

principles of Contract had been advanced to a very remarkable degree of order even before the close of the thirteenth century. But, as Professor Maitland points out (*d*), the 'lex mercatoria' was simply a code of private international law. By the charter (Carta Mercatoria) granted by Edward I. to the foreign merchants trading in the kingdom, it was provided that "Every contract between the said merchants and any persons whencesoever they may come, touching any kind of merchandize, shall be firm and stable, so that neither of the said merchants shall be able to retract or resile from the said contract when once the 'God's penny' shall have been given and received between the parties to the contract" (*e*). But this provision of the Edwardian contribution to the 'lex mercatoria' was in direct opposition to the rule of the Common Law, which expressly denied to the transfer of the 'God's penny' the effect of confirming the contract, or, in the language of a later stage of legal development, constituting an "earnest to bind the bargain".

A careful examination of the sources of our juridical history will justify the conclusion that the English law of Contract was, in its inception, merely an escape from the fertile garden of Procedure. Indeed, it may be said generally that the moulders of the Common Law only saw Rights through the refracting medium of Remedies.

In early times the King's Court provided no means for the general enforcement of conventional obligations. The writs by which actions of any kind might have been instituted were few in number, and the rules of pleading so technical and inelastic as to exclude the generalizations necessary to the existence of any body of substantive law. At the close of the thirteenth century

(*d*) Publ. Selden Soc., vol. ii (The Fair of St. Ives), p. 133. See also Black. Com. i, 273.

(*e*) See Smith's Mercantile Law, 10 ed. Introd. lxxiv. It may be explained here that the 'God's penny' (denarius Dei) was originally a tribute levied by the Church upon the business transactions of the faithful, and constituted a medium whereby such transactions received a religious sanction. The Denarius Dei must not be confounded with the 'arrha' of the Roman law, because it was not regarded as 'part payment' but simply as a symbol of the conclusion of the bargain between the parties. There is some doubt as to whether the English doctrine of 'Earnest' is derived from the denarius Dei. Fry, L.J., in *Howe v. Smith* (27 Ch. D. at p. 102) adheres to the former derivation, and it certainly has strong etymological support (arrha, erles, ernes). Pollock & Maitland, however, in their learned 'History of English Law' (2nd ed. vol. ii, p. 209) express the view that the origin of this doctrine is to be traced to the provision concerning the denarius Dei in the Carta Mercatoria, quoted in the text.