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trans. by

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NOTES ON ST. THOMAS BY PROFESSOR ALFRED O'RAHILLY

III—ST. THOMAS ON CREDIT

(1) AUTHENTICITY

THE little treatise, or rather letter, *De emptione et venditione ad tempus*, is included in the *Summa opusculorum* (circa 1485) and in subsequent editions of the works of St. Thomas. Though it is not mentioned in a single Catalogue, its authenticity is admitted almost unanimously. ^{†1} We know from Tholomeo of Lucca and Bernard Guidonis ^{†2} that St. Thomas wrote many replies on points referred to him by various correspondents. The correspondent to whom the present letter is addressed is the Dominican James of Viterbo who, according to the letter, was then Lector in the convent of Santa-Maria-Novella at Florence. Of this friar we know that he was in Viterbo in 1233, later (from 1265 to 1270) we find him Procurator General of the Order; in 1270 he was appointed Archbishop of Tarentum; he died in 1273. ^{†3} Hence if the present letter is genuine, its date must be prior to 1265, the date on which James became Procurator.

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At the beginning of the letter we find some concrete references which greatly strengthen the case for its authenticity. James requested the opinion of both Thomas and the Archbishop-Elect of Capua concerning certain cases of conscience. Now Marino d'Eboli, Vice-Chancellor of the Roman Church from 1244 to 1251, was nominated to the Archbishopric of Capua on 13th January, 1252. He deferred his consecration and remained at the Curia; he was re-nominated on 28th May, 1266; he died in 1286. ^{†1} Therefore from 1252 to 1266 there was an Archbishop-Elect of Capua; and the letter, if authentic, must fall within these dates.

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At the beginning of the letter St. Thomas is also made to say that he had a conference with Cardinal Hugues de Saint-Cher, the first Dominican to be made Cardinal (1244), who died at Orvieto on 19th March, 1263. The letter must be prior to this date.

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When, in addition to these references, we consider the consonance of the doctrine on usury embodied in the letter with that expressed elsewhere by St. Thomas, and the appositeness of the subject-matter to Florentine commercial life in the thirteenth century, there can be no doubt of the authenticity of this interesting little letter which shows us St. Thomas as in touch with the economic and practical problems of his day.

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This letter must have been written at the Roman court, whither Thomas was called by Urban IV in 1261.^{†2} As it must have been written before March, 1263, its probable date is 1262.

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Hitherto no manuscript of the opusculum has been known. I have succeeded in identifying four manuscripts which, though of the fifteenth century, help to improve and correct the text printed in the Parma edition (vol. xvii, p. 337).

B—Bologna, Biblioteca comunale dell' Archiginnasio, A.209, fol. 56v-57r, fourteenth to fifteenth century.

C—Cortona, Biblioteca del Comune e dell' Accademia Etrusca, 140, fol. 42r-43r, fifteenth century.

O—Oxford, Bodleian Library, Canonici MS. Pat. Lat. 81, fol. 111v-112r, fifteenth century.

V—Venice, Biblioteca di San Marco, Classis iv, Cod. 51, fol. 133r-134r, fifteenth century.

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In two of these MSS. (O and V) the letter occurs after the treatise *De usuris* which occurs in the *Summa* of St. Antoninus, Archbishop of Florence (d. 1469); it may be St. Antoninus who first unearthed the letter and published it.

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The best of these MSS. is undoubtedly C, and its readings have been chiefly adopted in the text printed below, especially when they agree with V, the next best MS. There are many variants and omissions in B and O, some of which agree with p (the Parma printed text). Though at the beginning C has merely "J" instead of "Jacobus Viterbiensis lectori Florentino" (B and p), it contains a new and appropriate ending, which is accepted as authentic. We are also enabled to throw light on the phrase "de nudinis Litinati" in the Parma text. B omits it, O has "de nudinis Latiniani," V has "de nudinis de Francia"; but C has "de nudinis Latiniati." This last reading makes it clear that the reference is to Lagny-sur-Marne (Latiniacum), where one of the six great fairs of Champagne was held. We read of the cloths of Lagny being sold in Spain in the thirteenth century and in Paris from the thirteenth to the fifteenth centuries.^{†1} The cloth trade in Florence comprised not only the *Arte della Lana*, the manufacture of cloth from imported or native wool, but also the *Arte di Calimala*, the working up—carding, shearing, cutting, dyeing, stretching, calendering, rolling—of rough undressed foreign cloth. The Florentine and other Italian merchants brought certain goods—gold, silver, furs, spices, finished cloth and silk—to the fairs of Champagne and bought rough cloth (*panni franceschi di Kalimala*) which was made in Champagne or Flanders.^{†2} Early in the fourteenth century these fairs began to decay and already in 1296 the Florentine merchants emigrated to

Lyons. ^{f3} Hence this accurate reference to the Fair of Lagny, which ceased to be of any importance for Florence by the end of the thirteenth century, is a further proof of the authenticity of the letter.

On Buying and Selling on Credit

The Translation

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To his very dear brother in Christ, James of Viterbo, Lector at Florence, Brother Thomas of Aquin, greetings.

