Ego huic inscriptione non credo, … ipse scribere potuit, quod voluit: Law, Literacy, and Daily Life in Late Medieval Galicia

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The words quoted in the title were spoken by Nicolas Czajkowski, nobleman of L'viv land, during his lawsuit with Nicolas Tyczka, a L'viv patrician. The case was held in the L'viv castle court and recorded on May 5, 1501.[1] Nicolas Tyczka blamed Czajkowski for negligence in defending him on an estate, called Chajkovychi.

It is reported that the village of Chajkowychi had been in the possession of Jan Zubrski, father of Nicolas Czajkowski, who had inherited it from Nicolas Pustomytski. Later, Jan Zubrski mortgaged this estate to Tyczka. It was usually stipulated in this sort of contract that the person who mortgaged the estate was obliged to defend the new owner against possible claims of his/her relatives. This was what Tyczka claimed to have been an essential part of his agreement with Jan Zubrski. When Jan Zubrski died this obligation passed on to his son, Nicolas Czajkowski, who showed no interest in fulfilling his obligation. In Tyczka's words, Zubrski took no care to provide for the defense against the claim of Rosa, the wife of Jacob Chąstowski and daughter of Nicolas Pustomycki.

To support his allegation Tyczka produced in the court a copy of the charter of the mortgage and stated that, if necessary, he would be ready to take recourse to the court register to confirm the charter's authenticity: *et si necesse est actis eandem copiam confirmabo*. After declining Chajkowski's request to give the case to the land court, the judges ordered a reading of the copy of the contract which had been inserted in the court register in order to check on the

[1] See *Akta grodzkie i ziemskie z czasów Rzeczypospolitej Polskiej, z archiwum tak zwanego Bernadyńskiego we Lwowie w skutek fundacii A. Stadnickiego* (henceforth: *AGZ*), ed. Oktaw Pietruski, Ksawery Liske, and Antoni Prochazka, vol. 17 (L'viv, 1901), no. 3785. The case is mentioned in Sylwjusz Mikucki, „Badanie autetyczności dokumentu w praktyce kancelarji monarszej i sądów polskich w wiekach średnich," in *Polska Akademja Umiejętności. Rozprawy wydziału historyczno-filozoficznego*, vol. 69.3 (Cracow, 1934), 292-293. Mikucki did not consider the case in context of the interplay of literacy and orality.

correctness of Tyczka's statement. The reading confirmed that both copies agreed on the point of the conditions of the contract. Immediately afterwards the account of the dispute gives the words Czajkowski addressed to the captain who presided over the court hearings:

> Sir Captain, I trust neither the document that he produced as his own copy, nor the document that had been put down into the register; he could write down everything that he wanted to do.[2]

Afterwards the scribe noted the response of Tyczka, who turned to the captain, calling his attention to the fact that Czajkowsky held the register of the captain's court in contempt. [3]

In the following analysis this case will serve as a starting point for addressing the problem of the interrelation between writing and dispute in the legal practice of fifteenth-century Galician courts. I intend to examine how the rise of a new literate mentality during the fifteenth century affected the practice and meaning of writing in the context of litigation and how the usage of written documents shaped the disputing strategies. Additionally, I shall try to show how new techniques of litigation depended on writing, and interacted with more traditional oral patterns of proofs and legal process. My suggestion is that the strong persistence of elements of orality in the practice of court disputes resulted in an ambiguity of accepting written documents as the principal means of proof. I shall further argue that the interplay and interdependence of two modes of legal pursuit, oral and literate, opened a wider space for individual dispute trajectories and the manipulation of legal norms in the course of litigation.

The context, first and foremost, in which this case must be situated, is the profound transformation of the field of literacy that Galician society witnessed during the fifteenth century. This period was a turning point in the history of literacy and record making in late medieval Galician Rus'. One observes a radical shift in the status of the written document, which changed the social and cultural landscape of the region.[4] The extension of writing resulted in the emergence of a literate mentality, characterized by new attitudes towards the written word. Care

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[2] *AGZ*, vol. 17, no. 3785: *ego huic inscripcione non credo, quam ipse in copia ponit, nec huic inscripcioni credo, que fuisset in actis inscripta; ipse scribere potuit, quod voluit.*

[3] For mocking the adversaries' reliance on the written document in medieval disputes one could consult Susan Reynolds, "Rationality and Collective Judgment in the Law of Western Europe before the Twelfth Century," *Quaestiones Medii Aevi Novae* 5 (2000), 8-9, and Hanna Vollrath, "Rechtstexte in der oralen Rechtskultur des früheren Mittelalters," in *Mittelalterforschung nach der Wende 1989*, ed. Michel Borgolte (Munich: R. Oldenbourg, 1995), esp. 333.

