

Debt litigation in medieval Holland, c. 1200 – c. 1350

Paper for the GEHN conference, September 20-22, 2007, Utrecht

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Introduction

Among the wide range of subjects appearing in the charter of urban liberties granted to the Holland town of Haarlem in the year 1245, debt and debt litigation may well be the most prominent. The charter describes in some detail, to give just a few examples, under which conditions compurgation is allowed in debt pleas, how to deal with negligent debtors from out of town who fail to turn up in court, and to which extent a husband can be held responsible for the debts incurred by a wife selling bread, beer or yarn.¹

This focus on the subject of debts is not a coincidence. Medieval society, and medieval trade in particular, relied heavily on credit.² In order to ensure its availability, efficient mechanisms to stop defaulting were vital. Most of these mechanisms were probably of an informal nature, relying on long-lasting personal contacts and reputation. If even in international trade amicable settlement of debt conflicts and arbitration were preferred to formal litigation,³ this will certainly have been the case for conflicts arising from financial obligations in the much smaller circles of villagers or fellow-townsmen. Still, even if only a fraction of the debt conflicts ended in a court session, the possibility that this could happen set a standard for the behavior of debtors and creditors. The stress on regulations for debt litigation in the Haarlem charter of liberties therefore makes sense: a balanced set of rules on this subject and a well-functioning system for administering justice in debt cases did matter.

Until the late 12th century Holland was a marshy, almost exclusively agrarian region in the periphery of European civilization. Human habitation was only possible on the sandy strip behind the North Sea dunes and on the clay banks in the river delta. Towns did not exist, international trade was mostly passing by. Yet only 150 years later, in the second half of the 14th century Holland experienced a phase of strong economic growth, the more remarkable when it is confronted with the decline, stagnation or at best very partial recovery that characterized neighboring economies. Population very quickly recovered from the effects of the Plague, urbanization increased sharply, market-oriented livestock and dairy farming emerged, non-agricultural activities in the countryside expanded and urban industries like brewing, shipbuilding and textile production developed strongly.⁴

¹ Koch and Kruisheer, *Oorkondenboek van Holland en Zeeland tot 1299* (hereafter *OHZ*) II, nr. 672-673. The Haarlem charter has recently been re-edited and commented upon by Hoogewerf, *Haarlemse stadsrecht*.

² This point was made forcibly by Postan, 'Credit in medieval trade'.

³ Gelderblom, *Merchants in the Low Countries*, chapter 8.

⁴ Van Bavel and Van Zanden, 'Jump-start', pp. 504-507.

If, as is fundamental not only to the neo-institutionalist economics of Douglass North but also to the ‘legal origins’ debate, favorable legal institutions affect economic performance,⁵ Holland between 1200 and 1350 is the place and the time to look for them. This paper aims to do so for one aspect: debt litigation, with a focus on commercial debts. It examines the judicial procedures for debt litigation that developed in the towns of Holland during what can be called their formative years, the 13th and early 14th century, and compares them to similar institutions in the southern Low Countries (Flanders and Brabant) and England in the same period. The comparison is useful not only because of the diverging paths of economic development after 1350, but also because the social and political structure of the three societies was very different. The reclamation of Holland’s central peat district had given rise to a class of free farmers, who recognized the count as their sovereign but were not subjected to feudal ties. The manorial system, so prominent in England, had in Holland all but disappeared at an early stage. The count of Holland, although clearly growing in authority especially in the second half of the 13th century, did not command the same power over his subjects as the English king. On the other hand towns were late to rise and only slowly acquired political influence. Even in the middle of the 14th century they were by no means in a position to dictate conditions, as the cities of Flanders frequently were. A comparison can throw light on the effects these differences had on the development of legal systems.

For Holland, the choice of sources for a study like this is limited. Urban by-laws, town accounts, resolutions of town authorities and court records are but rarely available before the late 14th or even the early 15th century. What we do have however are the charters of urban liberties of many of Holland’s towns. They have provided the backbone of the dataset on which this paper rests. The comparison with Flanders and England has mainly been based on modern literature. After a note of explanation on the sources and their use, the paper first discusses the transition from traditional methods of proof based on a belief in divine intervention to fact-finding. The following section focuses on the subsequent development of sureties and the registration of debts.

2. The sources: charters of urban liberties

It is only in the year 1200 that the very first reference to a town (*opidum*) appears in the Holland sources. That town is Dordrecht: situated in the river delta of Rhine and

⁵ For the work of Douglass North see e.g. North, *Institutions, institutional change and economic performance*. For the legal origins debate: Glaeser and Shleifer, 'Legal origins'.

Meuse it developed into a small centre of the international river trade in wine, grain, wood and salt in the course of the 12th century. Dordrecht's first charter of liberties – or, to be more precise, the oldest known charter- dates from 1220 or 1221. In the late 12th century some of the earlier settlements on the sandy strip behind the dunes began to develop into towns. Leiden, Haarlem, Delft and Alkmaar all acquired charters of liberties in the middle of the 13th century.⁶ In the last decades of that century urbanization accelerated. Trade and urban industries expanded, existing towns grew and new ones emerged. By the middle of the 14th century most of these towns had been granted urban liberties.⁷

As elsewhere in Europe, liberties were often derived from models used in other towns. In Holland the best known and largest 'family' of charters is the Brabant-Holland filiation. A large part of the Haarlem charter of 1245 was based on the liberties of the Brabant town of Den Bosch. In turn, a draft version of the Haarlem charter served as a model for several other towns in Holland. The liberties of a group of smaller towns on the islands in the southwestern part of Holland and in Zeeland, Brielle and Goedereede among them, form a second, more loosely associated filiation.⁸ Other towns, for instance Dordrecht, Leiden and Amsterdam, had liberties of local origin, unrelated to one of the two filiations. In this paper most attention will be paid to the liberties of the Brabant-Holland family which, because of their detailed character and attention to what we would now call civil justice offer the best clues for an analysis of debt litigation. Elements from other charters will be used to complement the information.

