

Credit and nonpayment in late medieval Catalonia: court proceedings of Caldes de Malavella (1330-50)

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The aim of the present paper is to describe the functioning of a jurisdictional court in a late medieval Catalan small town and its relation with the exercise of credit and debt litigation. With this objective, we will present a source that has been barely studied until this moment, the bailiff's court books, pointing out as well which were the main mechanisms that were used to recuperate nonpaid debts. The study of this institution is a previous condition that will enable us to work with the bailiff's court book in order to focus on the social and economic trends in late Medieval Catalonia. Specifically, the source could be used to study the social stratification of these small towns in their privileged location, which enabled the integration of urban and peasant economies.

Following Hilton's steps, in late medieval Catalonia we label as *small towns* those urbanized places that had some degree of manufacturer and commercial specialization and centralized economic functions and services for their rural surroundings. Since the XIth c., the lord's extension of settlement charters and franchises promoted the creation and growth of these small-towns. We characterize these places not due their relative demographic weight - they usually did not exceed 1.000 inhabitants -, but to their function in a specific geographical space. Different economic services could be offered (markets, fairs, butchers...) but also spiritual relief (for instance, through Hospitals) and juridical and administrative specialties (notaries, bailiffs' courts and judges). The inhabitants of the surrounding areas, mainly serf peasants, frequented the town seeking to commercialize their produces, solve their conflicts or even enjoy their free time.

But our main interest here is the fact that from these poles the commercial urban elites distributed their financial capital, as loans, and at the same time tried to get control of the agricultural surplus that came from the most common landholding in the region, the *mas*. Credit extended in-between peasants, not infrequent at all, was bargained and registered, from its inception, in these *central institutions*. This heavy trading activity, increased by the early XIV c., is an indicative of the so-called medieval commercial revolution.

But this revolution would never have taken place without a succession of innovations at the institutional level. The extension of marketing and the development of a financial system were backed up by some normative anchor points, specially the use of notarial protocols to register the contracts and an efficient jurisdictional system (the bailiffs' courts) that granted the protection of private property.

Notarial records have been in use by social and economical historians since the 1960's in Catalonia. We owe these sources most of private and public credit studies until the moment. The bailiff's court book is not as abundant in our archives as the notarial record. It hasn't

received, neither, the attention of scholars in Catalonia as similar sources have had in other places in northern Europe. But we know, beforehand, that these local courts - the institution that issued the books - defined a political space and unified many of the requirements and functions of the community. Jurisdictional lords, as it has been said, settled up these institutions, with the objective of easing economic transactions, settling disputes in-between neighbors or disciplining the residents of a district.

It should be pointed out that inside a jurisdictional district of northeastern Catalonia there usually coexisted many different lordships with their own bailiffs and reeves, which only received lordly rents and exerted a minimal jurisdiction on their serfs. Grossly, these landlords did not pose much resistance to the exercise of a greater district jurisdiction, valid for all residents of a barony or a royal estate. These lordly officials working at the same time had only collector attributions, while the jurisdictional lord's officials had control over the *peace and truce*, the common law and some of the political and economic activities of the whole community.

In fact, many disputes that these landlords had in-between themselves or with their own peasants could end up being dealt by the institutions controlled by the jurisdictional lordship, the one that hold the civil or the penal jurisdiction (or both at the same time). It was capable of impelling the inhabitants to meet their payments or judgments related to complaints previously made by landlords.

A case study appears, for instance, on June 15th 1349, when Marcus Cassiani (Marc Cassà), from the sea shore settlement of Lloret de Mar promised - under a 100 s. fine - that before a week he would convince his daughter-in-law to redeem herself from the *dominium* of Sant Salvador de Breda Monastery. Despite the nature of this obligation, concerning serfdom, it was the main court of Pere de Montcada, the jurisdictional landlord, which fostered it.

This example will approach us to the case study; the jurisdictional district of Caldes de Malavella, with its center in the homonymous small town. All this territory belonged to a broader estate called *Baronia de Llagostera* (Barony of Llagostera) ruled by the noble family Montcada. This space gathered, as well, seven parishes (Cassà de la Selva, Llagostera, Lloret de Mar, Tossa de Mar, Caulès, Santa Seclina and Franciac). A compact estate of 260 square kilometers, tucked between the flatlands of La Selva and a coastal mountain range. The towns of Cassà, Llagostera and specifically, Caldes, were commercially dynamic, and from them, law was enforced all over the territory.