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[i]

I received your letter containing some cases concerning which you requested the opinion of the Archbishop Elect of Capua and myself. After a discussion thereon with the aforesaid Archbishop Elect and afterwards with Cardinal Hugh, I decided that the following reply should be made to the first case:—

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Assuming that the custom of deferring payment for three months, as is set forth in the case, has been introduced for the common good of merchants, that is, for facilitating commerce, and not for fraudulent usury; then a distinction must be made. For the vendor, while granting credit for the aforesaid interval, sells his goods either (1) for an amount exceeding the just price on account of his waiting for payment, or (2) for an amount equal to the just price.

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In the first alternative there is no doubt that the contract is usurious, inasmuch as the waiting for a certain time is included in the price. And this is not excused by the fact that the second vendor may be employed by the first, since for no cause whatever may the price be increased on account of the interval for which payment is deferred.

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In the second alternative, there is no usury. Nor does the fact that he would sell for less were payment made immediately make any difference. This can be seen by comparison with other debts. If an amount due to a person is payable after a certain date, even though he might remit portion of the debt if it were paid to him sooner, still in this case it is clear that the creditor is entirely immune from usury. For though it smacks of usury to take more than is due on account of delay in payment, to take less than one may be paid sooner does not smack of usury, especially on the part of him who gets less, though on the part of him who gives less on paying sooner, there seems to be some kind of usury since he sells an interval of time. Hence also in the case proposed there is more fear of usury in connection with the buyer who, when he pays before

three months, buys the cloth for less than the just value, than in connection with the seller who takes less than he may be sooner paid.

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[ii]

From this it is also clear what should be said concerning the second case. For if the merchants of Tuscany, bringing cloth from the Fair of Lagny, to wait for it [payment ?] until Easter, sell the cloth for more than it is worth in the general market, there is no doubt that this is usury. But if they sell it, not at more than its worth but at its worth, yet at more than they would take for it if payment were made immediately to them, there is no usury.

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In the third case a similar reply should be made. For if those who accept money with usury, wish to recover that usury by selling the cloth at more than its worth on account of the aforesaid delay, there is no doubt that this is usury since time is clearly sold. Nor are they excused by the fact that they wish to indemnify themselves, for no one should indemnify himself by committing mortal sin. And although they can in selling the cloth lawfully recover other expenses lawfully contracted, for example, the cost of transporting the cloth, still they cannot recover the usury they paid, for this was an unjust payment; especially since by paying usury they sinned as giving the usurers an occasion for sinning, since the necessity which is urged—namely that they may live more respectably and do a bigger trade—is not such a necessity as suffices to excuse the aforesaid sin. This is clear by comparison; for a man could not in selling cloth recover expenses which he might have incurred carelessly and imprudently.

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From what has been said the query in the fourth case is also clear. For if he who owes money payable on a certain date pays before this date that a portion of the debt may be remitted to him, he seems to commit usury, inasmuch as he sells the time for paying the money. Hence he is bound to restitution. Nor is he excused by the fact that he is inconvenienced by paying before the date or that he is induced to do this by someone, for all usurers could be excused on the same ground.

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This is the firm and definite decision of myself and the aforesaid, namely, the Archbishop Elect of Capua and Cardinal Hugh, concerning the aforesaid cases. Farewell.

Analysis

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(4) ANALYSIS.

In spite of textual improvements, it is not easy, in the absence of the letter to which St. Thomas is replying to reconstruct the cases submitted to him.

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From the first case we infer the existence of a general custom of giving three months' credit. If, on account of such credit, the seller charges more than the 'just price,' he commits usury. It makes no difference if the buyer—whom St. Thomas calls the 'second seller,' presumably the retailer or broker—is an agent of the seller. But if the goods are sold at the just price, there is no usury, even though the seller would accept a lesser sum as spot cash. St. Thomas is more doubtful concerning the buyer; for he considers the payment of less than the just price as equivalent to paying the just price and buying the time-interval for the difference.

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The illogicality of this solution is concealed by the fact that St. Thomas confines himself to one fixed credit-interval (three months). If we generalize the solution and consider the amount (x) less than the just price (p) which a creditor would reasonably accept, we must grant that x is, say, proportional to the credit-interval. Assuming then that p is the same whenever payable, the amount the creditor would accept here and now—namely, $p - x$ —might be made zero or even negative, if the credit-interval were sufficiently increased!

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The second case concerns 'merchants of Tuscany bringing cloth from the Fair of Lagny.' †1 The clause 'ut eos usque ad tempus Resurrectionis expectent' is rather curious. The 'eos'—for which B has 'de eis . . . pretium'—seems to refer to the 'pannos' just mentioned—but if they bring the cloths, how can they wait for them? In spite of the MSS. I think the correct reading is 'emptores.' †2 It seems clear at any rate that the importers of Lagny cloth gave the buyers credit until Easter. †1 Once more St. Thomas lays down the principle that if they demand more than the worth of the cloth according to the 'communis forus,' †2 they commit usury; but there is no usury if the merchants sell at the proper worth, though they would accept less if paid at once.