The use of charters of urban liberties in historical research involves some methodological problems that are best understood by looking at the charters' original function. First and foremost, they aimed at officially establishing or confirming the position of the town as a separate administrative and jurisdictional district with a certain degree of autonomy. Charters of urban liberties were never meant to be comprehensive law codes. There was no need for anything of the kind: unwritten customary law met the normal requirements of urban society well enough. The need for recording was probably only felt when new rules were introduced, particularly if these deviated materially from customary law. The charters therefore only show a small part of the rules and practices that were actually being used and they sometimes

⁶ Dordrecht: *OHZ* I nr. 406 and 910 (hereafter referred to as Dordrecht 1220/21 and Dordrecht 1252). Haarlem: *OHZ* II, nr. 672-673 (hereafter Haarlem 1245); Delft (1245) *OHZ* II, nr. 680; Alkmaar (1254) *OHZ* II, nr. 1009; Leiden (1266) *OHZ* III, nr. 1433.

⁷ Hoppenbrouwers, Van Waterland, 118-120; De Boer, 'Op weg naar volwassenheid'. For a survey of all charters of urban liberties in the present-day Netherlands: Cox, *Repertorium van de stadsrechten*.

⁸ For the Brabant-Holland filiation: Kruisheer, *Stadsrechtsoorkonden van Haarlem, Delft en Alkmaar*. For the filiation on the Zuid-Holland and Zeeland islands: Cappon and Van Engen, 'Stad door stadsrecht?'

tend to stress the exceptional instead of the regular.⁹ From this it will be clear that the use of charters of liberties requires caution. Still, they provide a unique source of information on the development of legal institutions in an otherwise rather barren landscape. It is actually quite surprising that so little use has been made of them for this purpose in the past.¹⁰

3. From divine judgment to the ‘truth of the aldermen’

In keeping with the stress placed by Henri Pirenne and his followers on the role of merchant settlements in the rise of medieval towns, the decline of trial by combat has often been attributed directly to the needs of a rising merchant class. Johan Huizinga for instance argued that the prohibition of the judicial duel in the Haarlem charter of liberties demonstrates the influence of mercantile customs on urban law: merchants had no wish to jeopardize their life and their profits by duelling over every trade conflict.¹¹

However, the decline of trial by combat is not an isolated phenomenon. It is connected to a wider process of change of judicial procedures taking place all over Europe in the high Middle Ages: the disappearance of the modes of proof based on the belief in a revelation of divine judgment that had been in use for centuries, although mostly as a last resort when ‘certain proof’ was not to be had. The unilateral ordeal, undergone by a single proband, in its many varieties of water, fire or the hot iron probably appeals most to our imagination as a fascinatingly alien and dramatic practice, but at the end of the age of ordeals the judicial duel, a bilateral ordeal which pitted opponents against each other, seems to have been more usual in civil justice, including debt conflicts. Even more common was the purgatory oath or wager of law, often in the shape of compurgation (the oath with oath-helpers). Perhaps this was not a genuine ordeal, but it was still closely related in its reliance on divine intervention - perjurers knew that eventually they would not be able to escape God’s vengeance - and in the demand of correct pronunciation of the oath formula in the smallest detail: almost a physical test in its own right.¹²

Whereas earlier generations of legal historians pictured the ordeal and, to a lesser extent, the purgatory oath as primitive and irrational, scholars approaching the issue

⁹ Van Engen, 'Geen schraal terrein', pp. 73-74, 77; Kruisheer, *Stadsrechtsoorkonden van Haarlem, Delft en Alkmaar*, p. 60.

¹⁰ The work of Huizinga on the rise of Haarlem, dating from the early 20th century, is an exception (Huizinga, 'Opkomst Haarlem', pp. 27-36).

¹¹ Ibidem, p. 29. For a similar statement regarding the English boroughs: Stephenson, *Borough and town*, p. 138.

¹² Bartlett, *Trial by fire and water*, pp. 13-33 and 103-113; Hyams, 'Trial by ordeal', pp. 90-93.

from an anthropological point of view have more recently pointed out the functional nature of these traditional methods of proof in a society of small, self-enclosed communities and deep religious convictions.¹³ The reasons for the eventual disappearance of the ordeal have been the subject of debate too, with one party stressing its condemnation by the Fourth Lateran Council in 1215 as the driving force and the other pointing to the profound economic, social and mental changes that Europe experienced in the 12th century.¹⁴ This is not the place for a new contribution to either of these debates, but it is worth noting that the traditional explanation attributing urban exemptions of trial by combat to the interests of trade and the rational and progressive outlook of urban merchants is open to discussion. Urban hostility to trial by battle can also be seen as an attempt to prevent fighting and feuding in the urban community, or as an expression of the struggle for urban autonomy: burgesses may have wanted to make sure outsiders could not challenge them to combat.¹⁵