Around 1,000 people lived in Caldes before the Black Death in 1348. It functioned as a joint space for its surroundings, which were composed by scattered *masos*. This agricultural space was economically articulated with the town, which housed a weekly market and two annual fairs. As it has been said previously, a permanent market, the notary, the court and even the lord's residence were found here.

The local court usually held two or three sessions a week; it was a permanent institution. Sustained by a group of officials, in head of it there was the bailiff, who played a presidential role. Under his orders we meet other officials: An auction broker (a middleman agent, who was in charge

of the goods valuation and the organization of public auctions; and in the specific case of Caldes, also had warden and town-crier responsibilities); four stewards (the unskilled laborers, with many burdens, for example the obligation of notifying all parties the proceedings activated at the court and, as well, the physical confiscation of movable goods); and a public scribe (in charge of registering and filing the court's proceedings).

The judge wasn't an ordinary member of the court, albeit taking part in some civil jurisdiction lawsuits. He was the only character that had capacity to pronounce sentences and interlocutory judgments. Judges were law experts that worked for many courts, in different lord estates, at a time. When they took part in lawsuits they usually designated neighbors to arbitrate disputes over agricultural issues or called other officials to assist them.

The activities of all these officials can be traced in the bailiff's casebooks, of which, for Caldes, a long serie survives in the local provincial archive ranging from the late 1320's to 1350.

At first sight, this source shows us two different jurisdictional actions, that we remit to that scheme recently presented by Julie Claustre of litigious jurisdiction on one hand and gracious jurisdiction, on the other.

Briefly going over the gracious jurisdiction, the court provided those individuals who attending to residency belonged to its district, the chance to register obligations. These are documents in which the scribe registered that one individual or a group of them had taken compromise in court to carry out a task or, in case of default, pay a fine. These obligations could rather be fruit of new contracts or the arrangement of old debts. It was a sort of an alternative to common notarial debit notes, although much cheaper - usually cost free - for the client. They had no prosecuting consequences, but its default would activate immediate proceedings in court against the debtor.

According to the content of the bailiff's books, litigious jurisdiction was more complex. All the proceedings in court concerning nonpayment belonged to this sphere. Each one of these mechanisms was thoroughly written down in the casebook.

In first place we should mention the *querimoniae*, the claims made before a court against a borrower; it warned him that in 10 days he was supposed to satisfy the plaintiff or, otherwise, would be penalized. The steward orally notified these claims to the defendant, and it was this last action the one that was recorded in the book, in a short and schematic document that gave the plaintiff's and the defendant's name, the amount of money owed and the date in which the steward had reported it.

After bringing suit - if the capital owed had not been paid back or new repayment conditions hadn't been negotiated - the most common proceeding chosen by plaintiffs was the *empara*, an impound of chattels. The *empares* were the documents through which it was notified that the steward, answering the lender's requirement, would have informed his delinquent client an impoundment of the goods he owned within the jurisdictional district. It was a provisional measure, which still enabled different arrangements before the impoundment of chattels was executed. The plaintiff who activated this proceeding was usually after crops; It came

just before summer, when crops were still tender, had not been cut and their price could be speculated.

Few complaints were carried on to a public auction. We describe these proceedings as those public sales controlled by the broker and that aimed at a full debt recovery. An auction could be the subsequent action after an *empara* or a judgment. The auctions were executed against the main debtor, but depending on his solvency they sometimes could affect guarantors and their belongings.

Without a direct intervention of a judge, the bailiff could automatically activate all mechanisms described to this point. Even so, the defendant had the right to stop the proceedings and to send the case to a judge, asking for a hearing. This action is only evidenced in our court books through a kind of document called *ferma de dret*. This was a special warrant issued after a claim or an impoundment, with which the defendant submitted 5 s. and canceled previous claims or seizures, while it sent the lawsuit to a judge, who, from that point on, would proceed according to an inquest, avoiding the so-called *viam litigi*.

Let's see now more attentively how these proceedings were put together in a process of debt recovery or dispute over payments. Some methodological notes -to better understand the source- should be made previously, since it has almost been neglected until now in Catalonia. Moreover, legal historical studies have not dealt with local court proceedings and their theoretical and practical influences and sources.