[4] The consequences and contexts of the rapid transformation of the social and political order in Galician Rus' under the impact of literacy has been recently highlighted by Thomas Wünsch, "Verschriftlichung und Politik in Rotrußland (14.-15. Jh.): Zum kulturgeschichtlichen Aussagewert mittelalterlicher Geschichtsaufzeichnungen," in *The Development of Literate Mentalities in East Central Europe,* ed. Anna Adamska and Marco Mostert (Turnhout: Brepols, 2004), 93-105.

for the systematic accumulation and preservation of official and private documents and a sharp awareness of the role of the written document as a key instrument in exercising power and the administration of justice were among the most characteristic traits of this newly emerged literate mentality in fifteenth-century Galicia. These two features can further be linked to other significant changes in the mode and means of communication that are usually associated with the spread of literacy in traditional societies.[5] Writing became a crucial technological device which broadened opportunities for fixation, transmission and accumulation of knowledge in an unprecedented way. The spread of literacy enhanced critical thinking and facilitated an incessant and growing rationalization and skepticism of human thought. Writing developed into the most effective tool for verifying and classifying information due to the effect of the spread of literacy.

One of the most immediate and apparent manifestations of the impact of the literate mode of transmission in the Galician context is the survival of the first registers of the local courts, which were kept on a regular basis starting from the late 1420s. The emergence of the court registers in Galicia was one of the basic consequences of the radical institutional changes of the years from 1430 to 1434. The privilege of Jedlno, issued by King Wladislas Jagiełło in 1430, and the privilege of his son Wladislas III from 1434, sanctioned the final introduction of the Polish legal and administrative system into Galician Rus' and endowed the Galician nobles with rights equal to the nobility of other lands of the kingdom. Galician Rus' was transformed into the Rus' palatinate with its main administrative center in L'viv. The palatinate itself consisted of four administrative-territorial units, called "lands" (*ziemie*): L'viv, Halych, Przemysl, and Sanok. These, in turn, were divided into districts (*powiaty*).

The earliest preserved court register coming from the lands of Galicia is that of Sanok. Its records have survived starting from 1423, that is, before the official introduction of the Polish law and administrative system in Galician Rus'. The court registers of other lands survive from the decades that immediately followed the years 1430-1434. In Przemysl land, the register of the local land court is preserved from 1436. The earliest records of castle courts of

[5] On the structural transformations in the field of social knowledge and patterns of communication in traditional societies undergoing the process of the rapid spread of literacy see the recent anthropological studies by Jack Goody, *The Domestication of the Savage Mind* (Cambridge: Cambridge University Press, 1977); Jack Goody and Ian Watt, "The Consequences of Literacy," in *Language and Social Context. Selected Readings*, ed. Paolo Giglioli (Harmondsworth: Penguin, 1972), esp. 312-319. On the relationships between the written and the oral forms of communication in medieval culture, see, e. g., Brian Stock, *The Implication of Literacy. Written Language and Models of Interpretation in the XIth and XIIth Centuries* (Princeton: Princeton University Press, 1983), esp. 3-15, 42-59; M.T. Clanchy, *From Memory to Written Record. England 1066-1307* (Oxford and Cambridge: Blackwell, 1993), esp. 254-299; Patrick Geary, *Phantoms of Remembrance: Memory and Oblivion at the End of the First Millenium* (Princeton: Princeton University Press, 1994), esp. 12-15.