When the traditional modes of proof declined, they were replaced by procedures based on fact-finding. Timing and pace of this process differed. Not only were cities in the vanguard everywhere and did the countryside usually lag behind, but in some parts of Europe the ordeal had a much longer life than elsewhere. Moreover, vestiges of trial by combat and in particular of the purgatory oath continued to exist in civil justice in the late Middle Ages and sometimes beyond.¹⁶

With the charter of liberties of Haarlem (and those of the other towns of the Brabant-Holland filiation) we plunge right into the middle of this process of change. One element has already been mentioned: the prohibition of trial by combat, also present in the 13th-century charters of Dordrecht, Leiden, Vlaardingen and Schiedam, and in the early 14th-century charters of Rotterdam and Amsterdam as well.¹⁷ With this clause the Holland towns join their counterparts abroad that had obtained a privilege to the same effect, some of them at a much earlier date, for instance Ypres (1116),

¹³ For a recent representation of the first point of view: Van Caenegem, 'Methods of proof', pp. 73-74. For the second point of view: Hyams, 'Trial by ordeal', and Colman, 'Reason and unreason'.

¹⁴ A recent re-evaluation of the first hypothesis is given by Bartlett, *Trial by fire and water*. For the second hypothesis: Hyams, 'Trial by ordeal', pp. 99-106; Van Caenegem, 'Methods of proof', p. 111. It is worth noting that this second interpretation is reminiscent of Pirenne's views, although the scope has obviously broadened beyond a direct response to merchants' needs.

¹⁵ Bartlett, *Trial by fire and water*, pp. 53-62.

¹⁶ Caenegem, 'Methods of proof', pp. 85-94.

¹⁷ Leiden: 1266, *OHZ* III nr. 1433; Schiedam: 1270, *OHZ* III nr. 1524; Vlaardingen: 1273, *OHZ* III nr. 1632; Rotterdam: 1340, Van Mieris, *Groot charterboek* II, pp. 638-640; Amsterdam: 1342, Van der Laan, *Oorkondenboek van Amsterdam*, nr. 49.

Saint Omer (1127) and London (c. 1130).¹⁸ Both the Ypres and the London documents mention compurgation as the appropriate alternative.

The early prohibition of the judicial duel in towns is, to a certain extent, deceptive: in the countryside trial by combat was more resilient. The English situation illustrates this best. Trial by battle was probably unknown in Anglo-Saxon England, but after its introduction by the Normans it was in common use throughout the 12th century, both in criminal and in civil justice. Even in the late 13th century debt cases were sometimes resolved by a duel.¹⁹ Less is known about the role of trial by combat in debt conflicts across the Channel. We do know that in Flanders trial by combat in general was becoming rare by 1300, outside the towns as well as inside.²⁰ In the Holland countryside the disappearance of trial by combat probably took longer. There is evidence that the judicial duel continued to be practiced in the 14th century, although increasingly only as a voluntary option in criminal justice.²¹

Wager of law, the preferred mode of defence in civil justice, also figures prominently in the Haarlem charter, including the demand of correct pronunciation and adherence to the ritual. Notably, in debt cases this formalism seems to have been applied quite rigidly. In a conflict about the ownership of land the person who made a mistake while taking the oath was given another chance and even a third; however in a case about a financial claim, mispronunciation led to immediate conviction.²²

More than a century after Haarlem received its liberties, wager of law in debt cases is still mentioned in the charters of liberties of the small towns of Vianen (1336) and Naarden (1353).²³ Moreover, whereas Huizinga assumed that the requirement of correct pronunciation of the oath would soon disappear from daily legal practice, the early 15th-century law code of Brielle, put in writing by the town clerk Jan Matthijssen, still refers to it in very explicit terms.²⁴

This persistence of wager of law, to be sure, is not unique for Holland. Both in England and in Flanders remnants of the purgatory oath in civil cases outlasted the Middle Ages.²⁵ Only for England it is possible to outline the process of the demise of wager of law more precisely. Here the purgatory oath was still a distinct possibility in

¹⁸ Ypres: Vercauteren, *Actes des comtes de Flandres*, nr. 79; St. Omer: Derville, *Histoire de Saint-Omer*, pp. 269-271 (translation in French); London: Stephenson, *Borough and town*, p. 129.

¹⁹ Hyams, 'Trial by ordeal', pp. 111-112, 119-120, 123-124; Brand, 'Aspects of the Law of Debt', p. 25.

²⁰ Van Caenegem, 'La preuve', pp. 386-389, 392-393.

²¹ Fruin, 'Over waarheid, kenning en zeventuig', pp. 333-338.

²² Haarlem 1245, par. 16; Hoogewerf, *Haarlemse stadsrecht*, pp. 146-148. There is a correspondence with the rules on a failure to turn up in court: in a property case a defendant who did not show up was to be summoned two more times, whereas in a debt case he would be convicted right away (Haarlem 1245, par. 12, 15.)

²³ De Geer, 'Rechten van Vianen'.

²⁴ Huizinga, 'Opkomst Haarlem', pp. 22-23; Hoogewerf, *Haarlemse stadsrecht*, pp. 147-148; Matthijssen, *Rechtsboek Den Briel*, p. 161.

