Ius commune on the Periphery?
A Study of Peasants' Wills in Poland in the XV–XVII centuries[1])

Summary: The article is devoted to an analysis of the corpus of wills of peasants living in the Kingdom of Poland at the turn of the Middle Ages and the early modern era. This was inspired and based on a recent source edition compiled by Janusz Łosowski. The most important institutions of the peasant will, its normative context and the possible influence of the ius commune are analyzed.

Key Words: last wills, peasants, *ius commune*, testamentary freedom, judicial records.

1. Introduction:

The issue of law of wills in rural parts of the Kingdom of Poland has already become the subject of careful study[2]). This may not come as a surprise if one considers that, according to the findings of historiography, peasants probably accounted for just over 70% of the population living on lands of the Kingdom of Poland[3]). The question of what the testamentary legal practice of such a large group of people looked like therefore remains a matter of considerable interest. At the same time, it must be stressed that the available source base of published, printed, peasant wills in Poland has expanded considerably since previous studies of peasant testamentary law. These wills have not survived as separate documents, but rather in entries in the court records of the office to which the testator declared the content of his last will. The vast majority of them were written in the Old Polish language, although dispositions in Latin and German also appear. This study is an attempt to describe the basic institutions and dispositions used in peasant wills and to place them in the *ius commune* conceptual grid. The considerations in the following article are based on a corpus of

[1]) The text of this study was written within the framework of the Central Europe Leuven Strategic Alliance research project "Ius commune and local testamentary succession laws in the periphery of the European academic tradition. A comparative analysis of the Polish-Lithuanian Commonwealth and the Low Countries" which was funded by the Catholic University of Leuven and the Jagiellonian University in Cracow. The proofreading was funded by the Priority Research Area Heritage under the Excellence Initiative – Research University program at the Jagiellonian University in Cracow.

[2]) The literature on the Polish law of wills in the early modern period is extremely abundant, which is very much in contrast with the law of rural wills. Here the following can be enumerated in particular: J. Dicker, Testament w polskiem prawie wiejskiem, Szkic prawno-obyczajowy, in: Pamiętnik trzydziestolecia pracy naukowej prof. dr. Przemysława Dąbkowskiego, Lwów 1927; J. Rafacz, Włościańskie prawo spadkowe w Polsce nowożytnej, Warszawa 1929; K. Dobrowolski, Włościańskie rozporządzenie ostatniej woli na Podhalu w XVII i XVIII w., in: Studja i materjały, Kraków 1933; A. Walawender, Zwyczaje i udziały spadkowe chłopów we wsi Kargowa, powiatu kościańskiego, w Wielkopolsce w pierwszej połowie XVII w., in: Etnografia Polska 2 (1959); R. Łaszewski, Wiejskie prawo spadkowe w województwie chełmińskim w okresie oligarchii magnackiej, in: Czasopismo Prawno-Historyczne 28 no. 2 (1976); J. Łosowski, Dokumentacja w życiu chłopów w okresie staropolskim, Studium z dziejów kultury, Lublin 2013, 231–244, 259–262, 324–327.

[3]) C. Kukło, Demografia Rzeczypospolitej przedrozbiorowej, Warszawa 2009, 220–21.

161 published peasants' wills dating from the 15th to the 17th century and from various areas of the Kingdom of Poland. Due to the state of preservation of rural court records, the majority of wills come from the historical territories of Lesser Poland (Małopolska) and Red Ruthenia (Ruś Czerwona). The source corpus consists both of wills documented in rural court records published to date[4]), and those published individually in scientific articles[5]). The most significant element of the researched source corpus, however, is the extensive collection of peasant wills published by the historian Janusz Łosowski of the Marie Curie-Skłodowska University in Lublin[6]). Łosowski's collection – the fruit of an impressive archival search – is also important in that it provides a completely new source base and fresh inspiration for renewed research devoted to the subject of testamentary law among the peasantry[7]). This article is intended as a pilot study on the content and form of peasant wills in Poland in the early modern period, based on this extended source base. It does not pretend to give definitive answers, which is usually impossible in the current state of research anyway, but rather tries to outline the general picture and the main features of peasants' wills as they appear from a careful legal-historical reading. From my own perspec-

[4]) B. Ulanowski (ed.), Księgi sądowe wiejskie, tom 1 Kraków 1921; H. Polaczkówna (ed.), Najstarsza księga sądowa wsi Trześniowa 1419–1609, Lwów 1923; A. Vetulani (ed.), Księga sądowa Uszwi dla wsi Zawady 1619–1788, Wrocław 1957; idem (ed.), Księga ławnicza wsi Kargowej w powiecie kościańskim 1617–1837, Warszawa 1960; idem (ed.), Księgi sądowe wiejskie klucza łąckiego, I: 1526–1739, Wrocław 1962; L. Łysiak (ed.), Księga sądowa kresu klimkowskiego 1600–1762, Wrocław 1965; S. Płaza (ed.), Księga sądowa wsi Iwkowskiej 1581–1809, Wrocław 1969; L. Łysiak (ed.) Księga sądowa wsi Wary 1449–1623, Wrocław 1971.

[5]) U. Sowina, Testament pewnego kmiecia, Przyczynek do badań nad relacjami międzystanowymi w późnym średniowieczu i wczesnej nowożytności, in: C. Buśko (ed.), Civitas et villa, Miasto i wieś w średniowiecznej Europie środkowej, Wrocław 2002; W. Kowalski, Testamenty szewińskich chłopów z połowy XVII stulecia, in: W kręgu historii, gospodarki i kultury, Studia dedykowane profesorowi Jerzemu Piwkowi w siedemdziesiątą rocznicę urodzin, Ostrowiec Świętokrzyski 2004; M. Lubczyński/J. Pielas/H. Suchojad (eds.), Cui contingit nasci, restat mori, Wybór testamentów staropolskich z województwa sandomierskiego, Warszawa 2005.

[6]) Testamenty chłopów polskich od drugiej połowy XVI do XVIII wieku, ed. J. Łosowski, Lublin 2015; cfr. also its review by K. Fokt, Pomnikowa edycja nowożytnych chłopskich rozrządzeń ostatniej woli in: Krakowskie Studia z Historii Państwa i Prawa 9 no. 1 (2016) 123–126.

