WHY WE NEED A HISTORY OF COLLATERAL RIGHTS

The example of Antwerp (15th-16th century)

In 1596, the Antwerp printing shop of Christopher Plantin published the *Flandriae descriptio* by *Jacobus Marchantius*, Jacques Le Marchand[1]. This monograph is a history of the county of Flanders and also of other areas of the Southern Low Countries, in particular of the Duchy of Brabant. The author, a native of Furnes in Flanders, was jurist by training and historian in his pass-time[2]. Le Marchand describes the history, including the economic history of the mentioned regions, with an eye for legal details. In a few paragraphs it is explained, for example, that starting in the 1480s the commercial attractiveness of the city of Bruges dwindled and that groups of foreign merchants left the town and moved to the city of Antwerp[3]. This story is well known and was familiar to contemporaries as well. However, Le Marchand's statements on the causes of Bruges' demise are original. He attributed the emigration of Spanish merchants to the fact that the Antwerp legal regime regarding the priority of debts was much more beneficial than the rules that were applied in Bruges. In particular the status of the dowry mattered according to Le Marchand: he stressed that in Antwerp upon the insolvency of the husband the dowry had priority over all debts, even over older and express pledges and hypothecs. Since this *privilegium dotis* was absolute in Antwerp, merchants from Bruges were attracted by it, because the rule allowed them to shield their assets in the event of bankruptcy. If they construed their estate as their wife's

1 Le Marchand, Jacques, *Flandria commentariorum libres iiii descripta in quibus de Flandriae origine, commoditatibus, oppidinis, …*, Antwerp, Plantin, 1596.

2 Morery, Louis, *Le grand dictionnaire historique ou le mélange curieux de l'histoire sacrée et profane*, Amsterdam, Boom & Van Someren, 1694, vol. 3, p. 438.

3 *Flandria commentariorum libres iiii*, p. 127.

property, then at the event of persistent default their creditors would have no pledge for their debts and the debtors could remain in possession of their effects. Le Marchand qualified this as fraudulent behaviour, which it certainly was[4].

For the remainder of this story, the analysis of Le Marchand is less relevant–as will be seen it was correct only to some extent as well. More interesting is that at the end of the sixteenth century a legally educated author, having historical interests, considered one rule of the municipal law of Antwerp as having been a decisive factor in the rise of the city and that this norm related to collateral rights and the priority of debts at insolvency. According to the Antwerp municipal law of the early sixteenth century, not all debts were put on the same level. In cases of expropriation at which debts outweighed the available assets, debts were paid with proceeds coming from these assets, according to a legally imposed ranking[5]. Generally speaking, regulations on the order of payment of creditors may stipulate rules of distribution according to timing, on the basis of the origins of the debt or in terms of the nature of the document attesting to the debt (officially registered, notarial or private). A principle of both Roman (*prior tempore, potior iure*) and Germanic origins provided that creditors who claimed their debts first were given priority over those that did do so only later[6]. Over the course of the later Middle Ages, in priority rules the nature of the debt became more used as criterion. The high rank of the dowry is one example of this, but there were others, for example as regarding annuities, salaries and debts of alimony[7].

Le Marchand was right in valuing the importance of rules on collateral rights and priority of debts. This is not a common strand of thought in present-day economic and legal history. In accounts of the historical

4 *Flandria commentariorum libres iiii*, p. 127.

5 Antwerp City Archives (FelixArchief) (hereafter ACA), *Vierschaar* (hereafter V), 4 (2 June 1518). A critical edition of this bylaw is in De Ruysscher, Dave, "De ontwikkeling van het Antwerpse privaatrecht in de eerste helft van de zestiende eeuw. Uitgave van het *Gulden Boeck* (ca. 1510-ca. 1537), (ontwerpen van) ordonnanties (1496-ca. 1546), een rechtsboek (ca. 1541-ca. 1545) en proeven van hoofdstukken van de costuymen van 1548", *Handelingen van de Koninklijke Commissie voor de uitgave der Oude Wetten en Verordeningen van België* 54 (2013), p. 199-205.