Przemysl land are of later date – starting with the year 1466. The reverse situation can be found in the case of L'viv land. There the first available court register is from the castle, not from the land court. The castle's earliest records were written down starting from 1440. Records of the L'viv land court from the fifteenth century survived only in pieces – the earliest ones from 1453 and 1461-1463.[6]

This evidence is pivotal in showing the introduction of new and more sophisticated techniques of record keeping. Such new politics of record preservation resulted in a rapid growth in the quantity of preserved records of the judicial institutions of the Rus' palatinate. This large scale output of various sorts of written documents which resulted from the courts' activity is particularly impressive if compared with the scattered and occasional documents revealing the process of the administration of justice in the previous period of the earliest decades of Polish rule in Galicia. A gradual process of establishing the courts' network as sites of record keeping also had another significant implication related to the proliferation of literacy. The impressive increase in the volume of documentary production of the courts brought a larger part of Galician society into contact with literacy. It was during this period that the uses of writing advanced beyond the circle of the social elite – the nobility and patricians of the great towns. The evidence suggests that literacy went down the social ladder and the resources of writing became accessible and familiar to representatives of various plebeian groups.[7] To illustrate the process of accommodation and appropriation of writing in the context of dispute settlement, it is relevant to take a closer look at some important and interrelated aspects of the legal process – the role of writing in the procedure of summoning, and the uses of the written documents and court registers.

The procedure of summoning/pleading was one of the most significant elements of the legal process, which was deeply affected by the diffusion of writing. In the course of the fifteenth century the written citation became the predominant form of suing an opponent at law.[8] Suits initiated exclusively by oral pleading and summons, made, for instance, with assistance of the court

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[6] Most of the legal records, contained in the court registers of the Rus' palatinate for the fifteenth century were published during the second half of the nineteenth and beginning of the twentieth century in one of the most ambitious and largest source editions, undertaken by Polish historians, that is *Akta grodzkie i ziemskie*, vol. 11-19, (L'viv, 1886-1906).

[7] A very nice piece of evidence showing the circulation of writs among the members of the lower strata of the Galician society is provided by a legal record from the Sanok castle register, dated March 18, 1447. According to the text of the record, two men of plebeian origin, the smith Clymek from Prosek and Mathwey from Boiska, agreed to serve as sureties of a certain Dmytr, peasant from Wolyca. The text goes on saying that the mentioned sureties were called to guarantee that Dmytr would bring in four weeks the writ to Sanok castle confirming the fact of the purchase of some fish by the mentioned Dmytr in the town of Sambir. See *AGZ,* vol. 11, no. 2399.

[8] The oral form of pleading was still recognized by the Statutes of Casimir the Great. See Józef Rafacz, *Dawny proces polski* (Warsaw, 1925), 108.

bailiff, were regarded as insufficient. Such plaints and claims, if not additionally supported by the text of a written citation, could be effectively refuted by the opponent.[9]

Citations had to be composed according to strictly established rules. The slightest mistake in the text of a citation, if identified by the opponent, could turn out to be fatal. The examination and identification of sometimes very small and insignificant mistakes in the texts of summons was able to alter the course of a dispute. Citations composed in the wrong way were usually denounced and classified in the sources as *mala, inordinata, indecenta cittacio*.[10] Such improper summons created fertile ground for the manipulation of legal procedures and were a widely used strategy of challenging the opponent's claim. They could result in delaying the judgment or even terminating the lawsuit.

The multiple evidence of very detailed and careful scrutiny of the content and formal characteristics of the text of a summons by the disputing parties offers one of the best insights into how the literate mode of thinking penetrated the

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[9] *AGZ*, vol. 11, no. 1916 (May 26, 1444): *Ibidem domina Steczkowa de Tarnawa et dominus Fredricus de Iaczmirz Gladifer Sanocensis contendebant invicem iure pro eo, quia domina Steczkowa asserebat, quod dominum Fredricum citaverat pro violencia scilicet, quod ei pignora repercussit. Sed dominus Fredricus volebat videre literam citacionis et domina Steczkowa literam non habuit, sed cum ministeriali ipsum dominum Fredricum citaverat. Quare dominus Fredricus voluit habere pro lucrato, quod ministerialem nec literam citacionis habuit. Ideo damus eis ad interrogandum ad quatuor septimanis*. For similar cases see *ibid*., vol. 11, no. 25 (February 15, 1424); *ibid*., vol. 15, no. 198 (after December 9, 1457): *Et doms. Vicecapts. Terminum transtulit…, quia non fuit ausus ipsos hominess iudicare ... quia pro ipsis hominibus datus est terminus facialis knezowi et non est cittatus litera.* There were a few exceptions, which permitted initiating a lawsuit without having recourse to any form of a written summons. Among these exceptions was first the so-called citation by touch (*pozew taktowny*). The citation by touch was probably utilized most often as a form of *concittatio*, the second citation, needed to summon a defeated defendant to compensate a plaintiff for already adjudicated damages and penalty. Resorting to a citation by touch occurred most often at court proceedings, which were attended by both plaintiff and defendant. Then, at the request of the plaintiff, a court bailiff touched or took hold of an adversary, thus forcing him to listen to the plaintiff's charges. There were also some other possibilities of bringing a case to the court without resorting to a written citation. One of them concerned a summons made during sessions of the royal court (so-called *rok nadworny*). Another form of citation without a written summons was foreseen for cases in which a court bailiff pursued a wrongdoer immediately after his crime had been committed. Summons could be given orally by a bailiff in the course of an investigation if the bailiff's scrutiny resulted in some findings that made it possible to convincingly establish a wrongdoer's guilt (*lic, rok licowy, ocularis*). All three types of oral summons were discussed shortly by Stanislas Kutrzeba, *Dawne prawo polskie sądowe w zarysie* (Lwów-Warszawa-Kraków, 1921), 66.