²⁵ Van Caenegem, *Geschiedenis strafprocesrecht in Vlaanderen*, p. 160-161; Pollock and Maitland, *History of English law II*, pp. 631-632.

debt cases in the late 13th century, even when the plaintiff could produce witnesses to the transaction the debt originated from. Yet even by that time it seems to have been loosing ground to trial by jury.²⁶ Later references do exist; in fact the burghers of London insisted on their right to defend themselves against debt claims by oath as late as 1364.²⁷ Still, of the debt cases presented in the manor court of the Essex village of Writtle between 1382 and 1490 only 10% was settled by oath against more than 53% by a jury of inquest.²⁸ Figures that would allow for a comparison with Holland simply do not exist, but the references in the documents from Vianen, Naarden and Brielle give the impression that Holland was no more inclined to a radical abandonment of wager of law than England.

Holland, it appears, was not in the lead when it came to replacing the traditional modes of proof by new ones. Still, the Haarlem charter of liberties does illustrate that a transition was taking place. A Haarlem burgher who was being sued for a debt could only demonstrate his innocence by oath if the claimant had merely uttered a complaint without coming up with any proof. However if the claimant offered documents or testimony from witnesses to support his case, compurgation was not accepted. In that case the court would base its verdict on an investigation of the evidence, which took place in an informal setting behind closed doors.²⁹

What we witness here is a procedure that in Flanders was called the *veritas scabinorum* or ‘truth of the aldermen’; in the 15th-century Holland sources it is referred to as *schepenenkenning*. When a case was brought before the local court of aldermen, two or three of them were to investigate the matter by consulting their own experience, witnesses and other sources, and subsequently pronounce a verdict binding to the bench as a whole. The ‘truth of the aldermen’ was probably used both in criminal and in civil cases. Its introduction in Flanders took place just after the middle of the 12th century, when it first appeared in the charters granted to several towns by count Philip of the Alsace.³⁰

Of ‘truths’, in the sense of inquests, several varieties developed in north-western Europe, originally probably under the authority of the sovereign. The English jury system is one of them. It seems to have developed from the royal inquisition, an administrative device aiming at establishing the crown’s rights to lands and rents, also made available, as a royal favour, to individuals who wished to have their rights

²⁶ Brand, ‘Aspects of the Law of Debt’, pp. 24-25.

²⁷ Plucknett, *Concise history of the Common Law*, p. 116.

²⁸ Clark, ‘Debt litigation’, pp. 252-253. The remaining 37% never came to judgment.

²⁹ Haarlem 1245, par. 14, 58; Hoogewerf, *Haarlemse stadsrecht*, pp.140-141, 66-71; cf. Fruin, ‘Over waarheid, kenning en zeventuig’, pp. 344-352.

³⁰ Hoogewerf, *Haarlemse stadsrecht*, pp. 66-70; Van Caenegem, ‘Methods of proof’, p. 96; Van Caenegem, ‘La preuve’, pp. 394-395; A. Nortier, *Burgerlijk procesrecht Leiden*, pp. 48-54.

ascertained. As is well known, from this point onwards England, under the influence of an increasing control of the Crown over the judicial system, followed a course of its own. The Angevin reforms carried through in the second half of the 12th century brought an extension and formalization of the jury system, both in criminal and in civil justice. The jury members were ordinary men from the surrounding area, but the juries as such functioned as part of the developing system of royal justice and royal courts.³¹

In Flanders on the other hand the introduction of inquests led by comital functionaries had evoked hostile reactions from the powerful towns, who saw them as an intrusion on their judicial autonomy. As with trial by battle they tried to acquire an exemption or, alternatively, they claimed the right of inquest for their own magistrates. It was this development that gave rise to the 'truth of the aldermen'.³² To all appearances the towns of Holland copied the model of the 'truth of the aldermen' from Flanders. Other parts of the southern Low Countries had done the same, although in Brabant the duke's officials retained a greater degree of control over inquisitorial procedures than in Flanders and also in Holland.³³

Notably, unlike the situation in the south, in most of Holland the court of aldermen as the main administrative and judicial institution at the local level was not indigenous. The institution was known at an early date in the Meuse delta, where Frankish influence had been strong, but the rest of Holland had followed Frisian customs: justice was in the hands of local courts of a sheriff and neighbors. The aldermen's court was only introduced gradually between the 13th and 16th centuries, first in the towns and later in the countryside as well.³⁴ The fact that we find these courts exercising the right of inquest almost from the moment they exist, is an indication that innovations from the southern Low Countries were picked up very quickly. Significantly, it also illustrates that even by the middle of the 13th century, the grip of local authorities on the administration of justice was sufficient to replace the 'count's truth' with the 'aldermen's truth'. We will return to this aspect shortly.

³¹ For a description of the development and nature of the jury: Plucknett, *Concise history of the Common Law*, pp. 106-131.

³² Caenegem, 'La preuve', pp. 396-397.

³³ Ibidem, p. 395 note 2 ; De Vries, *Strafprocesrecht*, pp. 202-207.

³⁴ Blok, 'Opmerkingen over het aasdom', p. 244.

4. Sureties and debt registration

Sureties

The introduction of methods of proof based on fact-finding was an important step towards a more efficient institutional framework for debt litigation, but the process did not stop there. Between the late 12th and the middle of the 14th century a wide range of additional instruments developed that facilitated the recovery of commercial debts through legal proceedings. The discussion of these instruments below does not pretend to be exhaustive: it merely aims at demonstrating the most important similarities and differences between Holland, England and the southern Low Countries.