6 For the Roman law, see Coing, Helmut, *Europäisches Privatrecht*, München, Beck, 1985, vol. 1.

7 Planitz, Hans, *Die Vermögensvollstreckung im deutschen mittelalterlichen Recht. Erster Band: Die Pfändung*, Leipzig, Wilhelm Engelmann, 1912, p. 291-304.

development of commercial law of the later Middle Ages and of the Early Modern period, legal historians have not often assessed the themes of collateral rights and priority of debts. Moreover, analysis in an integrated fashion, or from a comparative perspective, is absent. Whereas economic historians tend to consider the interactions between pledging, debt enforcement and insolvency proceedings[8], this is not the case for legal historians[9]. Legal-historical studies do not analyse the broader notion of collateral rights. With regard to security interests the focus has mostly been on conventional securities, say contractual pledges (pawns) and hypothecs. In spite of their contractual nature, they have been analysed mostly as legal institutes, as legal *Begriffe*[10]. Even when the municipal law was examined, this approach was predominant. Either Germanic principles were detected as being at the core of municipal rules, either such rules were conceived of as demonstrating high similarities with arrangements of Roman law (*pignus*)[11].

Foremost for the German territories legal historians have laid out procedures of *Pfandung* and others, which were started upon default[12]. The seizure, locking and expropriating of a debtor's effects were common proceedings that existed in all cities of late medieval and early modern Western Europe. Yet, as mentioned, the interferences with rules on priority of debts and the law of evidence have remained largely unexplored[13].

8 For example, Zuijderduijn, C. J., *Medieval Capital Markets. Markets for Renten, State Formation and Private Investment in Holland (1300-1550)*, Leiden, Brill, 2009, p. 111-137.

9 Legal scholars tend to emphasize the interconnectedness between the themes. See for example Dahan, Frédérique, *Research handbook on secured financing in commercial transactions*, Cheltenham, Edward Elgar, 2015, p. 25.

10 On this methodological approach, see Conte, Emanuele, "Droit médiéval: un débat historiographique italien", *Annales. Histoire, sciences sociales* 57 (2002), p. 1593-1613; Stolleis, Michael, *Rechtsgeschichte schreiben: Rekonstruktion, Erzählung, Fiktion?*, Basel, Schwabe, 2008, p. 22.

11 Both Wach and Planitz linked properties of late-medieval seizure and expropriation proceedings to Germanic concepts. Wach considered a Lombard approach of self-help as being at the origins of the *Arrestprozess* (executory expropriation proceedings). Planitz related the *Arrestprozess* to *Friedlosigkeit*. See Planitz, Hans, "Studien zur Geschichte des deutschen Arrestprozesses", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 34 (1913), 49-140, 39 (1918) 223-308 and 40 (1919) 87-198; Wach, Adolf, *Der Arrestprozess in seiner geschichtlichen Entwicklung. Band 1: Der italienische Arrestprozess*, Leipzig, 1888.

12 See, besides the above mentioned monographs and journal article, also Briegleb, Hans Karl, *Über executorische Urkunden und Executivprozess*, Stuttgart, Liesching, 1845, 2 vols.; Kisch, Guido, *Der Deutsche Arrestprozess in seiner geschichtlichen Entwicklung*, Vienna, Tempsky, 1914.

13 See for example, Planitz, *Die Vermögensvollstreckung*, 292-293, where links to rules of priority and evidence are mentioned only briefly.

The distinctions between procedure and substantive law, between enforcement on the one hand and the contents of contracts and the nature of debts on the other are prevalent among legal historians. They are related to the divide between Romanist and Germanist legal history. The former focuses on doctrine and the latter on local law and legal practice[14]. The mentioned distinctions were also quite typical for the academically trained lawyers that wrote about Roman and municipal law in the sixteenth, seventeenth and eighteenth centuries. Even though local law and academic doctrine were increasingly studied together throughout the Early Modern Period, attention was still mostly directed towards the legal institutions that were found within source texts of Roman law and which could be identified in texts of municipal law. Conventional pledges were therefore a common theme; insolvency and seizure proceedings, and also legal hypothecs and priorities were not, also because for these themes the municipal laws were considered to be more idiosyncratic[15]. It is telling that Le Marchand's claim about the Antwerp *privilegium dotis* was not considered important enough for legal writers of the seventeenth and eighteenth centuries to be mentioned[16].