[7]) In recent times, rural testamentary law has not received significant attention from historians and legal historians in contrast to, for example, urban testamentary law. By way of example only, works such as the following can be mentioned here: K. Justyniarska-Chojak, Rodzina mieszczańska z województwa sandomierskiego w świetle siedemnastowiecznych zapisów testamentowych, in: U. Oettingen/J. Szczepański (eds.), Między Wisłą a Pilicą, Studia i materiały historyczne, tom 8, Kielce 2007; A. Bartoszewicz, Testament jako źródło do badań nad piśmiennością mieszczańską w późnym średniowieczu, in: Kwartalnik Historii Kultury Materialnej 59 no. 3–4 (2011); A. Głowacka-Penczyńska, Testamenty mieszkańców małych miast wielkopolskich z XVII wieku, in: Kwartalnik Historii Kultury Materialnej 59 no. 2 (2011); J. Wysmułek, Testamenty mieszczan krakowskich (XIV–XV wiek), Warszawa 2015; N. Biłous, Zapisy mieszczan wołyńskich na rzecz dobroczynności i świątyń różnych wyznań według testamentów z XVII wieku, in: Kwartalnik Historii Kultury Materialnej 68 no. 2 (2020).

tive, I would contend that Łosowski's impressive edition (nt. 6) has not yet received due attention from legal historians[8]).

2. Normative context:

Before proceeding to present the peasant will in Poland on the basis of an analysis of the sources, it is worth devoting a few words to outlining the normative context. In other words, it is necessary to ask what order of private law governed peasants deciding to make a will. The answer to this question is of fundamental importance, but poses enormous difficulties. This is because, despite the emergence of a separate peasant social class in Poland, there was never any formation of a nationally or even regionally uniform rural judicial law. In villages founded under Magdeburg Law ruled formally the Sachsenspiegel and the Magdeburg Weichbild, as also in towns[9]). In practice, however, German law remained completely unknown in the villages and was virtually never applied in court practice[10]): applications went directly to the Magdeburg municipal court in Germany. Deficiencies in the knowledge and application of German law in Poland were to be remedied in 1356 when King Casimir established, as a final Polish instance in municipal cases, the 'Iudicium iuris supremi teuthonici Magdeburgensis in arce Cracoviensi' (Higher Court of German Magdeburg Law at the Royal Castle)[11]). This court was to serve appeals and also to issue instructive judicial decisions: Polish 'ortyle' from German 'Urteile'. Therefore, its role was to limit the previous custom of appealing before the Magdeburg municipal court. Meanwhile, research by Jagiellonian University's eminent legal historian Stanisław Kutrzeba has shown that, even during the period of the Kraków court's most prolific activity, the extent of its influence on rural courts was limited to the immediate vicinity of Kraków itself[12]).

From the beginning of the 16th century, private villages, whether owned by the nobility or the clergy, enjoyed judicial immunity from public courts, which meant that the owner of the village exercised judicial power over its inhabitants[13]). This power was accompanied by the legislative powers of the village owner through the

[8]) Interest in this corpus of peasant wills has already been demonstrated by, for example, linguists studying the language of the rural population, cf. M. Rak, Niepiłe ręce i inne przykłady ludowego słownictwa prawniczego (na materiale chłopskich rozporządzeń ostatniej woli), in: R. Przybylska/M. Rak/A. Kaśnicka-Janowicz (eds.), Historia języka, dialektologia i onomastyka w nowych kontekstach interpretacyjnych, Kraków 2018.

[9]) Magdeburg law did not, moreover, *expressis verbis* allow for testamentary succession. The regulation of testamentary succession was only taken into account in the Romanising gloss to the provision of the Weichbild regulating so-called painbed donations, cf. M. Mikuła, Tradycje prawne w regulacjach testamentowych w miastach Królestwa Polskiego XIV–XVI wieku: prawo sasko-magdeburskie, prawo kanoniczne i rzymskie oraz prawodawstwo lokalne, in: Kwartalnik Historii Kultury Materialnej 68 no. 2 (2020) 137–41.

[10]) L. Łysiak, Prawo i zwyczaj w praktyce małopolskich sądów wiejskich XV–XVIII wieku, in: Czasopismo Prawno-Historyczne 34 no. 2 (1982) 4–8.

[11]) M. Obladen, Magdeburger Recht auf der Burg Krakau: Die güterrechtliche Absicherung der Ehefrau in der Spruchpraxis des Krakauer Oberhofs, Berlin 2005.

[12]) S. Kutrzeba, Zasięg ortylowy sądu najwyższego prawa niemieckiego na zamku krakowskim, in: Collectanea Theologica 17 no. 1–2 (1936) 21–23.

[13]) J. Bardach/B. Leśnodorski/M. Pietrzak, Historia ustroju i prawa polskiego, Warszawa 2009, 228.

so-called dominion laws, i.e. binding legal acts issued for a given village. It must be emphasised that such dominion laws did not, as a rule, interfere with the provincial and stately private law. They were far more often limited to administrative relations between the village community and the manor, and in particular concerned the feudal obligations of the peasants towards the manor. It is evident from the surviving dominion laws that they interfered only quite exceptionally with the content of local inheritance law, and, if they did, this was usually in the broad interest of the manor. Thus, some of the dominion laws imposed the public form of the will (i.e. before the village clerk) to be compulsory[14]). Another example is the restriction of the freedom of testament for mayors or village heads by introducing the non-divisibility of their inheritance: the aim in this case was to limit the number of village officials, in case each of the heirs of a mayor or village head claimed the office in question[15]). Finally, dominion laws sometimes imposed the non-divestiture of smaller agricultural fields through testamentary succession[16]). In all the cases mentioned above, the dominion laws were rather interventionist in nature, and their aim was not to comprehensively regulate the rules of rural testamentary succession, but to ensure stable legal turnover of rural land and rational rules of manorial management[17]). This, after all, guaranteed to the court the achievement of specific profits from agricultural production. On the scale of the Kingdom of Poland, the legal situation of the Chełmno land regulated primarily in Kulmer Handfeste was exceptional[18]). There, the written law of Chełmno county, in the version of the Neustadt revision (rewizja nowomiejska) of 1580, was universally applicable, including in the villages and elsewhere.