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The third case concerns merchants who, having had to finance themselves by securing a loan of capital at interest, †3 wish to recoup themselves for this interest by charging more for the cloth on the plea of the three months' credit they give. These merchants naturally urged their right to indemnify themselves for expenses incurred in their business. But St. Thomas is inexorable; while allowing them to add other expenses, such as the cost of transport, to the price, he refuses to recognize their right to raise capital by paying 'usury.' Such payment is allowable only in case of real necessity, not merely for the purpose of increasing trade. †4 He regards payment for capital not as a social or statistical necessity, but as an individual aberration, comparable to imprudent buying, which cannot be considered as a factor in determining the just price.

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The fourth case concerns a debtor whose debt is payable on a certain date. †5 If, even at some inconvenience, he anticipates the date of payment in order to have a lesser amount accepted by his creditor, he commits usury and is bound to restitution. The reason is: he is really selling the time. †6 The debtor owes p ; but, anticipating the date, he is required to pay only $p - x$. This is equivalent to paying the full amount (p) and receiving back a sum (x) for the time he has anticipated. †1 But why then does not St.

Thomas deal with the creditor's moral position? Is the creditor justified in thus equivalently buying the 'time'? If selling the time is tantamount to receiving usury—that is, accepting a rebate in return for handing over the money sooner than required—then buying the time must be connivance with a usurer. He has just said, in solving the third case, that this is allowable only when there is real necessity. Hence only when necessitated may a creditor accept less for anticipated payment. Yet in discussing the first case he stated categorically that a creditor who accepts less is always 'entirely immune from the sin of usury.'^{†2} It is clear that in St. Thomas's attempt to apply the canon law and the Aristotelian doctrine of usury to the rapidly developing commercial life of thirteenth century Florence, serious difficulties, concessions and inconsistencies are already beginning to appear. *A fortiori* we cannot, without further investigation accept even the *firma et determinata sententia* of St. Thomas on a social-economic question as applicable to the modern world.

ALFRED O'RAHILLY.

Footnotes

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^{†1} Echard (*S.O.P.* i. 341) is somewhat reserved: 'Nullus veterum meminit; penes eruditos arbitrium.'

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^{†2} Mandonnet, *Des écrits authentiques*, 1910@2, pp. 61, 69; Michelitsch, *Thomasschriften* 1 (1913), 129, 152.

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^{†3} Mandonnet, pp. 117f.

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^{†1} Mandonnet, p. 118. He seems to have been a relative of St. Thomas.

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^{†2} Michelitsch, p. 53.

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^{†1} F. Bourquelot, *Etudes sur les foires de Champagne*, Paris, 1865: in *Acad. des Inscr. et Belles-Lettres*, tome 5; parts 1 and 2 are separately paged. See i. 244.

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^{†2} *Ibid.* i. 164, 188, 212.

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^{†3} *Ibid.* i. 190f, 213f.

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‡1 Schreyvogel (p. 257) translates: 'merchants from Tuscany, if they bring clothes to the weekly market at Litinatum.'

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‡2 Cf. *Summa* 2.2, q 78, a 2, ad 7: 'Si aliquis carius velit vendere res suas quam sit iustum pretium, ut de pecunia solvenda *emptorem* expectet, manifeste usura committitur.' This also illustrates the peculiar use of 'ut' Similarly in our text: 'ut . . . expectent, plus vendant.'

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‡1 In the thirteenth century the Lagny Fair began on 2nd January and lasted until the Monday before mid-Lent.—Bourquelot, ii. 23. How then could there be much credit concession, if payment were made at Easter?

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‡2 'Forus' was used as well as 'forum'—Du Cange, *Glossarium* 3 (1844) 379.

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‡3 'Qui pecuniam mutuo cum usuris accipiunt.' One would expect 'sub usuris.' Cf. *Summa* 2.2, q 78, a 4, ad 2: 'Qui accipit pecuniam mutuo sub usuris.'

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‡4 In the *Summa* (2.2, q 78, a 4) St. Thomas says: 'Licet tamen ab eo qui hoc paratus est facere et usuras exercet, mutuum accipere propter aliquod bonum quod est subventio suae necessitatis vel alterius.'

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‡5 'Qui ad certum terminum debet.' The expression 'vendre à terme et à usure' occurs in an old MS. relative to the abuses committed at the fairs of Champagne.—Bourquelot, ii. 116 note.

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‡6 Note that St. Thomas speaks of the time, not of the productive possibilities comprised in the time. One might almost say that he assumes the Böhm-Bawerk positive theory of capital in order to reject interest.

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‡1 'Ista anticipatio solutionis pecuniae habet mutui rationem, cuius quoddam pretium est quod diminuitur de iusto pretio rei emptae.'—*Summa*, 2.2, q 78, a2, ad 7.

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‡2 Similarly in the *Summa* immediately after the words cited in the previous note: 'Si vero aliquis de iusto pretio velit diminueri ut pecuniam prius habeat non peccat peccato usurae.'