In first place, some difficulties appear attending the order - chronologically and not in a casuistic way- each lawsuit was registered. As it has been said, jurisdictional courts had a session almost every day of the week. Thus, the acts of courts were not filed in dossiers or indictments, but set out as the court issued them, as in the ordinary notarial records. The recording of each document, because of its chronological appearance, does not show in an obvious way which coherent regulations were chosen by the court to hold trial. In addition, very few of these proceedings, when they were recorded, referred to the previous stages that the suit had gone through.

Going over another methodological question, it is evident that the negotiation and private arrangements left many "uncomplete" lawsuits; namely those that were first initiated and registered in the source as a complaint. Thus, the entering of a complaint and no further proceedings probably meant that the suit would have been solved outside of court. This usually leaves the researcher with a great amount of claims, for instance, and few examples of how these disputes evolved from that point on.

The civil lawsuits held in the court of Caldes de Malavella - and within, those related to nonpayment - could respond to two different legal *traditions* or channels that were clearly distinctive from one another. We've seen how the court officials were under the commandment of the bailiff, who presided its sessions and gave approval to each proceeding. This infrastructure was almost autonomous in its functioning; it only required the denunciations of the plaintiffs and the discretionality of the officials. It wasn't, thus, an inquisitive process: Not a single investigation

was initiated to determine if the facts adjusted to reality. However, the judge was in charge of another set of proceedings (sometimes adversarial) in which evidences were presented, witnesses were heard and finally a sentence was passed.

We know few things about the set of proceedings in which the judge interceded. The inquiry and the sentence itself were normally an oral matter and none notarial proof was registered. We do not know yet if the judge, from its inception, directly carried out some suits attending their nature or subject. But we do know now, that in some phases of those complaints heard in court, the contenders could pass on to judiciary mechanisms - through the *ferma de dret* - in their eagerness to elucidate the truth. We have some evidence of the fact that this proceeding was activated in those occasions when two rivals contradicted each other or a defendant just did not accept or even could refute the requests made by the plaintiff. It was at that point when the judge was required. Exceptionally, the court book makes explicit that this was the reason because the suit was heard by him: In December 4th 1340, being aware of a previous *ferma de dret - ratione predictae firme* - the judge, through the steward Bernardus Pelicerii (Bernat Pellicer), summoned Bonanatus Boiga (Bonanat Boïga), a local tailor, next Monday. He was denying a debt claimed by a well known Girona citizen and cloth merchant, Tomas Avellaneda (Tomas d'Avellaneda).

As Beckerman has remarked about Jury Trial in England in the late XIIIth century, it “...achieved succes not only in concluding disputes... but in laying bare the truth of a matter and reaching a reasonable conclusion. For this reason, the parties often requested [them] in particularly obscure or difficult cases...”. We understand that in our own local courts the judiciary path accomplished these same functions and was used in those occasions where the opponents sought “justice”, or, at least, what the community considered as so.

On the other hand, suits in court followed a non-inquisitive tradition, and required the activation of each proceeding by the plaintiff. This was possible because most credit agreements registered in the notary already anticipated which would be the measures taken against the debtor; their content is full of punitive clauses.

There are plenty of examples of the measures implemented in the casebooks, so we've had the opportunity to trace with exactness the general sequence of court mechanisms. In first place, a process required a claim in order to be inchoated. Only once it was entered, the *empara* was allowed. There, the defendant had to accept the seizing or, otherwise, present himself a *ferma de dret*, which would remit the case to the judge. Auctions took place in the last phase of a suit. But this general portrait could include as well many different negotiations that usually didn't solve the dispute and would remit the suit to a preliminary stage. The introduction of mechanisms not sanctioned by public power (that were not notarized) prolonged the proceedings during a long period.

We should say that complaints in a suit of debt were not all entered on time, in the precise moment in which the payment terms were not observed or were exceeded. To better understand when and why plaintiffs decided to enter a complaint we should consider first which type

of financial product had given rise to debt. Not all products entailed the same urgency and some loans, for instance, were more resilient to delays and arrangements than other sorts of credits. This same study on claims should be aware, as well, of mutual relationships and interdependence - trust - established in between creditors and debtors.

Even so, some claims would have been entered, at the same time, in places like Caldes and in some other jurisdictional space in which the defendant presumably would have had chattels to be seized. This was probably a strategic choice of a semi-professional plaintiff, resolved to recuperate its debts. If the suit were settled, for instance, in this second jurisdiction outside Caldes, the claim entered in our court would have remained, in the source, by itself, usually hampering us to trace the “life cycle” of the debt suit, albeit it does offer some clues about the casuistic of these disputes.