The legal regimes relating to debts and collateral rights must be studied from a broad perspective in order to capture the dynamic interplay between rules. Moreover, temporal shifts can be understood fully only when adopting this larger view. The Southern Low Countries, and the Duchy of Brabant in particular, can be taken as example. In Brabant, the authentication of debts, which was done by means of aldermen's letters, was still in the fourteenth century considered a necessary condition to execute the debt on the effects of the debtor. Private agreements, even if they were written down, were not regarded as sufficient to expropriate a non-cooperating debtor[17]. Of course, a proceeding of execution could be

14 E.g. Brissaud, Jacques, *Le créancier "premier saisissant" dans l'ancien droit français*, Paris, Presses universitaires de France, 1972.

15 A standard monograph was Peck's *De iure sistendi* (1564), which details the doctrinal rules on seizure and expropriation proceedings with few references to local law. See Peckius, Petrus, *Tractatus de iure sistendi et manuum iniectione*, Leuven, Bogard, 1564. Another example is Pieter Bort's *Tractaet van d'arresten* (1681), which refers to municipal law and procedural statutes and judgments of high courts, but which still relies heavily on doctrine. See Bort, Pieter, *Tractaet van d'arresten* in Bort, Pieter, *Alle de wercken…*, Leiden, Haaringh, 1702.

16 References can be found in Zoes, Hendrik, *Commentarius ad institutionum iuris civilis libros iv*, Leuven, Nempaeus, 1643, p. 676.

17 Debtors were invited to "assign a pledge". If they refused, formal execution proceedings had to be started by the creditor. See for an example of this, Strubbe, Egied, "Het

started, and authorisation by the city's administrators could be obtained upon the default, thus substituting the authentication of the debt[18]. But this was a lengthy process. Even for the enforcement of officialised debts, proceedings of expropriation were time-consuming, particularly when immovable properties had to be sold publicly[19]. This had to do with the so-called "*recht van naesting*", which were rights of pre-emption that were granted to relatives of the debtor. They were imposed in order to avoid that properties, and in particular immovable property, would migrate too easily from one family to another one[20].

Taking a broad view also invites for an assessment of the law of evidence. In Antwerp, aldermen's letters were thought of as sufficient evidence of the debts that were written down in them, whereas this was not the case for private contracts or other instruments such as acknowledgments of debt. For the most part of the fifteenth century, this rule applied, and it also concerned debts that were made at the city's fairs. There were two Brabantine fairs, held at Antwerp and Bergen-op-Zoom, during short periods of the year. These fairs were privileged, in the sense that merchants visiting the fairs were granted protection by the Duke of Brabant against apprehension or arrest of their belongings. But this did not mean that the debts of visitors of the fairs were considered as having higher legal validity than other debts. The law of evidence was closely linked to the law regarding the priority of debts. Private debts were put on the same level, which was after officialised debts that were inserted into aldermen's letters[21].

All this resulted in the strange effect that mercantile debt was foremost enforced by way of imprisonment. In fact, it was easier to have a

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veertiende-eeuwsche oude rechtsboek van Vilvoorde", *Handelingen van de Koninklijke Commissie voor de uitgave der Oude Wetten en Verordeningen van België* 15 (1936) p. 80. On the proceeding of "*thoonpand*", see Godding, Philippe, *Le droit privé dans les Pays-Bas méridionaux du 12e au 18e siècle*, Brussels, Royal Academy, 1987, p. 515 (no. 870). For Antwerp, all this is evident in some sections of the *Keurboeck*, which is a compilation of municipal rules that had been extended from around 1390 onwards. These sections stipulate exceptions for hostellers to the general rule that the sequestering and dispossession of assets was not executed without a deed, if there was no cooperation of the debtor. See *Coutumes du pays et duché de Brabant : Quartier d'Anvers. Coutumes de la ville d'Anvers*, De Longé, Guillaume (ed.), vol. 1, Brussels, Gobbaerts, 1870, p. 20 (s. 53/3). See also p. 46 (s. 125).