Again, to a considerable extent the rules on debt recovery mentioned in the charters of liberties of Haarlem and the other members of the Brabant-Holland affiliation reflect practices common in neighboring countries as well. For a start there is the procedure of distraint in case of reneging on obligations: the seizure of the debtor's property as security, or his arrest in person, with the aim of compelling him to appear in a court of law.³⁵ The Haarlem charter states that a defaulting debtor was first to be held in arrest by the authorities for two weeks. Afterwards he was handed over to the creditor, who could keep him into custody until payment of the debt had been arranged. Most likely the cumbersome and costly arrest was normally preceded, and hopefully for both parties prevented, by seizure of property: even though the Haarlem charter does not explicitly refer to it, *panding* (seizure) is mentioned in the 13th-century liberties of Dordrecht and in many later charters.³⁶

Distraint was also in common use in the southern Low Countries, under almost identical conditions; here the prevalence of seizure of property over arrest in person is explicitly recorded in urban by-laws and privileges from the late 12th century onwards.³⁷ The most prominent instance of distraint in England was the power of a lord to distrain a tenant for rents or services in arrear, usually by taking cattle. This power was exercised extra-judicially: no court order was needed to seize the goods. Still, the lord's rights were limited: he could not sell or use the beasts but had to give them up again when the arrears were paid.³⁸ In the English towns creditors who found their debtors unwilling or unable to pay could also resort to distraint, and here

³⁵ For a more detailed discussion of the instruments of seizure and arrest: De Blécourt and Fischer, *Kort begrip*, pp. 262-263; Zuijderduijn, *Medieval capital markets*, pp. 92-94.

³⁶ Haarlem 1245 art. 33 ; Hoogewerf, *Haarlemse stadsrecht*, p. 196; Dordrecht 1220/21 and 1252.

³⁷ Godding, *Le droit privé*, pp. 510-511.

³⁸ Pollock en Maitland, *History of English law* II, pp. 572-576. Probably a similar right existed in Holland: *Panding* is mentioned as compensation for a failure to perform labour services in an early 12th century document from the abbey of Egmond (Meilink, *Archief Egmond*, p. 62).

safeguards against abuse had been introduced, at an early stage. The debtor first had to be summoned three times, and if that failed, permission from the authorities was needed to distrain the debtor's goods. Extra-judicial distraint was only allowed against foreigners.³⁹

Likewise, from the 12th century onwards several towns in Flanders and Brabant acquired formal privileges that gave their burghers freedom from seizure and arrest unless they had previously been tried and found guilty by the local court of aldermen, thus putting an end to extra-judicial distraint. Here too foreigners did not enjoy the same privilege; on the contrary, the entire urban community was expected to collaborate in the arrest of a foreign debtor who might otherwise flee.⁴⁰ The charters of the Brabant-Holland filiation do not have a paragraph to guarantee the burghers' freedom from seizure and arrest, but there is one in the Dordrecht charters of 1220/21 and 1252 and in the Vlaardingen charter of 1273: they state that seizure of a citizen's property cannot not be executed unless the aldermen have allowed it.⁴¹

As with the introduction of the 'truth of the aldermen', the chronology suggests that Dordrecht, and other Holland towns at a later stage, copied a successful institution developed in the southern Low Countries. Actually in this case a document exist that indicates how this may have happened: a treaty concluded by the count of Holland and the duke of Brabant in the year 1200. The two rulers agreed that a creditor in Brabant was only allowed to seize the property of a debtor in Holland and vice versa if the creditor's application to the local court of the debtor's town or village of residence had met with a denial.⁴² The paragraph must have been inserted primarily in the interest of the Brabant merchants, who no doubt had a large share in the trade between the two countries. It therefore makes sense to assume that when Holland's trade began to develop, regulations were adapted to those of the southern neighbors under the influence of commercial relations.

Guarantees of this kind may have provided protection from unlawful confiscations, but for creditors trying to recover their money they brought serious disadvantages: proving the existence of a debt was often difficult and debtors could easily obstruct the course of justice by fleeing or alienating their goods.⁴³ In reaction, a series of instruments developed that reinforced the position of the creditor by offering additional securities to ensure its repayment. A tendency for change in favor of the creditor seems to have been a general phenomenon: it can be observed in

³⁹ Bateson, *Borough Customs*, vol II, p. xlv-xlv; cf. the early 12th-century customs of Newcastle: Alsford, *Florilegium Urbanum*.

⁴⁰ Godding, *Droit privé*, p. 507, 509; Gilissen, *L'étranger* II, pp. 296-297.

⁴¹ Dordrecht 1220/21 and 1252; Vlaardingen: *OHZ* III, nr. 1632

⁴² *OHZ* I nr. 245.

⁴³ Zuijderduijn, *Medieval capital markets*, p. 92.

England as well.⁴⁴ Even the ways in which it was achieved were often the same - but not always, as we will see.