As can be seen, a relatively wide autonomy was left to the peasants in the field of private law, i.e. legal acts performed by peasants according to local custom were usually accepted by the village owner himself as effective. It must therefore be assumed that, in the absence of state and dominion private law norms, villages were governed by local customary law[19]). Customary law, on the other hand, by its very nature remains fluid and underdetermined as the current legal practice of a given community. For the sake of completeness, let us note that no inventory of peasant customary law in Poland has survived. No wonder: who would compile one? The peasants themselves, being mostly illiterate, were not able to cope with such a challenge. Besides, there was no need to write down the customary law since the information on the sub-

[14]) S. Kuraś, Ordynacje i ustawy wiejskie z archiwów metropolitalnego i kapitulnego w Krakowie, 1451–1689, Kraków 1960, 67.
[15]) *Ibid.* 44–45.
[16]) *Ibid.* 78, 93.
[17]) There seems to be one isolated case where a dominion law was passed in the interests of the testator himself, in the decision of the Kraków bill of 1549 on the prices and inheritance of peasant houses, in which the customary local rule of inheritance by the youngest son was broken, ensuring that the testator should be free to testate, Kuraś i*bid.* 22.
[18]) Łaszewski (n. 2) 38.
[19]) Józef Rafacz's quite isolated view on rural inheritance law in the Kingdom of Poland (nt. 2) 6–8 cannot be followed. He considered dominion laws the most important source, followed by German law, state laws, and – finally – the jurisprudence of rural courts. This view is based on a purely dogmatic assumption of the superiority of statute law over customary law, which Rafacz does not mention at all in his typology of sources of law.

ject was a tradition handed down from generation to generation. The village owners, on the other hand, did not interfere with and were not interested in local private law orders, thus implying far-reaching legal particularism.

In view of this, it has to be acknowledged that – apart from the Chełmno region – we do not have any normative sources in the field of rural testamentary law. With regard to the issue at hand, this means primarily two things. Firstly, peasants' wills as source texts on legal practice are of crucial importance for any attempt to reconstruct the order of rural testamentary law in Poland in general[20]). Secondly, the reading and analysis of peasant wills unfortunately remains suspended in a certain normative vacuum, and their content cannot be confronted and compared with an objective point of reference in the legal basis. This, in turn, prompts one to be far more cautious when making general theses and drawing general conclusions.

3. Main features and dispositions of peasant wills:

The content of peasant wills can be analysed from a number of interesting angles. They constitute declarations of the last will of generally illiterate people. As such, they are an invaluable source for learning about peasant life as seen through the eyes of the peasant himself, summing up his course on his deathbed. After all, the will as a literary genre is not limited to indicating the testator's legal successors. It also contains religious elements, evoking specific images of God and the afterlife, and testimony to the testator's personal piety. Between the lines of these wills, practical information can be found on the family model, the position of women in the household, the relationship between spouses, and moral views addressed by parents towards their children[21]). Furthermore, on the basis of peasant wills, attempts can be made to estimate the level of wealth of peasant holdings in a given area. Meanwhile, the present consideration of peasant wills is limited purely to the legal aspects. Therefore, elements belonging rather to economic history, social history, or spiritual history, which should be separately triangulated, are deliberately omitted.

The fact that the peasant testator remained an illiterate person entails another special feature. His oral declaration was edited in writing by someone else. It is quite clear that the person of the scribe had an enormous influence on the specific shape of the will, the choice of words, and whole concepts, as well as the technical terms that made up the repeatedly reproduced form[22]). Nonetheless, my reading was guided by the methodological assumption proposed by the Utrecht University historian Anna Adamska, according to whom a will is an authentic testimony of the testator's in-

[20]) The same view has already been proposed by Dobrowolski (nt. 2) 8–10 who added to the wills themselves the decisions of village courts in succession cases as essential sources of knowledge of peasant testamentary law.

[21]) K. Justyniarska-Chojak, Najlepszemu i najściślejszemu przyjacielowi – więzi małżeńskie w testamentach mieszczańskich z terenu Małopolski w XVII wieku, in: B. Popiołek/A. Chłosta-Sikorska/M. Gadocha (eds.), Kobieta i mężczyzna, Jedna przestrzeń – dwa światy, Warszawa 2015; B. Popiołek, Woli mojej ostatniej testament ten …, Testamenty staropolskie jako źródło do historii mentalności XVII i XVIII wieku, Kraków 2009.

[22]) On the potential relationship of the rural will form to the urban form see P. Madejski, Dokument chłopski w świetle oblat w księgach sądowych wiejskich okresu staropolskiego, in: Pamiętnik I Ogólnopolskiego Zjazdu Studentów Archiwistyki, Toruń 1998, 64, 68–69.

tent, and the editor was merely 'a technician who was able to express the testator's intentions by means of a conventionalized text, and was not supposed to influence its provisions'[23]). The final approval of the text of the will was usually confirmed by the testator, after the written content had been read to him or her, by his or her own cross signature[24]). Incidentally, it is worth noting that, in the reality of the rural environment, the person writing the will was only rarely a professional: only exceptionally was it possible to engage a scribe from a neighbouring town[25]). Usually, after an *ad hoc* search for someone who knew how to write and draft a will[26]), and in the absence of a professional court clerk, the role of the notary was often performed by a local parish priest[27]) or ecclesiastical servant – especially in villages with church property – or court officials and, later also village teachers. The name of the person drawing up the will was not essential for it to be effective[28]). Therefore, the village scribe usually remained anonymous, without mentioning his or her name in the body of the will – as opposed to the names of the witnesses or jurors present when the will was drawn up. Nor was there any obstacle to the will being written by a person related to the testator. Cases of the writer revealing himself are highly exceptional[29]).

Undoubtedly, the most significant disposition for a Roman canonical will was the establishment of an heir as universal successor to the testator. The heir was intended not only to take over all the testator's goods of succession, but also to assume the testator's debts and claims. First of all, it should be noted that the establishment of an heir in this way is virtually absent from Polish peasant wills. These wills are in fact more or less extensive collections of legacies, with additional dispositions of an ancillary nature. In essence, therefore, we are dealing with a Germanic type of will, which is a collection of individual legatees in the absence of any indication of a general successor to the testator[30]). Such a solution is not surprising insofar as the very concept of universal succession remains highly abstract even today for those without specialised legal training. Meanwhile, the Germanic type of will allowed the

[23]) A. Adamska, Stąd do wieczności, Testament w perspektywie piśmienności pragmatycznej na przełomie średniowiecza i epoki nowożytnej, in: Kwartalnik Historii Kultury Materialnej 61 (2013) 195. This assumption is also shared by other experts on the subject: Łosowski, Dokumentacja (nt. 2) 259; T. Wiślicz, Zarobić na duszne zbawienie. Religijność chłopów małopolskich od połowy XVI do końca XVIII wieku, Warszawa 2001, 157.

