

relief before judgment limited by the debtor's absence. If the Christian creditor presented to the Mayor a matured, acknowledged debt instrument corresponding to an enrolled debt, he had established full right to relief.¹⁷² If the debtor did not pay, the creditor eventually obtained access to the debtor's lands,¹⁷³ even as the Jews had done for years. And if the creditor were ejected from the debtor's lands, he could bring an assize of novel disseisin to be put back in possession.¹⁷⁴ The Statute of Merchants expressly allowed merchants "damages, and all necessary and reasonable costs in their labors, suits, delays, and expenses,"¹⁷⁵ the same label that disguised otherwise usurious interest in Jewish contracts.¹⁷⁶ Finally, the King assumed the duty of maintaining the Roll of Debts, affixing his seal next to the debtor's and charging one penny for each pound of obligation.¹⁷⁷ The new law expressly excluded Jews.¹⁷⁸

Five years after the Statute of Merchants, Edward I expelled the Jews from England. Religious hostility was rife. Repeated tallages had depleted the Jews' resources and lessened their value to the King's purse.¹⁷⁹ No longer were the Jews the unique source of credit in England.¹⁸⁰ By the Statute of Merchants, Edward had granted to all non-Jewish creditors the same remedies and procedural rights previously available to Jews. Debts were secured by land, and the security interest survived the death of the creditor and the alienation of the property.

In addition to the property that escheated to the King on their departure,¹⁸¹ the Jews left behind a law of debtors and creditors developed in the Talmud,

permitted to elect his remedy. Pollock and Maitland trace the writ of *elegit* (election of remedies) to the adoption by the Second Statutes of Westminster, 1285, 13 Edw., Stat. 1, ch. 18, of the remedy formerly available only to Jewish creditors. 1 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 475. The election was between a writ of *fiery facias* and transfer of the debtor's property to the creditor. Second Statutes of Westminster, 1285, 13 Edw., Stat. 1, ch. 18.

The Statutes of Westminster introduced another innovation: where before, judgment in debt could be executed only from the debtor's chattels and the fruits of his lands, A.W.B. SIMPSON, *supra* note 119, at 87, now only one half of the debtor's land and his "Oxen and Beasts of the Plough" were immune from execution. Second Statutes of Westminster, 1285, 13 Edw., Stat. 1, ch. 18.

172. Statute of Merchants, 1285, 13 Edw., Stat. 3. See also A.W.B. SIMPSON, *supra* note 119, at 127-28 (describing creditor's procedure for relief under Statute of Merchants).

173. See Statute of Merchants, 1285, 13 Edw., Stat. 3 (upon creditor's presentation of debt instrument to Mayor, debtor arrested and imprisoned; if he has not paid within three months, he is enabled to sell his lands or chattels to satisfy the debt; if he still has not paid in another three months, a reasonable portion of his lands and chattels are delivered to the creditor to hold as security against ultimate repayment or until the debt is satisfied out of their proceeds). See also A.W.B. SIMPSON, *supra* note 119, at 127-28 (same).

174. Statute of Merchants, 1285, 13 Edw., Stat. 3; cf. text accompanying note 102 (same remedy had been denied ejected creditor who had held by gage).

175. Statute of Merchants, 1285, 13 Edw., Stat. 3 (translation from 1 STATUTES OF THE REALM, *supra* note 28, at 100 n.4).

176. See J.M. RIGG, *supra* note 13, at xxxviii-xxxix (although Statutes of Jewry prohibited their usurious practices, Jewish creditors concealed interest charges as expenses of recovery or penalties for defaults on installments).

177. Statute of Merchants, 1285, 13 Edw., Stat. 3. At fairs, the cost was one and one-half pennies per pound. *Id.*

178. *Id.*

179. See 10 S. BARON, *supra* note 3, at 109 (in 1271, the Jews were unable to raise a 6,000 mark tallage imposed for Prince Edward's Crusade).

180. *Id.* at 109-13. As Jewish revenues dropped, Edward borrowed from Italian and Cahorsin merchants. *Id.* at 113.

181. *Id.* at 114. Edward allowed the Jews to take their movable property. T. TOUT, *supra* note 166, at 162.

introduced in the Exchequer, and preserved in the laws of England. Traces of the shetar procedure survived for centuries in English law. A sealed debt continued to be dischargeable only by a deed of release or by cancellation or destruction of the debt instrument.¹⁸² The practice of debt cancellation by requiring return of the *pes* of the chirograph continued from 1194 until its abolition by statute in 1833.¹⁸³

Most important, the encumbrance of real property permitted by the Jewish Law of the shetar had been adopted by English law. Bonds contained the traditional Hebrew formula pledging "all my goods, movable and immovable."¹⁸⁴ Creditors had the statutory right to execute against the debtor's land. No longer were personal obligations and rights in land rigidly separate. Even while Edward was divesting himself of his Jewish moneylenders, he made their legacy permanent. A small but significant principle of Jewish Law, wherein personal debt superseded rights in real property, had become the law of the land.

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182. A. KIRALFY, *THE ENGLISH LEGAL SYSTEM* 53 (6th ed. 1978); C.H.S. FIFOOT, *HISTORY AND SOURCES OF THE COMMON LAW* 231-33 (reprint 1970).

183. F. LINCOLN, *supra* note 13, at 136-38. *See supra* text accompanying notes 137-39 (describing documentary procedure of Archa, under which *pes* was returned to debtor by Archa when debt was paid).

184. J. RABINOWITZ, *supra* note 4, at 254-55. Some bonds further mimicked the shetar, extending the lien to all goods "present and future." *Id.*