Personal sureties, pledges who in case of defaulting by the original debtor assumed liability, were frequently asked to secure repayment of all kinds of debts, including commercial ones, throughout the Middle Ages, in England, in the southern Low Countries and also in Holland.⁴⁵ The Vlaardingen charter of liberties for instance states that debts could be claimed from a pledge after three unsuccessful exhortations to the debtor.⁴⁶

Another widely used institution aimed at improving security is the ('special') mortgage or non-possessory collateral: the creditor acquired a right to a specific property of the debtor, in the 13th and early 14th century usually land, tenements or land rents, to be claimed if the debt was not repaid at the scheduled time.⁴⁷ In England mortgaging of real estate is mentioned in Glanville's late 12th-century textbook on the emerging English Common Law.⁴⁸ In Flanders and Brabant the practice was known even in the 11th century, although it was but rarely used until the early 13th century.⁴⁹ The Haarlem charter also mentions non-possessory collaterals.⁵⁰ The chronology suggests that here too a model may have been introduced that had already proven its value elsewhere. On the other hand this is one of the very few instances where the Haarlem charters gives customary law explicit preference over the Den Bosch rules and regulations. Moreover this paragraph was not incorporated in the Delft charter of 1246, although it was included in the charter of Alkmaar and of all the towns in the northern part of Holland that belong to the Brabant-Holland filiation. This suggests that a system of mortgages may have existed in customary law in this part of the county as well.

Debt registration

Until now we have mainly come upon similarities in the organization of debt litigation in the three countries. It is however with regard to a final instrument giving surety to the creditor that differences come to the fore as well: the recognizance of debts. In itself, the introduction of ratification and registration of debts by the authorities was a development of international dimensions, but there were significant variations in the way it took shape.

⁴⁴ Brand, 'Aspects of the Law of Debt', p. 34.

⁴⁵ England: Ibidem, pp. 20, 28-29; Kowaleski, *Local markets*, p. 208. Low Countries: Gelderblom, *Merchants in the Low Countries*, Ch 6, p. 23.

⁴⁶ Vlaardingen charter of liberties: *OHZ* III, nr. 1632, art. 4.

⁴⁷ Zijderduijn, *Medieval capital markets*, pp. 166-167.

⁴⁸ Brand, 'Aspects of the Law of Debt', p. 21.

⁴⁹ Godding, *Droit privé*, p. 215-216.

⁵⁰ Haarlem 1245 art. 62; Hoogewerf, *Haarlemse stadsrecht*, p. 278-280.

Of course there were other, easier and less costly mechanisms of making sure the existence of a commercial debt could be substantiated than having it officially registered. The presence of witnesses at a transaction was such a mechanism; the tally was another frequently used option.⁵¹ In local trade in particular people kept relying on these simple but often effective strategies throughout the Middle Ages and beyond. Holland was certainly no exception: the Brielle and Goedereede charters of liberties for instance make it clear that the testimony of three reliable burghers or merchants was considered valid proof that a transaction had taken place.⁵²

But as society became more complex, the possibility to have debts resulting from deferred payment or delivery ratified by the authorities emerged as an alternative, presumably mainly to be used under high-risk conditions. Formal recognizance offered material advantages: it was considered to be absolute proof of the existence of the debt. A creditor who possessed a document issued by the proper authorities stating a debt had been incurred and was to be repaid at a certain date, could, if payment was not forthcoming, demand summary execution: immediate distraint of the debtor without a previous lawsuit.⁵³ Notably, the principle of formal recognizance of debts and was much the same in the three countries. The difference was in the public bodies that assumed the leading role in voluntary justice.

Simple written contracts stating the indebtedness of one person to another were issued by aldermen's courts in Flanders as early as the 12th century.⁵⁴ In Holland they first emerged in the second half of the 13th century,⁵⁵ but ratification of debts before the local court took place earlier than that, even if it was not yet put in writing. The Dordrecht charter of liberties of 1220/21 explicitly states the existence of the debt had to be known to the court of aldermen to allow the creditor to take action.⁵⁶ The Haarlem charter, though not in the same clear words, refers to the ratification of debts as well.⁵⁷ Again, it is remarkable that we find such a recently introduced institution as the aldermen's court almost immediately actively engaged in voluntary justice: it is yet another indication of the ease with which innovations from the southern Low Countries were implemented.

In England registration of commercial debts was organized in a different way, in keeping with the superior degree of control of the Crown over the judicial system. For

⁵¹ Zijderduijn, *Medieval capital markets*, p. 155-156.

⁵² Pols, 'Bevestiging handvesten Goedereede', p. 333, par. 5; Cappon and Van Engen, 'Stadsrechtsoorkonden van Brielle', p. 143, par. 10 and p. 156, par. 32.

⁵³ Zijderduijn, *Medieval capital markets*, pp.156-158, 167. For the summary execution (*parate executie*): Fockema Andreae, *Oud-Nederlandsch burgerlijk recht*, pp. 103-105. For Flanders: Godding, *Droit privé*, pp. 435-437, 509-510.

⁵⁴ Gelderblom, *Merchants in the Low Countries*, ch 9 pp. 13-14 ; Murray, *Notaries public in Flanders in the late Middle Ages* (Ann Arbor 1983), pp. 34-36.

⁵⁵ Burgers, Dijkhof and Kruisheer, 'Doordringing van het schrift', pp. 199, 201.

⁵⁶ Dordrecht 1220/21.