As negotiations induced a delaying of proceedings, claims and *empares*, those first steps in court, were much more frequent compared to other resorts.

In this sense, only 16.7% and 11.7% of claims during the years 1342-1343 and 1346, respectively, had any continuity in court in the period comprising 365 days after it's registering - the limit that the plaintiff had to present an *empara* -. In absolute numbers, the graphic shows that claims and *empares* were common proceedings, which gave an incentive to payment or reaching other settlements and restrained, this way, more executive means.

On the other hand, we assess that during the period 1342-1343, of the 40 *empares* that were preceded by a claim; both operations were executed at the same time on 19 occasions (47.5% of the cases). Claim and *empara* at once - and usually registered in the same document - was a frequent practice, which we trace exclusively during the months of June and July. In that same period, claim and *empara* were activated in only a week's time in other three occasions. In 18 suits the intervals offered are certainly longer, in between 48 and 270 days.

In 1346, of 23 *empares* that were preceded or notified by claims, in 11 cases both proceedings were presented simultaneously (47.8% of the total suits). In the same way, this coincidence between claims and *empares* occurred during the harvesting period. In the rest of cases, two suits left short intervals, of 9 and 13 days, and in nine other disputes the plaintiff presented the *empara* nearly three months after the claim (57 and 58 days in all these 9 cases).

Nevertheless, the generic form of bringing to an end a debt recovery suit, once the *empara* had been presented, was to reconvert the provisional seizing of chattels or crops in a permanent distraintment. Most *empares* had no other documental continuity in the court book (86.3% of all *empares* in 1342-1343 and 75.5% of them in 1346); this data may serve as an index of automatic conversions to irreversible seizures. In the case where the plaintiff was contented, the court did not activate other proceedings and notarial receives were neither extended.

It should be stressed that claims were mostly presented during specific moment of the year, which usually matched with harvesting (from May to September, depending on the crop) or during wintertime, after the

sow of major cereals (wheat and barley). In that point, the proceedings in court reveal themselves as operations aimed at controlling the commercialization of agricultural produce, as a prelude to an executive measure (seizing) or as a strategy to negotiate over those crops. In debts complaints, thus, we interpret a trend of plaintiffs to control the market of cereals, olive oil and coal - the products of the territory -, more than their intention of being repaid in cash.

Some creditors would decide to accelerate the whole process during summertime, when defendant's crops were at their reach. Other plaintiffs, although, offered long time periods - of a whole winter, for instance - to try to reach an arrangement with their client over the quantities that were due.

We suspect that over some period of the year, namely when harvesting was underway, the plaintiff had an evident collecting intentionality. Here, those creditors resolved to gather their capital through crop seizing, would register a claim and an *empara* simultaneously, not leaving much leeway to any kind of arrangements.

But if a borrower was sued during wintertime, but had no capacity to negotiate with his plaintiff during the winter gap, there was a high chance that an *empara* would be presented by spring. A claim, in these situations, bolstered an arrangement before the plaintiff decided to put more pressure with an *empara*.

Claims and *empares* were the most used mechanisms in the court of Caldes during the 1330-1350 timeline. The creditors activated consciously these proceedings before harvest gathering, in order to force negotiations with their clients. Besides simple credit collecting, these mechanisms were used to seize crops or to create a complex system of customer loyalties.

Before ending my paper, I shall make some few remarks: In first place, that credit recovering suits were also a space of oral and non notarized negotiation. As we revealed, the gradation with which the proceedings took place in court (grossly; Claim-*empara-ferma de dret*-auction), and the existence of a split judiciary and inquisitive action, we also realized about their commercial and financial imbrications. Claims and *empares* were made coincide with the months before harvest gathering, when negotiations could have an effect over defendants, mainly dependent on their landholding.

Our investigation will continue on one hand refining the description of court proceedings and on the other solving out the nature of the economic actors involved in debt recovery suits in these rural areas. Our future hypothesis has already partly been announced: The court mechanisms were efficient methods of commercial negotiation, in behalf not only of the lord that would have promoted this institution, but also serving the financial elites that in between the XIIIth and XIVth c. went beyond their home cities to extend their business over the rural back country. Synthetically, the gears that enforced law were as well economical resources that generated a net of commercial clients. Future research will focus, thus, in the link between the court proceedings and the logics of the rural market.