[24]) J. Łosowski, Dokumenty i kancelarie wiejskie, in: T. Jurek (ed.), Dyplomatyka staropolska, Warszawa 2015.

[25]) Łosowski *ibid*. gives, for example, situations where a scribe from Gorlice made several entries in the ledger of the village of Świętoniowa, or a scribe from Rzeszów worked in the village of Pobitna.

[26]) Adamska (nt. 22) 193.

[27]) The will of Wawrzyniec Mazur from Chrapice, 22 V 1630, Testamenty chłopów (nt. 6) 48–49: "Com dla lepszej wiary i pewności ręką własną napisał przy bytności osób i świadków wyżej mianowanych […]. Jan Gizewski, commendarius Papoviensis […] ręką księdza Gizewskiego".

[28]) Rafacz (nt. 2) 14.

[29]) For instance in the will of Walenty Gad from Gacia, 12 X 1614, Testamenty chłopów (nt. 6) 33–34: ‚that on the poor ecclesiastical servant Stanislaus, with whom he wrote this testament, he made up nothing, but wrote truly, as he himself would have commanded'. All translations from old Polish into English are my own, K.S.

[30]) Mikuła (nt. 9) 134; cfr. P. Dąbkowski, Prawo prywatne polskie, t. 2, Lwów 1911, 80–81.

intuitive needs of the testator to be met in a simple and predictable manner. By way of legacies, specific things went to specific persons or institutions indicated in the will.

In the wills I analysed, it is admittedly possible to come across a testamentary disposition which, in literal terms, somewhat resembles the traditional establishment of an heir. This quasi-establishment of an heir designates the beneficiary of the succession in the absence of an enumeration of specific legacies[31]). In fact, we are probably dealing here with a solution analogous to that used in Polish land law (the nobility's own law)[32]). In land law, the testator could dispose freely only of movable property, while the immovables, on the other hand, had to go to his legal heirs, who in this sense were heirs by compulsory law. In the case of land, the distribution took place only among the legal heirs. The testator was free to dispose in his will only insofar as he could assign unequal portions to his legal heirs, but never omit one. This solution was designed to prevent testators from disposing of particularly valuable family assets to third parties: it therefore radically upheld the value of family solidarity in succession law. In this context, it is important to recognise that, in the case of the quasi-establishment of an heir, the testator's disposition consisted of a purely declaratory designation of non-testamentary heirs (or some of them) as recipients of the inheritance. Indeed, it can be seen that it was usually one of one's own children who were endowed. It is significant that in all the wills analysed for this study not a single one is a quasi-establishment of an heir outside the family.

Cases in which the testator named a more distant relative as heir are extremely rare. It seems, moreover, that also in such cases the testator – in the absence of his own descendants – indicated his closest relative. An example of such a disposition may be the above-cited will of Stanisław Bzdula, where the testator, in an extremely laconic will, indicated his brother as the beneficiary with the words "*omnia bona mea que habeo quatuor vacas dono ac legitime perpetuique lego fratri meo legitimo Martino Bsdula*". In Matys Motłoch's will, on the other hand, we can observe the testator's special relationship with his nephew Walenty Sporek, to whom the testator endowed half of the inheritance. It is clear that there was a strong personal relationship between the testator and his nephew arising from the testator's gratitude for the kindness and care shown to him[33]). The other half of the estate went to the testator's stepson Jan Dziatek. This content of the testator's testamentary dispositions, along with the lack of information about the testator's own children, leads us to conclude that the stepson was regarded as the testator's most immediate family member. One is free to assume, therefore, that in the absence of the designation of an heir in the will, the heir remains *ab intestato* as designated by local customary law.

Of course, this positioning of the matter does not resolve all the problems and doubts that arise. How far did the circle of heirs extend without a will? Can they be

[31]) The will of Stanisław Bzdula from Wola Rzędzińska, 1573, Testamenty chłopów (nt. 6) 16; the will of Matys Motłoch from Krowodrza, 3 V 1589, *ibid.* 17–19; the will of Wojciech Jewula from Jaworsko, 17 VI 1605, *ibid.* 27–29.

[32]) Dąbkowski (nt. 29) 70–73.

[33]) 'Item to the said Walenty Sporek, his nephew, he has given half of his movable and immovable properties, such as the garden, the fields situated in Krowodrza and by whatever name they may be called, without taking out any of them, in return for his faithful and kind services, as well as the kindnesses he used to do and show towards me', will of Matys Motłoch (nt. 31) 17–19.

described as necessary heirs, and, if so, to what extent? Does consideration for the testator's closest relatives lead to the precedence of a non-probate succession over a testamentary succession[34])? These questions cannot be answered with certainty on the basis of the content of the wills themselves. In the absence of a normative reference, it would be necessary to examine the records of village court cases in which a relative of the testator, who had been omitted from the will, would sue the testator's heir for the release of inherited property. Subsequent research will therefore need to confront surviving wills with cases recorded in village court books. However, even this research does not guarantee positive results. This is because the investigations to date have shown that village courts rarely gave specific legal bases for their decisions, and even in these cases various orders were mixed up in an arbitrary manner; e.g. the commandments of the Decalogue, local custom, and 'law' as a general term were juxtaposed side by side[35]). It is at present impossible for me to determine definitively whether the village court was actually guided by any legal basis or merely by its own equity intuitions.

The boundary between the quasi-establishment of an heir and a legatee remained fluid and, above all, did not present any practical meaning for the testators themselves. This is because the testators, regardless of the words used, were trying to achieve a concrete effect in the form of bestowing their property on their relatives, in particular their children. It is noteworthy that testators generally treated their sons and daughters equal, demonstrating a certain egalitarianism[36]). The wills analysed here consist, for the most part, of numerous detailed legacies of the testator's individual items to specific individuals. It is possible to observe the principle that testators sought to endow each of their children equally in their wills with legacies, although they sometimes privileged one of them who was particularly promising, obedient or helpful to the testator[37]). In addition, smaller legacies were willingly bestowed on people personally related to the testator: siblings, siblings-in-law, acquaintances, co-workers, or farmhands[38]). Interestingly, the subject of legacies in peasants' wills could be either movable property (primarily items useful on farms such as grain, livestock, clothing, and money were bequeathed) or entire properties. In doing so, the property itself was bequeathed without indicating any specific form of legal au-

[34]) The primacy of testamentary succession in rural areas was advocated by Rafacz (nt. 2) 8; for non-testamentary succession see J. Bardach, Les dispositions à cause de mort dans l'Europe Centre-Est et de l'Est entre le 16e et le 18e siècle, in: Recueils Société J. Bodin, 66: Actes à cause de mort, Bruxelles 1993, 200f.