⁵⁷ Haarlem 1245, art. 22.

one, a growing number of cases could only be initiated through a writ, to be obtained from the royal Chancery. In the late 13th century a royal writ came to be required for all litigation concerning debts over 40 shilling. Secondly, a system of royal courts was introduced. These courts did not replace the existing system of manor courts and urban courts, but they did compete successfully with them because of the advantages they offered, one of them being the possibility of summary execution for debts recorded on the Plea Rolls of the royal courts or on the rolls of the Chancery.⁵⁸

In the late 13th century a new system for the registration of commercial debts was introduced, which although it did involve the urban authorities in the larger towns had a marked national component as well. The Statute of Acton Burnell of 1283 and the Statute of Merchants succeeding it in 1285, allowed merchants to have debts they incurred recognized by the mayors of a limited number of cities and towns. If such a debt was not repaid in time, the creditor could present the document that had been made up by the mayor and demand summary execution, as in Holland and Flanders. Moreover, if the debtor lived elsewhere, the mayor would forward the documents to the Chancellor, who could then issue a writ to the sheriff of the debtor's county of residence, ordering him to pursue execution. Judging from the number of certificates issued to non-merchants and to people from out of town, the system was a success, and not just for commercial debts. While the two Statutes did not outlaw pre-existing forms of registration – apart from the rolls of the royal courts and the Chancery registries we know that in some towns registers were kept as well- these earlier methods seem to have lost much of their function to the statutory bonds.⁵⁹

English statutory registration differed from debt registration as it took place in Holland in two respects. For one, although statutory registration soon became possible in more towns than at the initial introduction, it was still limited to the larger commercial centres. The system was not extended to small town courts and certainly not to manor courts, even though these courts were authorized to adjudicate in commercial debt cases involving unfree tenants and indeed frequently did so.⁶⁰ In Holland on the other hand ratification of debts could take place at all urban courts and also at rural courts, although in the countryside it probably did take longer before oral testimony was replaced with written statements.⁶¹

Secondly, with the possibility of recourse to central bodies and their powers of enforcement, the statutory registers provided England with a solution for a problem towns in Holland, and indeed in Flanders as well, were struggling with: how to cope

⁵⁸ Brand, 'Formation of the English legal system', esp. pp. 107-108.

⁵⁹ McNall, 'Statutory debt registries'; Kowaleski, *Local markets*, pp. 212-215; Postan, 'Credit in medieval trade', p. 236.

⁶⁰ E.g. Clark, 'Debt litigation'.

⁶¹ *Zuijderduijn, Medieval capital markets*, pp. 144, 156-158, 167. For the summary execution (*parate executie*): Fockema Andreae, *Oud-Nederlandsch burgerlijk recht II*, pp. 103-105.

with debts owed by someone living in another town or in the countryside. As trade grew this must have been an increasingly frequent problem, and one for which a good solution was not readily available as long as towns anxiously guarded their autonomy.

In a series of regulations, partly of Den Bosch origin and partly newly added, the Haarlem charter of liberties vividly pictures the problems that could rise. When a foreigner reneged on an obligation ratified by the court, he would be called to justice three times. If he did not show up, he would be convicted, which in this case implied that he was to be arrested as soon as he re-entered the city and forced to pay not only his debt but also a compensation for damages and a fine. This was of course hardly an encouragement to fulfil one's obligations and probably many debtors decided to stay away. In that case the sheriff, joined by the entire community, was to go to the debtor's place of residence and seize his property. This procedure was called *bannen*. What it in fact came down to was the right of the urban community, acting in defence of its members' interests, to take justice into its own hands. Only if it was not successful, the count was asked to intervene and to execute the sentence.⁶²

Of course in an increasingly complex and regulated society this did not work: it could not be reconciled with the increasing strength of central government or the rise of other towns, whose burghers also claimed freedom from arbitrary arrest. The 15th-century 's-Gravenzande law code is enlightening in this respect. In 1448 the authorities of this small town had a codification made of local rules and customs, using the paragraphs from Haarlem's charter of liberties as point of departure. As it turns out many of the 13th-century regulations were still deemed valid, but the codification explicitly warns against the use of the procedure of *bannen*, especially if the debtor was the burgher of another town: it could damage relations and cause trouble.⁶³

The alternative that developed in the southern Low Countries was in keeping with the dominant position of the towns in the region: it involved the extension of the urban enforcement mechanisms over the surrounding countryside. In Brabant in particular the role of urban courts in debt ratification was greatly reinforced by privileges the duke granted to the large towns. In the late 13th century Louvain and Brussels received a privilege that later came to be known as the right of *ingebod*. It gave the courts of aldermen of these towns the right to call to justice all defaulting debtors who had registered their obligations at the court, even if they did not live in town. The practice was afterwards known in Antwerp and Den Bosch as well.⁶⁴ The right of *ingebod* offered the creditor a material advantage: he no longer had to go

⁶² Hoogewerf, *Haarlemse stadsrecht*, art. 3, 22, 23, 63. A similar regulation is in the charter of liberties of Amsterdam of 1300/01, Van der Laan, *Oorkondenboek van Amsterdam*, nr. 6.

⁶³ Telting, 'Oude rechten van 's-Gravenzande', pp. 371-372, 380.

