A CONSULTANCY ON WINE IMPORTS

by

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To Prof. Dr. Dr. h. c. Ph. Godding
on his 80th birthday

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The present contribution is a supplement to the article published in this Tijdschrift two years ago under the title ‘Ius Commune and International Wine Trade (Middelburg c. Antwerp, 1548–1559)’ 1. That contribution dealt with the conflictual economic competition between Antwerp and Middelburg during the sixteenth century, focusing on the enforcement by the former of the ‘crane duty’ owed by importers of wine in or via Zeeland. In that article, I mentioned in an obiter2 that the original case-file of the proceedings opposing Middelburg and Antwerp on the crane-duty probably included a legal opinion by Mudaeus, whose autographs and interventions on behalf of Antwerp at the last stages of the proceedings are recorded in the Antwerp Municipal Archives3. Shortly after the publication of my article, Professor Michel Oosterbosch, who is in charge of making an inventory of the vast collection of uncalendared surviving case-files of proceedings before the Great Council of Malines, at the General Archives of the Realm in Brussels, told me that he could confirm my conjecture, as he had come across more documents relating to the same case, including a legal opinion by Gabriel Mudaeus and Petrus Peckiuss. Professor Oosterbosch also kindly provided me with photocopies of the documents4.

The article published two years ago was dedicated to my predecessor in Leiden, Professor J. Th. de Smidt, on his 80th birthday. Although I had first intended a more private law orientated contribution to celebrate the 80th birthday of my

* For a summary see below, p. 355.

predecessor in Louvain, Professor Philippe Godding, a critical edition of the consultancy by Mudaeus and Peckius, who both taught at our Law Faculties in the sixteenth century, was too good an opportunity to be missed. Not only are early-modern consilia by members of the Louvain Law Faculties still very much unchartered waters\(^5\), the professional occupations of Mudaeus and Peckius are better known through their academic work, as neither published a collection of opinions\(^6\). The present edition of such an opinion may therefore also contribute to the history of the Louvain Law Faculties.

‘The story so far’

The facts of the case can be briefly recalled\(^7\). In December 1548, a ship sailing from Rouen to Antwerp found shelter during a storm in Flushing, the Zeeland port at the entrance of the Scheldt-estuary. The ship’s cargo included Burgundian wine owned by the Paris-based French merchant François de Noyon. Middelburg’s crane-master ordered the shipmaster to bring the ship to Middelburg in order to have the wine gauged. Upon the shipmaster’s refusal, ship and cargo were seized and attached. A law-suit followed before the Great Council in Malines\(^8\). The proceedings effectively opposed Middelburg (acting on behalf of its crane-master and in pursuance of its own interest regarding the crane-duty) to De Noyon and the city of Antwerp, who both had protested against the attachment to the Privy Council, which referred their case to the Great Council. The first-instance proceedings before the Great Council ended with a final judgement on 24 July 1556\(^9\) in favour of De Noyon and Antwerp.

5. Since the previous article on this case (supra, n. 1), I have also published a general outline on commercial cases in printed Belgian collections of consilia: *Business Relations Between Merchants in Sixteenth-Century Belgian Practice-Orientated Civil Law Literature*, in: V. Piergiovanni (ed.), *From lex mercatoria to commercial law*, Berlin 2005, p. 255–290; some of the material gathered for that article, as well as the material around the present case, is also briefly discussed in my article: *Wamèse, la pratique du droit commercial dans l’œuvre d’un professeur louvaniste*, in: Liber amicorum Guy Horsmans, Brussels 2004, p. 1151–1175.

6. A few more opinions (co-)signed by Mudaeus have been discovered since the article by R. Robaye, *Droit romain en Belgique: œuvres et bibliographie de Gabriel Mudée (1500–1560)*, Revue internationale des droits de l’Antiquité, 3ème série, 30 (1983), p. 193–209; see (inter alia) my own article *Een prince ende heere van justitie, Un avis de G. Mudaeus sur l’organisation d’une table de prêt*, Tijdschrift voor Rechtsgeschiedenis, 64 (1996), p. 113–139 (also an article dedicated to Professor Ph. Godding). Prof. M. Oosterbosch has found at least one more in GCM, and there is no end to the good news, as, at the time when this article was in the press, I was told that the lost opinion I referred to in *Ius commune and International Wine Trade* (supra, n. 1), p. 309, n. 78, has been recovered.


9. GCM 857.41.