[35]) Łysiak, Prawo i zwyczaj (nt. 10) 11–13; G. Gudian, Die Begründung in Schöffensprüchen des 14. und 15. Jahrhunderts, Darmstadt 1960, and the review by G. Schubart-Fikentscher in: ZRG Germ. Abt. 79 (1962), 377.

[36]) In contrast to the rules of inheritance law of the nobility, as pointed out by Rafacz (nt. 2) 23.

[37]) Łosowski, Dokumentacja (nt. 2) 232.

[38]) Testament of Agnieszka Szponarowa from Albigowa, 31 III 1685, Testamenty chłopów (nt. 6) 120–21: 'From that I give half a measure of wheat to Szymon Kuźniar, half measure of millet linseed to Wawrzeniec Bartman, half a measure and old outerwear to the cook woman [.] I give to my granddaughter Dorota, who stays with me, one cow, underclothing, sheets, a pillowcase, a featherbed, a small wooden box and a linen apron. […] I give to my brother Jerzy 5 measures of flax; I give to maid half a measure of wheat and a piece of pork fat …'

thority. From a dogmatic point of view, the peasants' entitlements to the land varied according to the specific territory. For example, in Mazovia peasants only had the right of perpetual lease, while in the royal and ecclesiastical estates they usually had the so-called purchase right to land, similar to divided ownership[39]). However, even where peasants were not formally allowed to testate the property they were using, the village owners usually accepted the customary turnover of land by inheritance: after all, the most important thing was that the land should be cultivated and the number of labourers on the manor should not be reduced.

A separate issue is the position of the widow or widower of the testator, who is often mentioned in wills provided she or he lived to see her or his spouse's will. Significant exceptions include the situation where the spouse is omitted from the will, which should be duly justified[40]). Driven by the desire to ensure a decent and stable livelihood after the testator's death, a specific property was usually handed over to the spouse for use. Considerations of the personal relationship forged between the spouses also played an important role[41]). Some such dispositions explicitly state that the holder's authority over the property should cease upon his or her death[42]). Others, on the other hand, simply refer to the land in question and do not indicate precisely the form of legal authority that should accrue to the recipient. However, a reading of the research material as a whole shows that rural legal terminology is quite fluid on this point: even the formula allocating to the spouse a 'perpetual right' to the property assumes the moment of the spouse's death as the end date. This is demonstrated by the fact that, in such a situation, the testator was free to decide in his will the fate of the property in question after the death of the 'perpetually' entitled spouse[43]). In conclusion, it must be said that by allocating real estate to a spouse for *de facto* ownership, the peasant testators had in mind a lifetime use for maintenance purposes and not a transfer of ownership with the right to dispose of the property. With this

[39]) Dobrowolski (nt. 2) 226.

[40]) The will of Paweł Goraj from Sułoszowa, before 9 II 1680, Testamenty chłopów (nt. 6) 111–12: 'But since I had a wife by my second marriage, who did not keep her faith and vow to me, I separate her from me and my children, because what she brought me as a dowry or a gift from my mother, her mother took from me perfectly.'

[41]) References to the emotional side of the matrimonial bond arose in situations where there was a need to argue as to why the testator had decided one way and not another way, e.g. by omitting his relatives. They were particularly common in bequests between childless spouses, cf. T. Wiślicz, Upodobanie, Małżeństwo i związki nieformalne na wsi polskiej XVII–XVIII wieku, Wrocław 2012, 146–48.

[42]) The will of Stanisław Spotka from Krowodrza, 5 IV 1600, Testamenty chłopów (nt. 6) 20–21: ‚[…] the land that is between those of Skawieński and Kwaśniowski I give to my beloved wife to use as long as God will keep her in the world [.] and after her death that all will come to the children born of [my] first wife and that [second] wife as well'; the will of Antoni Szaflarski, 24 VII 1653, Dobrowolski (nt. 2) 81–82: ‚I leave for a life-long mistress a spouse named Anna Gadowszczanka, and she will be able to govern and run the farm, and I give her such authority in half the land with the younger sons.'

[43]) The will of Iwan Hacz from Wara, 2 IV 1601, Księga sądowa wsi Wary (nt. 4) 96: ‚Therefore, after his death, he bequeaths all of his own property and makes his wife Hanka his guardian of this property […]; he also bequeaths this property to his wife in perpetuity. And after the death of his wife, Hanka, he is to bequeath to [sic] his two children, i.e. his nephew, Tymek Klim, and his niece, Fiemka.'

solution, the testator had the certainty of ensuring a peaceful remainder of life for her or his spouse, while at the same time not exposing her or his descendants to the removal of the most valuable assets outside the family circle after the death of the beneficiary spouse. In addition to real estate, legacies of sums of money or grain to the testator's spouse are extremely common.

Peasant testators seem to have treated their endeavours to regulate the property relations in the family after their death as one organic whole. The goal of endowing their children was important, while the means of achieving this goal, i.e. whether they satisfied their children's expectations while they were still alive in the form of a gift or only in a will, was not important. It is therefore very common in peasant wills to also list among the legatees, children formally omitted from the will, but gifted while the testator was still alive. In such cases, the testator would meticulously note what goods the person had received, and emphasise that they had already been sufficiently rewarded[44]). On the other hand, one gets the impression of a certain measure of mistrust on the part of the testators, who seem to have feared that making a will might be seen as binding on themselves. That is why they often tried to specify that they were only disposing of property in the event of death and not by way of donation. They therefore stipulated that they retained the power to revoke their wills[45]), and also stressed that their dispositions would only be effective after their death[46]).