18 *Coutumes du pays et duché de Brabant*, vol. 1, Brussels, Gobbaerts, 1870, p. 164-168 (s. 5-10).

19 ACA, V, 4 (14 May 1530). See also De Ruysscher, "De historische ontwikkeling", p. 214.

20 Godding, *Le droit privé*, 243-247.

21 ACA, *Privilegiekamer* (hereafter PK), 914, fol. 69r (24 November 1515).

debtor incarcerated than to have his merchandise locked or sold publicly; the bars to evidence default for imprisoning a defaulter were lower[22]. Imprisonment served to pressure the debtor to pay his debts. Moreover, the debtor could retrieve his freedom by transferring his estate to his creditors. This proceeding, which was called "abandonment", entailed that the prisoner appeared before the town's magistracy, that he bowed before the aldermen and showed the tail of his coat[23]. This was regarded upon as a defamatory ritual, which was aimed to prevent that debtors would go bankrupt too easily. It seems that in the fifteenth century such an "abandonment" meant that the applicant temporarily lost his rights of citizenship, which were required to be member of corporations for example. The rise in importance of imprisonment also had to do with changes in the economic constellation of the city. It is likely that in the first decades of the 1400s, the rigid Antwerp rules on evidence and priority of debts were circumvented to a large extent by drawing on the cooperation of hostellers and–to a lesser extent–money changers. Hostellers often brokered deals and operated on behalf of their clients[24]. Storage and depositing could be combined. It is most probable that hostellers often stood surety for their guests' debts or that the properties of the latter were presented as collateral[25]. Money changers were active in large numbers in the first decades of the 1400s, and some of them maybe engaged as agent and cashier for their customers[26]. The growing numbers of foreign merchants at the Antwerp fairs, the presence of more and more business agents in Antwerp, and the concentration of so-called nations of foreign entrepreneurs in residential compounds in the city all may explain why hostellers became gradually less important from

22 It seems that the aldermen of Antwerp did not restrict apprehensions and imprisonments of merchants too much. There are no traces of preliminary authorisation.

23 Van der Tannerijen, Willem, *Boec van der loopender practijken der raidtcameren van Brabant*, Strubbe, Egied (ed.), Brussels, CAD, 1952, vol. 2, 262-263.

24 See "Oudt Register metten Berderen", *Antwerpsch Archievenblad*, 1st series, 29 (s.d.), 203-207, at 204 (27 January 1438 ns). See also Dilis, Emiel, *Les courtiers anversois sous l'ancien régime*, Antwerp, Van Hille-De Backer, 1910, p. 16-22 and p. 124-128.

25 "Oudt Register metten Berderen", *Antwerpsch Archievenblad*, 1st series, 29 (s.d.), p. 62 (23 March 1436 ns). In this aldermen's letter, a hosteller was appointed as surety for the debt. There is no trace of a general rule, but it can be assumed that many hostellers offered this service.

26 Aerts, Erik, "The absence of public exchange banks in medieval and early modern Flanders and Brabant (1400-1800): a historical anomaly to be explained", *Financial History Review* 18 (2011), p. 94-98.

around mid-century. It is clear from the ledgers of aldermen's letters from around 1460 that over the course of the subsequent years more and more of these registered documents related to mercantile debts that had been negotiated at the fairs. Equally clear is the generalisation of a clause of collateral, allowing for rights on assets and the debtor himself ("*obligat se et sua*"), in these aldermen's letters[27].

In the 1460s and 1470s direct access, upon default, to the debtor's assets was not considered possible, even if the registered debt contained a clause of collateral. The proceeding of execution had to be started, even if the debt had been written into an aldermen's letter. This meant that the public sale of the assets could last and generally the waiting period of one year was applied in order to warrant the rights of pre-emption of relatives. Moreover, seizure of assets had to authorised by the aldermen; the official nature of the debt did not procure rights of direct sequestration. This was still the case in the 1470s.