⁶⁴ Godding, 'Les conflits', pp. 314-315.

through the trouble of applying to the court at the debtor's place of residence. But there was a reverse side to it as well: the towns were able to use this privilege to increase their dominance over the surrounding countryside.⁶⁵

In Holland arrangements like this were known only in the south, near the Brabant border: Dordrecht and Geertruidenberg both managed in the late 13th century to have the validity of their aldermen's charters extended to the surrounding countryside. The small towns of Heusden and Woudrichem claimed the same rights, although in Woudrichem these were successfully contested by the rural communities and their lords in the 15th century.⁶⁶

In the rest of Holland however urban courts were unable to usurp the rights to voluntary justice in the countryside. This was related to the structure of Holland society. Direct relations between the count of Holland and his subjects had given rise to a uniform structure of strong public bodies in towns and villages, dominated by combinations of government agents and representatives of the local population. Local authorities, as we have seen, had a prominent role in the administration of justice. Feudal and ecclesiastical courts were of limited importance; notaries had hardly any role until the end of the Middle Ages. The result was an almost absolute monopoly in voluntary justice for the local courts: all local courts, to be precise, not just the courts of the largest towns.⁶⁷

In short, whereas in England contract enforcement beyond the limits of the town's freedom was ultimately ensured through the intervention of the Crown, and in the southern Low Countries through the courts of the large cities, in Holland the autonomy of local courts in towns and villages remained in tact. On the one hand this was the Achilles' heel of Holland's system of debt litigation, to be cured only in the middle of the 15th century, when under the reign of the Burgundian duke Philip the Good the option of appeal to a central court was introduced and it also became possible to take cases against others than fellow-townsmen directly to the central level.⁶⁸ But at the same time the central position of both urban and rural courts in voluntary justice may have been an advantage, as it stimulated an active role of local authorities in debt recovery.

This is perhaps best illustrated by the way the court of Brielle dealt with debt cases. In this small town the sheriff, on the request of the aldermen, made a tour through the streets of the town three times a year, collecting complaints about unpaid debts. Upon arrival at a debtor's house the sheriff would 'administer justice', meaning

⁶⁵ Godding, *Droit privé*, pp. 437.

⁶⁶ Zijderduijn, *Medieval capital markets*, p. 146. Privilege to Geertruidenberg: *OHZ* III, nr. 1815; to Dordrecht: *OHZ* IV, nr 2154. Heusden: Hoppenbrouwers, *Een middeleeuwse samenleving* II, pp. 610-612. Woudrichem: Korteweg, *Rechtsbronnen van Woudrichem* I, pp. 68-70.

⁶⁷ Zijderduijn, *Medieval capital markets*, p. 141-146.

⁶⁸ De Schepper and Cauchies, 'Legal tools', esp. pp. 252, 256.

that if the debtor admitted he had not fulfilled his obligations an arrangement was concluded to ensure that payment would be forthcoming within two weeks. A clerk would write down the details and the debtor would hand over a collateral to the creditor, either to be redeemed within two weeks or to be left in the creditor's hands as compensation.⁶⁹ The system is reminiscent of that of the *poortgedingen* held in 15th-century Leiden, special court sessions were almost completely devoted to problems with unregistered debts.⁷⁰ The *ommevangen* in the Brielle charter seem to have had the same role, but here the authorities did not merely wait for creditors to file their complaints: they also took steps to actively trace unpaid debts.

In other words, when in the middle of the 15th century possibilities for debt recovery through central judiciary bodies were introduced, a solid foundation of local debt litigation and debt registration based on a homogeneous network of rural and urban courts was already firmly in place.

4. Conclusions

This paper started out with the hypothesis that during the 13th and early 14th century in the emerging towns of Holland a set of judicial procedures for debt litigation conducive to economic growth developed, under the influence of a specific set of social and political relations. Analysis of the institutions as they appear from the charters of liberties of the Holland towns has shown that reality was more complex than that.

For one, most of the legal procedures for debt recovery used the town of medieval Holland were not unique. If the comparison with Flanders and England has made one thing clear, it is that the similarities between the three countries were far greater than the differences. It has also shown that many of the arrangements for debt litigation practiced in Holland were probably copied from the southern Low Countries under the influence of trade contacts.

At the same time it is clear that the late rise of the Holland towns was working in their favor: models that had proven their value elsewhere could easily be adopted, thus allowing the emerging towns to make a head start. In fact it seems quite possible that the Den Bosch charter of liberties appealed to the Haarlemmers exactly because it contained a set of detailed rules well suited to the needs of a rapidly developing economy. Seen from a wider perspective we might say that in the 13th century

⁶⁹ Cappon and Van Engen, 'Stadsrechttoorkonden van Brielle', p. 159, par. 52; Matthijssen, *Rechtsboek Den Briel*, pp. 150-153.

⁷⁰ Nortier, *Burgerlijk procesrecht Leiden*, pp. 37-46.

Holland was rapidly being integrated in European civilization, not just in terms of trade networks but also in terms of legal institutions.

Having stated this much, one important difference with Flanders and England does stand out, and it is closely related to the social and political characteristics of the Holland society. It regards the involvement of local courts, both urban and rural, in voluntary justice in Holland, as opposed to the dominance of the large cities in the southern Low Countries and that of the registries acknowledged under the Statute of Acton Burnell and the Statute of Merchants in England. On the one hand the judicial autonomy of these local courts shows a weak spot in the system of debt litigation in Holland: the recovery of debts across administrative borders remained cumbersome. On the other hand the fact that the local courts had a virtual monopoly in voluntary justice stimulated an active role of local authorities in debt recovery, thus providing a solid foundation of debt litigation and debt registration at the local level that may well have contributed to Holland's economic success in the second half of the 14th century.

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