
Readers of the *Tijdschrift* have had the benefit, a few years ago, of reading Ch. Donahue’s state of the art contribution on Equity in late-medieval and early-modern law merchant¹, which was partly based of his new research on Straccha’s *Tractatus de mercatura*.² Part of Straccha’s work, *viz.* the section on insurance law, has now been translated into French by Professor Gaurier, a legal historian who has already published several articles on 16th-century commercial law doctrines in the civil law literature³.

Gaurier has opted for a fairly literal translation, which reflects closely Straccha’s Latin, or, more generally, the traditional style of legal works of his era. To any reader not familiar with those works, that will probably require some adjustment, but the translator’s choice certainly contributes to a rendering which reflects the characteristic style of the work.

The translator has also invested much work in annotating his translation. Most of these annotations which appear in the footnotes are translations of the texts of the *corpora iuris* referred to in Straccha’s work. This no doubt makes sense and is very useful for direct references to the course of civil law or canon law, but may be somewhat disconcerting when the reference to the *lex or canon* is part of the wider reference to a commentary, since in many such cases, the commentary’s passage cited as an authority may not bear any obvious direct link with the text appearing now in a translation. Of course, no one would expect a translation to reproduce the passage of the commentaries referred to, but it seems that in those cases, a great deal of effort in translating Roman law and canon law texts could reasonably have been saved for better purposes. In the case of references to the *corpus iuris canonici*, it is not clear why the author decided to use a Cologne 1631 edition (p. 11), rather than, more conventionally, the Friedberg edition. Admittedly, the translator has also gone to a great deal of trouble in trying to identify the numerous authors quoted by Straccha. Here, again, one may wonder why some conventional works of reference have not been used systematically⁴, as they could

² Ch. Donahue, Jr., *Benvenuto Stracca’s De Mercatura; Was there a Lex mercatoria in Sixteenth-Century Italy?*, in: V. Piergiorgini (ed.), *From lex mercatoria to commercial law*, Berlin 2005, p. 69–120.
⁴ In many cases, the reader will notice at once some inconsistency, and will be able to solve it by looking up the Latin text on the CD-Rom. Thus, for example, on p. 250, the reference to a commentary by Felinus Sandeus on Justinian’s Code can be easily corrected as his commentary on X. 1.2.9; on p. 427, the reference to the Libri Feudorum in Fn. 114, should really be one, as the French translation of the text makes clear, to the *authentica* ‘Sacramenta puberum’ post C. 2,27,1 (C. 2,26,1 according to the appendix in the Krueger edition); on p. 465–466, one may be surprised to read that Bartolus, in his commentaries, ‘rapporte et approuve Panormitan ...’, but the Latin text p. 78b says : ‘... et refert Abb. ac probat in c. fraternitatis ...’.

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easily have helped to identify several authorities which are now mentioned as unknown, even when they were quite common at the time\textsuperscript{5}. Moreover, the presentation and the use of the footnotes would probably have been much enhanced, at little additional cost of time and printing space, by offering at the end of the volume an alphabetical table of all these authorities and the page (or footnote) where the quote can be found. In the present state, many authorities quoted by Stracca are not identified in a footnote, either because they have already been mentioned before (but in that case, the reader will need to find the earlier footnote where the initial identification is given, and he may well find himself on a wild goose chase), or because they appear to have escaped the translator’s attention. I suspect that Gaurier’s low opinion of Stracca’s and his contemporaries’ technique of quoting authorities (expressed \textit{passim}, but most vigorously on p. 7 and on p. 446, Fn. 192) may to some extent explain why not all the references to authors have been treated with the same care, but I would personally disagree with the translator’s negative assessment, because, in my view, the conventional \textit{modus citandi} in the traditional late-medieval and early-modern \textit{ius commune} literature was a way both to assert and to buttress a degree of coherence in the wide corpus of legal literature, in spite of the many doctrinal controversies (which, in Stracca’s work, are often duly stated and discussed). Yet, in Stracca’s case, his use of doctrinal authorities is of particular interest. His book, by taking commercial issues as its specific subject-matter and subdividing the subject-matter according to various commercial categories (rather than, for instance, abstract-logical categories), was innovative (though not entirely without precedents, witness P. Santarem’s treatise, often quoted by Stracca). At the same time, it anticipated the early-modern legal approach which considered in particular a more or less specific subject-matter than had been the case in the late-medieval legal methods. The latter still play a predominant role in Stracca’s pattern of authorities, but more modern authors (among whom some are designated as such, and can be recognised as scholars whom modern historiography identifies as early humanists) are also regularly quoted and discussed. Indeed, Stracca regularly refers to the \textit{Littera Florentina}, the critical edition of which was almost contemporary to the \textit{editio princeps} of his treatise (Venice 1553). Especially striking is Stracca’s intensive use of the late-medieval and sixteenth-century consilia-literature, perhaps an indication that precisely in the area of commercial law, legal practice and commercial litigation had offered to many a commentator the opportunity to develop commercial issues beyond what his lectures linked to the \textit{ordo legalis} of the \textit{corpus iuris} would have allowed him to do so.

An additional bonus of this translation is the CD-Rom included in the book, and which provides the photographs in pdf format of the Latin text used by the translator. Gaurier has used the part on insurances printed in 1668 at Amsterdam by Jan Schipper – which explains also why the book’s cover is illustrated, at a first glance surprisingly, with a print of a 17th-century Dutch ship.

One must hope that Professor Gaurier will pursue his translations of Stracca’s and other early ‘commercial lawyers’ works, not only because these works are fundamental

\textsuperscript{5} The reader will easily recognise some of the authors who have not been identified (such as, e.g., Marcus Antonius Bardus [whose \textit{De tempore utili \ldots} was published at Venice in 1563], Bartholomeus Caepolla [\textit{Veronensis}], Adriano Castellesi, Joost de Damhouder, Marquardus de Susannis [whose treatise on Jews was published at Venice in 1558], Pedro Plaza y Moraza [author of an \textit{Epitome delictorum \ldots}, published at Salamanca in 1558 and later reprinted], Jacobus Philippus Portius, Johannes a Sadoleto (of Modena), Pax Scala, Franciscus de Zabarel- lis [\textit{Cardinalis Florentinus}]), but, due to typographical errors or otherwise, other references are indeed more difficult to trace back.