The desire to consider all members of the immediate family holistically is not surprising. After all, in the initial formulation of their wills, testators often declared that the purpose of their final act was precisely to prevent conflicts between relatives after their death. We must remember, however, that due to a lack of normative sources, one cannot define the principles of intestate succession in customary peasant law in Poland with certainty. Peace in the family was definitely one of the declared objects of a will; another one may have been continuity in the household. We do find cases in which the testator decided to treat a particular child better or worse because of his or her personal qualities or behaviour[47]). If, in a very few cases, any of the testator's children were fully disinherited, that is, have received nothing in the will nor as a gift during the testator's lifetime[48]), then such drastic behaviour on the part of the testator, harming the interests of his immediate family, required

[44]) Paweł Goraj (nt. 40) 111–12: ‚[…] As far as Catherine is concerned, the daughter from [the legator's] first marriage, she should be satisfied with what she took from her father, that he financed her wedding and gave her two cows. Also younger daughter Anne after the death of her mother took young cows: she should be also satisfied with that and not demand anything more from the stepmother or younger siblings […].'

[45]) The will of Grygier Józkowicz from Krowodrza, IX 1652, Testamenty chłopów (nt. 6) 75–76: ‚If, however, the Lord God should bring me to my first health, I am allowed to cancel this will and use my property.'

[46]) The will of Maciej Pasterz from Grabowo, 5 XII 1617, Testamenty chłopów (nt. 6) 39–41: ‚And where the Lord God deigns to comfort me and bring me to good health, then I will be allowed to stay there [namely in the house bequeathed to the parish church] until my very death.'

[47]) The will of Stanisław Szewc from Sułoszowa, 25 XI 1601, *ibid*. 24–25: ‚To the girl [i.e. daughter] I give [only] one zloty, because she didn't want to listen to me and she used her free will.'

[48]) Disinheritance was rarely used by representatives of any social state, cf. K. Justyniarska-Chojak, Wydziedziczenie w testamentach mieszczańskich z

strong justification. For example, in his will, Jan Jastrzębski somewhat disowned his prodigal son, who had exposed his father to liability for his debts and even for buying his son out of the death penalty[49]). It can be presumed that the testator's radical reaction stemmed not only from the purely financial loss suffered due to his son's reprehensible behaviour, but also from his moral disapproval of his son's criminal acts. At times, the testator seemed to convince himself by multiplying the arguments for omitting the child from the will: both paying him off with a donation during the testator's lifetime and punishing him for his reprehensible behaviour towards the testator[50]). Children gifted while the testator was still alive were usually mentioned in the will, but they were no longer allocated a separate estate in the will. This situation should not, however, be interpreted as disinheritance: it was certainly not treated as such either by the testators themselves or by the beneficiaries of the inheritance, since they would have already received an expected share of the estate from their father or mother.

A separate category of legacies consists of the numerous *piae causae* legacies to ecclesiastical institutions. These were usually earmarked for the local parish church or parish priest; sometimes for ecclesiastical ministers, but less frequently for a particular monastery with which the testator might have felt personally connected[51]). The objects of legations were usually sums of money, sometimes for a specific purpose, such as buying candles or a vestment for the church. However, we also know of cases of legations of entire properties to the parish church[52]). In such a case, the testator would most probably have been childless and without any closer relatives. However, the wording of such a will itself does not make it possible to establish the circle of testatorless heirs, as it does not mention any of the testator's relatives at all. Legates *piae causae*, being a manifestation of the testator's personal piety, were usually accompanied by instructions to pray for the soul of the deceased, sometimes in a specific form specified by the testator (e.g. to say mass, ring bells, or recite the rosary on specific days). The instructions accompanying the legates *piae causae* were also

województwa sandomierskiego (w XVI–XVIII wieku), Almanach Historyczny 11 (2009) 20.

[49]) The will of Jan Jastrzębski from Bieławino, 17 II 1621, Testamenty chłopów (nt. 6) 42–43: ‚I dismiss all children conceived with other wives, namely [son] Kurian for his goods, for whom I had to pay debts and whom I redeemed from penalty of death.'

[50]) The will of Jan Tyrcz from Golcowa, 1697, Testamenty chłopów (nt. 6) 131–32: ‚I am distancing and separating my younger son Wojciech from this cottage, as he too has already taken his own and disobeyed his father and mother and had them for nothing.'

[51]) The will of Dorota Mazur from Chrapice, content taken from the entry concerning the will of her husband Wawrzyniec Mazur (nt. 27) 48: '16 zloty and 2 cows that she gave to friars of Sanct Francis in Chełmża in order to make them pray to God for our souls through the celebration of holy masses […].'

[52]) Maciej Pasterz (nt. 46) 39–41: ‚I give and command with that my last will, my house and my land to the parish church of Grabowo, and it is to be under administration of parish priest of Grabowo […]'; the will of Piotr Czopek, 29 V 1492, Najstarsza księga sądowa wsi Trześniowa (nt. 4) 121: "*libere omnia bona sua legavit et heredem facit primo Deum omnipotentem et eius Matrem, gloriosissimam Virginem et sanctam Katherinam et comisit in manus procuratorum ecclesie … vendere et in ussus ecclesie vertere … non removendo suam uxorem a tercia parte.*"

sometimes directed towards the welfare of the neighbour, e.g. by giving alms to the poor in the form of a meal or a monetary donation. Specific stipulations regarding the testator's burial place were rather rarely included and only by representatives of the wealthier and more influential peasantry group, e.g. aldermen, innkeepers, millers, etc.[53]).

It can be seen that in addition to their stated aim of preventing family conflicts, peasant testators often sought to influence the behaviour of the living after their death. The legal instrument used for this was the recommendation, which, next to the legatee, is the most common type of disposition used in rural wills. The objectives of the instructions are relatively recurrent: ensuring the salvation of the testator's soul through regular prayers, the proper management of the farmland left behind[54]), settling the testator's affairs (payment of a specific debt, collection of a specific claim), providing for the care of vulnerable persons in the family (e.g. care of the testator's mentally ill daughter)[55]), and showing obedience to the testator's spouse.