In the 1480s and 1490s this changed. The reasons for this were threefold. First there was the extension of competence by one officer of the Duke, the *amman*. Second, the emergence of a secondary market of bills obligatory. Third, circumstances of war. The first reason was the incremental extension of powers of the *amman*. As from the 1460s onwards, the *amman*–who was one of the representatives of the duke of Brabant in Antwerp–was considered the only official competent for seizures in Antwerp[28]. The revenue coming from organising attachments and public sales most probably provided an incentive for officers to widen

27 Near the end of the 1460s, nearly all aldermen's letters for mercantile debts contained the clause "*obligat se et sua*". This clause stipulated that all assets and also the person of the debtor could be seized in case of default. See ACA, *Schepenregisters* (hereinafter SR), 69 (1465-66, containing at least six letters without collateral, both in and outside the privileged period surrounding the fairs: fol. 44v (5 August 1465), fol. 46v (17 August 1465), fol. 83r (17 October 1465), fol. 182r (3 January 1466 ns), fol. 192v (12 October 1465) and fol. 193v. (10 November 1465). In the ledger of 1469-1470, no such letters could be found and all mercantile letters had the clause "*obligat se et sua*". See ACA, SR, 76, fol. 26v (6 June 1469), fol. 28r (8 June 1469), fol. 34v (23 June 1469), fol. 129r (28 March 1470 ns), fol. 323r (11 March 1470 ns) and fol. 367r (13 February 1470 ns).

28 ACA, V, 1231, fol. 220r-v (21 May 1493, the assets were kept with the amman). The delegation of this matter to one officer was due to the rising numbers of attachments. In the 1460s, the amman and two aldermen monitored the exceptional seizure of assets. See ACA, SR, 69, fol. 520r (29 November 1465). Before that time, at least until the early 1440s, liquidations and the distribution of proceeds from public sales did not involve the amman. See, for example, "Het 2de Oudt Register", *Antwerpsch Archievenblad*, vol. 30 (s.d.) p. 31-32 (13 January 1442 ns).

the scope of their competences. In the 1480s seizure proceedings were no longer exceptional.

The second cause concerned the frequent use of bills obligatory. It seems that the clause that was added to acknowledgments of debt that were registered by the Antwerp aldermen evolved from a conventional provision to an assumed provision; even when the contract or document did not provide it, it was thought that the clause of collateral applied. Furthermore, this came to be applied to private agreements and documents as well. In the 1490s and 1500s, the clause of collateral was already used in IOUs (acknowledgments of debt) that were written in Antwerp. In the 1490s, it was already considered fixed law that a bill obligatory containing a bearer clause was transferable[29]. The document could pass from one creditor to the next, the latter deduced powers of attorney from the bearer clause and the debtor could not refuse payment to the bearer. The negotiability of the instrument grew out of this practice of circulation; in 1507 it was decided that passing on an IOU containing a bearer clause was an "assignment", *assignatie*, which entailed recourse liability (the holder of the paper could claim the debt not only from the debtor, but also from the one who had given him the document if the debtor defaulted or refused to pay)[30]. Moreover, the clause of collateral could be general; in 1507 the aldermen of Antwerp certified that such a clause affected immovable property of the debtor, even if it had not been identified in detail in the clause[31].

But before this happened, another crucial step towards collateralisation and easy seizure proceedings had been taken; debts were framed as pertaining to a "crime", which meant that the municipal officials could more easily interfere with the ownership rights of defaulters. When the default was defined as criminal, then the collateral clause in an aldermen's letter sufficed for sequestering and freezing assets of the debtor. Remember that this locking had not been possible before, except after a lengthy proceeding. The circumstances of war in the 1480s provided ample opportunities in this respect. Attachments were explained as a measure of reprisal, for example, against merchants of the *nations* that

29 Van der Tannerijen, *Boec van der loopender practijken der raidtcameren van Brabant*, vol. 1, p. 59-60.

30 ACA, V, 68, fol. 13r (7 June 1507).

31 ACA, V, 68, fol. 23v (1 December 1507).

had supported the Flemish rebellion against the Burgundian house[32]. Gradually the limits were expanded and the protections provided during the fair were weakened. Merchandise that had been stolen but was relocated could be attached, even if no deed of the aldermen was presented[33]. The Antwerp court records, which exist for the late 1480s and early 1490s, are teeming with cases in which debts were enforced on the basis of arguments of crime.

