage* by the charterer; the cargoes to be loaded at various ports are listed; the timing and amount of payment to the crew is specified and the tun equivalents of other weights and measures are defined. Of significance is a legal point, revealed in the court hearing following the voyage: the document which altered the terms of the original charter-party had to be signed and sealed by a notary, indicating that the contractual status of the original agreement was accepted by both parties, although at which law is not clear. The position of White, as agent for Bagot, is not denied by Bagot nor questioned by Heyton, which perhaps points to merchant law. Heyton stated in his plea to the chancellor that he had no remedy at common law, that is, there was no writ available to plead breach of service contract. Why he did not direct his plea to a merchant law court where contractual obligations were recognised, but decided to seek equity from the Court of Chancery, is not known. Bagot maintained that the matter was determinable at common law where a service contract and its notarised alteration would be recognised. The differing views reflect the confusion in mid-fifteenth-century England arising from the reluctance of common law to accept the obligation of contract (a subject examined in chapter 1), and demonstrate the advisability of defining in the charter-party the code of law under which any dispute is to be heard. In view of Copyn and Snoke's troubles in the 1390s and, half a century later, those of Bagot and Heyton, merchant law was the safer option for those engaged in a service industry.

The shipmaster's bureaucratic load

In addition to finding cargo for the next voyage, the shipmaster had to arrange credit in such a way that accusations of usury were avoided. He had to agree to, and sign, financial instruments sometimes in foreign languages and often involving

[46] Heyton was right about hide prices; the few Irish hides imported at that time were probably seamen's freight-free portage*s* of three dickers each. In 1436 a ship arrested at Southampton for king's service was given special licence to unload and later reload Irish hides because of the difficult market. The claim of a later, over-riding contract is reminiscent of *Lisle* v. *Makenham*, discussed above.

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different currencies, try to keep a record of his various transactions, and investigate the possibilities of some form of insurance cover. When in partnership with men or women experienced in business affairs, his bureaucratic load would have been considerably reduced and that may have been a factor in the selection of partners. Although it may have been possible to appoint a shipping agent to work on his behalf, no evidence of such assistance has been found.

Of all the financial and commercial instruments available to the medieval shipmaster, the best-known are charter-parties because of their survival in the records of court hearings. These offer useful windows on the developing English medieval shipping industry, and on the business life of the mercantile shipmaster. The completion of the charter-party before each voyage could be quite straightforward, even formulaic, but nervous or cunning merchant shippers were capable of demanding complex clauses involving an unacceptable flexibility of route, an impossible timetable, or a mixture of currencies at different rates of exchange. Just as the growing complexity of commercial transactions, and the increasing risks to which shipmasters were exposed, required the *Lex d'Oleron*, dating from before 1315, to be supplemented by the additional articles of the Inquisition of Queenborough, sitting from 1375 to 1404, so the content of charter-parties also had to be expanded during the fourteenth and fifteenth centuries to cope with new situations. Particularly pertinent are those clauses which seek to defend the shipmaster after jettison or collision, defend him from the consequences of delay caused by a shipping merchant, and define the terms of payment.

With the necessary bureaucracy completed, it is probable that the late medieval shipmaster welcomed his return to the sea which he understood better, and on which he was more at ease.

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