As a general rule, the fulfilment of testamentary instructions was to be ensured by the persons endowed in the will. Very often, however, testators appointed the executors of the will separately. In the sources analysed they are often referred to as 'guardians of the will'. Undoubtedly, testators were keen to ensure the proper effect of their dispositions. Their role was important insofar as it was common in wills to draw up an inventory of the testator's debts and claims. Sometimes the testator imposed an order on a particular beneficiary of the will to pay a particular debt. Otherwise, the obligation to settle the bond situation after the testator's death fell to the will's executors. For this reason, executors were usually chosen either from the immediate family (son-in-law, brother-in-law, or spouse) or from among persons enjoying particular authority in the local community[56]). The tasks of the executors of wills were understood pragmatically: they were to act autonomously for the effective fulfilment of the will's disposition and had wide freedom of action to do so. Sometimes testators even left it to the executors themselves to specify the content of the disposition. For example, in his will, Maciej Bierzgieł established lifetime use of land for the benefit of his wife together with the obligation to maintain and raise his stepdaughter Dorota[57]). In contrast, in case of the death of the testator's wife, the executors were to 'appease

[53]) The will of mayor Jakub Polit from Łącko, 13 IV 1622, Księgi sądowe wiejskie klucza łąckiego (nt. 4) 160–61: ‚The place of the body as close as possible to the altar of blessed St. Anne; and if there is no proper place there, then [in] the great choir under the pulpit, where Mr. Kiczenski's bench is, or under the pulpit, where the students sing.'

[54]) The will of Franciszek Mierniczak from Olszówka, 3 II 1695, Testamenty chłopów (nt. 6) 129–31: ‚And the sons of her [i.e. widow of the deceased] should every year sow all the fields she got till she dies.'

[55]) Wojciech Jewula (nt. 31) 27–29: ‚He gave to his girl [i.e. daughter] Regina one cow, one 2-year cow and a pig, but as the girl is said to have no fifth sense he ordered her to live with his son Wojciech until his death.'

[56]) E.g., mayor or innkeeper, cf. the will of Agnieszka Galatowa from Brzozowa, 9 X 1628, *ibid.* 44–45; parish priest, cf. the will of Maciej Bierzgieł from Bierzgło, 13 VIII 1630, *ibid.* 49–51; princess of the convent, cf. the will of Anna Bierzgłowa from Bierzgło 16 VIII 1630, *ibid.* 51–52.

[57]) Maciej Bierzgieł (nt. 56) 49–51: ‚And if God takes my wife as well, I request from gentlemen executors to pacify and connive my stepdaughter.'

and connive' Dorota. It is clear from the wording of the will that the testator did not indicate what specifically should accrue to the stepdaughter. Presumably, it was up to the executors to decide what benefit would satisfy the testator's stepdaughter's legitimate claims and, therefore, in some way they co-created the content of the will.

The scope of testamentary freedom may be limited by the requirement of a third party's consent to the drafting and content of the will. In general, it must be said that the peasants' freedom to testify did not suffer any serious restrictions. Admittedly, isolated cases can be discerned where the spouse's consent to the content of the will was incorporated into the content of the will[58]). One should not draw too far-fetched conclusions from this: it is probably only a matter of moral support for the testator's last will. Only rarely does a peasant's request to the authorities, i.e. to the village owner, for approval of the will appear in wills[59]). Perhaps such a requirement was the result of a specific legal regulation for a particular village, or perhaps the testator was non-bindingly seeking the approval of a public authority in order to recruit village officials as potential executors of the will. In any case, asking for approval of a will is by no means the rule, but an exception in the analysed texts. This supports the thesis that the legal basis for the peasants to testify in their own view was the old customary law and not the legislative will of the village owner.

The form of the vast majority of the wills analysed was that the testator summoned the village officials to his house and there, in front of them, orally declared his will, which was written down on the spot and later entered into the village court book. This form thus coincided with the practice of urban Magdeburg law, which knew the form of a public will made in the testator's home, drawn up on a bed of pain. Alternatively, the peasant testator would go before the village court, composed of a mayor and two oath-keepers, and there orally declare his or her last will, which was written down on the fly and immediately entered into the village court book. This form was however much less common, as in peasant circles wills were not drawn up further in advance, in anticipation of death at a later date, but only in the face of a life-threatening illness. After all, most surviving wills open with a formula stating that the testator is sick in body, although sound of mind. The above-mentioned forms of wills used in rural law were of a mixed oral-written nature and it is difficult to clearly categorise them as purely oral or purely written. Therefore it seems that the recording of the will in the village books was an element essential to the validity of the will itself. Wills written by the testator himself (holographic wills), on the other hand, do not appear at all in the sources known to us: an obvious thing if one considers the illiteracy that was widespread among peasants. The form of the peasant wills did not require the signature of the testator: If the testator did sign, it was almost always only with the sign of the cross. Village officials or private witnesses also usually made the sign of the cross in place of their signature. The will was thus drawn up not by the village clerk, but by a literate person selected to write the document.

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[58]) Agnieszka Galatowa (nt. 56) 44–45: ‚On hearing that, the honest spouse of her Maciej Galat to the law declared and put away [sic].'

[59]) Maciej Pasterz (nt. 46) 39–41: ‚I ask for God's sake that this last will of mine be carried out in all things, and that the supremacy of His Majesty the Bishop confirm this will of mine.'

The purely private form of the will is much rarer: in that case the testator declared his or her will orally in front of a minimum of two witnesses[60]). The witnesses would then make a sworn statement to the village court as to the contents of the will so made. Such a will was also subject to entry in the village court book. This shows that, on the one hand, in rural testamentary law it was possible to draw up a will without the involvement of public officials. On the other hand, that in each case it was sought to guarantee the publicity and permanence of the disposition on the death of the testator by entry in the public register, which was the village court book.

4. Peasant wills in the ius commune grid:

The issue of the potential reception of Roman law in the Polish legal orders of the various states with regard to wills has already been addressed by other legal historians. It is difficult to speak of definitive and irrefutable results, but it is generally accepted that there can in fact be no reception of the *ius commune* in Polish law. References to the sources of Roman and canon law appeared mainly in the works of learned writers educated at universities. Their role, however, was limited to illustrating the erudition and readership of the author in question. However, as far as the content of the legal norms in force or the judgements made (law in action) was concerned, these were usually based on local customary law or indigenous statute law. In land law, for example, although influenced by canon law, the institution of a will as such was allowed, but the freedom to testify was fundamentally restricted by making it impossible to testify on immovable property as the most valuable asset[61]). The prohibition of testamentary estates – deeply rooted in customary law – was explicitly regulated by the Sejm constitutions of 1505 and 1510. The only normative exception was the Third Lithuanian Statute of 1588, which was binding on the territory of the Grand Duchy of Lithuania, and only subsidiarily on the territory of the Kingdom of Poland, and this was because this part of the Polish-Lithuanian Commonwealth did not have its own compilation of the law of the nobility. The influence of Roman law is clearly discernible in this piece of legislation, but it is a mediated influence: the drafters of the Statute relied not directly on Roman sources, but on the popular study of Roman law "Summa legum levis, brevis et utilis" by Master Rajmund (magister Raymundus). The practice of municipal law, on the other hand, was based primarily on the interpretation of Magdeburg law sources (Sachsenspiegel and Weichbild) together with Magdeburg court rulings. In order to curb the practice of appealing to a court located outside the borders of the Kingdom of Poland, King Casimir the Great established the Court of German Law at the Royal Castle in Krakow in the 14th century. An analysis of disputes in testamentary cases decided before this Court shows that only exceptionally did the judges refer to sources of Roman law[62]). Also