The above-mentioned incremental extension of implied collateral rights was never formally announced or enacted in a legal text. The result of the mentioned developments was that debts, even when they were informal and private, could be the basis for seizure proceedings. In 1493, attachments were laid in Antwerp without submittal of a deed for the first time, and without framing the default as criminal[34]; in other words, default *per se* and even for informal debts, had become a sufficient ground for the locking of assets[35]. This was a regime of general collateral, of common pledge: it was thought that for all defaulted debts seizure proceedings were allowed. Any debtor was considered to pledge all his assets for the payment of his dues. Another consequence of this was that seizure proceedings became the main method of enforcing debts. Imprisonments dwindled, because they were indirect tools of securing the assets of a debtor (who was *de facto* forced to abandon his estate). The regime of general collateral was thus a consequence of exceptional circumstances, of mercantile innovations (the negotiability

32 ACA, V, 1231, fol. 9r (23 December 1488), fol. 41r-v (20 October 1489). For another example of a seizure of merchandise in Antwerp as a measure of reprisal, see Slootmans, C.J.F., *Paas- en Koudemarkten te Bergen op Zoom 1365-1565*, Tilburg, Stichting Zuidelijk historisch contact, 1985, vol. 1, 50 (April-May 1480).

33 ACA, V, 1231, fol. 7r-v (9 December 1488), fol. 19r (9 April 1490 ns).

34 ACA, V, 1231, fol. 212r (22 March 1493 ns, in this judgment of the municipal court the attachment is grounded with the general phrase "because of certain actions", whereas before explicit mention was made of the deeds justifying sequestering the assets), and fol. 220r-v (21 May 1493; this is the first judgment in which attachment was laid without mention of justification).

35 At first, the Council of Brabant strictly interpreted the "freedom of the market". In two verdicts, of 1489 and 1494, it blocked framing seizure as a measure to prevent criminal behaviour. In the second case, a Spanish merchant had apprehended a Dutch debtor and underpinned his action with the argument that the debtor was "fugitive" since he had hopped from fair to fair in order to profit from the freedom of the market. See Slootmans, *Paas- en koudemarkten*, vol. 1, 76. In the 1489 lawsuit, a Venetian merchant threatened to seize a ship and cargo. In both cases, the creditors' actions were dismissed as going against the 'freedom of the fair'. See Slootmans, *Paas- en koudemarkten*, vol. 1, 75-80.

of IOUs), but also of strife between the ducal official and the aldermen (who handed out the aldermen's letters and oversaw court proceedings, and who considered that this was their monopoly). This analysis yields arguments against views that consider mercantile innovation as the sole catalyst of legal change[36], or against theses that municipal administrators captured optimal solutions when being confronted with the demands of merchants[37].

The latter is very clear in the hesitation and confusion regarding the priority of debts. In the first years of the 1500s, arguments concerning general collateral were raised before the Antwerp aldermen-judges. Some litigants claimed that explicit collateral had to be provided in the contract in order to establish rights over assets when the debt became due[38]. Others argued that seizure proceedings were not possible; the locking of assets could according to some be imposed only after the delay of one year. But these were old rules. As was the case in many sixteenth-century towns, debates in court were about conflicting rules, of older municipal law and contemporary legal doctrine. The growing infiltration of academic law had an important part in discussions over whether clauses of collateral in private documents, in particular in IOUs, had the effect of creating priorities. The magistracy of Antwerp was hesitant; but after a while the mounting influence of academic law facilitated the distinction between personal and real claims as well. In 1507, it had been decided that the general clause of collateral brought about real-right effects, which made the creditor of an IOU containing the clause a competitor of the creditor with a hypothec. In 1562, however, the Antwerp aldermen stated in detail that the claim of the creditor of an IOU was only a personal one, which did not affect the property of the debtor, and that hypothecs had priority[39]. This came after a period of several decades of uncertainty. In June 1518, a municipal

36 Piergiovanni, Vito, "Courts and Commercial Law at the Beginning of the Modern Age" in Piergiovanni, Vito (ed.), *The Courts and the Development of Commercial Law*, Berlin, Duncker & Humblot, 1987, p. 19-21; Piergiovanni, Vito, "Derecho mercantil y tradición romanistica entre medievo y edad moderna. Ejemplos y consideraciones" in Petit, Carlos (ed.), *Del ius mercatorum al derecho mercantil*, Madrid, Marcial Pons, 1997, p. 89-90.

37 Gelderblom, Oscar, *Cities of Commerce. The Institutional Foundations of International Trade in the Low Countries, 1250-1650*, Princeton, Princeton University Press, 2013.

38 ACA, V, 68, fol. 23v (1 December 1507).

39 ACA, V, 69, fol. 167 r-v (21 August 1562).

bylaw listing the priority of debts had been issued[40]. It provided that hypothecs preceded over private debts, but it was unclear what was the position of IOUs containing a clause of collateral. Could collateralised IOUs be considered a hypothec? The confusion lasted. In the early 1520s, the rule as established in 1507 was inserted into a compilation of rules applying in Antwerp, which was called the Golden Book. One manuscript, dating from the early 1530s, does not mention this rule[41]. But it reappeared in another manuscript dating from the early 1540s[42]. Another example of doubts concerned the dowry. In the 1510s, it was to be paid after the debts of lease and salaries, but it had priority over conventional hypothecs. But around 1523 the rule changed; absolute priority of the dowry was imposed[43], the rule to which Le Marchand referred. This was the complete opposite of what had been provided in 1495: back then the rule was that the widow could only claim her dowry after all creditors had been paid[44].

One of the reasons of the lasting problems was that the aldermen competed with notaries and merchants over the authority of documents. At the end of the fifteenth century, several apostolic notaries were working in Antwerp and foreign merchants made use of their services[45]. The legal validity and evidential value of notarial deeds became a legal issue. In 1515, the aldermen issued a bylaw that defined notarial deeds as having full evidential value, as a *"probatio plena"*, but only if they concerned ecclesiastical matters (marriage contracts, wills); otherwise they had to be confirmed with an oath[46]. But in the course of the 1520s and 1530s, this was not applied anymore; in the Antwerp court notarial deeds were considered sufficient evidence of debts, and this was also the case for private documents.

Around mid-century, certainty was achieved. The priority of debts was settled; hypothecs preceded over private debt, the dowry came after

40 See footnote 5.

41 De Ruysscher, "De ontwikkeling", 132-133.

42 De Ruysscher, "De ontwikkeling", 293.

43 ACA, V, 68, fol. 45v (between March 1523 and January 1526), fol. 63r (2 June 1526), and fol. 83v (22 July 1529).

44 ACA, V, 68, fol. 5v (24 March 1495 ns).

45 M. Oosterbosch, *Het openbare notariaat in Antwerpen tijdens de late middeleeuwen (1314-1531), Een institutionele en prosopografische studie in Europees perspectief*, unpublished PhD-dissertation KU Leuven, 1992.

46 ACA, PK, 914, fol. 69r (24 November 1515).

debts of lease but before wages; private documents had full evidential value, as was the case for notarial deeds, but they did not encompass real rights, which made that they were paid after hypothecs[47]. Since all hypothecs had to registered with the aldermen, the latter preserved their earlier competences, but only with regard to immovable collateral.

The Antwerp case demonstrates that rules of commercial law were crafted in response to diverse and connected phenomena. Lawmakers took into account the needs and demands of merchants, but also strife among groups of professionals and city leaders was responsible for legal change. The legal regime concerning collateral rights proved a challenge for the Antwerp administrators. Le Marchand was right in saying that in Antwerp the dowry was at one point considered a superpriority, but this was only during the period 1523-1530. Yet, in spite of this, Le Marchand's analysis as pointing to collateral rights as crucial features of municipal legal constellations can be taken on as an invitation to analyse collateral rights and priority of debts as a fundamental part of the political economy of late-medieval and early modern cities of trade. For that purpose, the perspective must be broad, with an eye on the interactions between different arrangements and proceedings.

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47 *Coutumes*, vol. 1, p. 172 (s. 14-15).