[60]) The will of Jakub Osuch from Iwkowa, 14 II 1608, Księga sądowa wsi Iwkowskiej (nt. 4) 129: ‚Jan Osuch together with Jan Tuczeń voluntarily and involuntarily testified that when they were at the death of the laborer Jakub Osuch, having found him in memory, they heard the house being torn apart from him. Which witnesses the office accepted for their confession, having obliged them by oath.'

[61]) Dąbkowski (nt. 29) 73.

[62]) K. Bukowska, Orzecznictwo krakowskich sądów wyższych w sporach o nieruchomości miejskie, Warszawa 1967, 93–104.; Mikuła (nt. 9)145–48.

in municipal law, therefore, it is not possible to speak of the reception of learned law in the field of *ius commune*[63]).

The situation is similar if one asks about the reception in Polish law of the principles of canon law in the field of wills. At the turn of the Middle Ages and the early modern period, particular Polish canon law (i.e. synodal legislation) did not devote separate attention to the substantive law of wills. The only issue in this matter was the question of the exclusive jurisdiction of ecclesiastical courts in inheritance disputes, which exclusivity was particularly opposed by municipal courts. However, one thing must be acknowledged and is not doubted by researchers of the subject: the very idea of a will, originally absent from Polish customary law, as well as from the customary laws of Slavic and Germanic peoples in general, probably emerged under the influence of canon law and, indirectly, Roman law.

Having presented the main features of peasant wills in Poland in the early modern period, it is worth asking about the possible influence of learned law on the content of rural testamentary law. It must be admitted that there can be no question of the reception of Roman law or canon law in this respect. Admittedly, peasant wills were familiar with and often contained constructions also known in Roman law, e.g. usufruct or command, as well as legations to individuals. However, it is not possible to demonstrate a connection or even inspiration with the solutions of Roman law in rural law. It must therefore be considered that the solutions mentioned above were adopted in rural common law spontaneously, independently of external influences. This is not surprising: after all, the needs of testators are similar despite the distance in time and space, and the number of possible useful legal solutions remains limited. Perhaps, therefore, the influence of learned law is limited to the institution of the will itself, which also appeared in Polish municipal or land law only under the influence of canon law.

5. Conclusions:

The work presented here sought to provide an outline of the main features of peasant wills in the Kingdom of Poland in the late medieval and early modern periods on the basis of an analysis of surviving wills that have been published in print. Even at this level, the perspective covered is extremely interesting. A number of issues raise questions, the most serious of which boil down to the question of the shape of the peasant order of non-testamentary inheritance and the relationship of non-testamentary inheritance to testamentary inheritance. Unsurprisingly, the peasant will does not provide for the establishment of an heir, but rather a set of legatees: but what then of the inheritance debts if the testator has not named the executors of the will? These questions must remain without a conclusive answer for the time being, as providing one would require turning to a completely different type of source in the future: the rural legacies of the inheritance courts.

In the meantime, it is worth adding that the potential source base of further peasant wills for researchers' inquiries is very promising. Firstly, it is to be hoped that

[63]) Even works of Bartłomiej Groicki (notably Artykuły prawa majdeburskiego, Kraków 1558, and Porządek sądów i spraw miejskich prawa majdeburskiego w Koronie Polskiej, Kraków 1559) barely betray the direct influence of Roman or canon law, as they mainly paraphrase the regulations of Magdeburg law.

hitherto unpublished rural court records will in time be published in print or digital versions[64]). Although they will provide information on the state of peasant testamentary law mainly in the territory of Lesser Poland and, to a lesser extent, Red Ruthenia, nevertheless, in view of the phenomenon of strong legal particularism, the testamentary practice of even neighbouring villages may have differed significantly. Secondly, references to the legal life of peasants can also be successfully sought in sources implicitly attributed to other social classes. A full and methodical search of church archives, where the wills of peasants living in villages constituting church estates can be found, can prove extremely valuable. It should also not be forgotten that villages usually maintained close economic contacts with the nearest towns. On the other hand, everyday life in small urban centres more closely resembled the occupations of farmers than the sophisticated occupations of the wealthy inhabitants of the capital. In practice, the petty bourgeoisie, like the peasants, made a living primarily from small-scale farming and backyard animal husbandry. The archival research carried out by the team led by Agnieszka Bartoszewicz (of the History Institute of the University of Warsaw) in the court books of small towns proves that these books often contained wills of peasants which were in one way or another connected with the petty bourgeoisie[65]). The direction of this research seems extremely interesting and undoubtedly deserves to be further explored.

Cracow Kamil Sorka[*])

[64]) For example, in the 1970s Polish scholars Adam Vetulani, Ludwik Łysiak and Stanisław Płaza transcribed a number of manuscripts of surviving village court books. Now results of their works is being prepared for digital edition with substantive description of the individual records in the Laboratory of Source Editions, Faculty of Law and Administration, Jagiellonian University as part of IURA database (https://iura.uj.edu.pl/dlibra).

[65]) A. Bartoszewicz *et al.* (eds.), Testamenty z ksiąg sądowych małych miast polskich do 1525 roku, Warszawa 2017, edits 10 peasant testaments from court books of small towns. This may serve as a starting point for further research. According to that edition, wills were submitted to the court books of small towns by persons described as 'village head' (No. 10), *laboriosus* (Nos. 146, 147, 288, 315, 317, 402, 568), and 'farmer' (Nos. 276, 363); on the subject of the fluid boundary between the countryside and smaller towns cf. A. Bartoszewicz, Miasto czy wieś? Małe miasta polskie w późnym średniowieczu, in: Przegląd Historyczny 99 no. 1 (2008) 133–34.

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