[10] Considering the attention, which judges and litigants paid to the scrutiny of texts of a summons for orthographic mistakes as one of the crucial proofs for their conceptions of the decisive influence of medieval Roman law on the origin of Polish procedural law of summons, see the summary by Zygfryd Rymaszewski, "Wokół problematyki średniowiecznego pozwu polskiego," in *Symbolae historico-iuridicae Lodzienses Iulio Bardach dedicatae* (Łódź, 1997), 79, 85-86, 93.

process of conducting disputes. This sort of judicial expertise became a commonplace in the legal practice of the fifteenth-century Galician courts. The field of expertise of identifying grammatical mistakes in a summons covered a wide range of issues. The mistakes found in the titles of men sued at court could often be considered as a cause for rejecting a summons.[11] This sort of mistake was taken very seriously if identified in the title of a king. In 1504, Alexander Orzechowski lost his case in the Przemysl land court to Jan Irzman of Sliwnica because, as Sliwnicki indicated, the royal title in Orzechowski's summons was written down in grammatically incorrect form – instead of *Rex Polonie* it had *Polonne*.[12] The summons could be challenged by classifying it as "mute", since the text contained only the surname without indicating the first name of the sued person.[13] Incorrectness identified in the names of the saints or holy days was used as a pretext for a claim to quit the suit. One report has it that in response to accusations the representative of the defendant did not miss an opportunity to draw the judges' attention to the wrong, "disgraceful" way the date of the appointed court session was written down in the plaintiff's plea. The date was indicated as the nearest sixth day before the holiday of "the saints of Pentecost" (*feria sexta prox. ante f. sanctorum Pentecostes*), which, according to the defendant's arguments was nonsense. The representative of the defendant reasonably emphasized that putting the word "saints" in the plural was completely irrelevant in reference to Pentecost. Pentecost meant the holiday of the Holy Spirit and was only one, not many, Holy Spirits.[14] In another case the defendant developed the opposite line of arguments, accusing the plaintiff of negligence for

[11] *AGZ,* vol. 17, no. 3097 (March 4, 1499): *Gsus. Iohannes Fredro de Pleschowicze actor in termino concitatorio affectavit satisfacionem iuxta duas concitaciones, pro quolibet seorsum, contra gsum. Andream Czurilo de Sthoyanicze Dapiferum Premisliensem. Qui respondit domine Iudex, affecto evasionem et hoc ideo, quia meritum meum in istis concitacionibus stat aliter, non ita sicut est meum meritum et hoc in isto, quia scripsit me dapiferum Leopl. Et ego sum Premisliensis, et propter hoc sunt concitaciones insufficientes alias nuedosthatheczne, peto evasionem*.

[12] *Ibid*., vol. 18, no. 4254 (April 11, 1504).

[13] *Ibid*., no. 622 (March 7, 1475): *Nob. Nicolaus Roza de Gorky actor [iuxta] citacionem videlicet pro indebita ac inordinta condemnacione super nob. Nicolaum de Balycze proposuit. Et Balyczsky dixit: domine iudex, ista citacio, iuxta quam super me proponit, est mutua alias nyemy, quia est inscriptum in ea: tibi nobili heredi de Balycze et non est scriptum in ipsa citacione nomen meum propirium videlicet Nicolaus, ergo citacio est muta et eo volo evadere ipsum Roza*.

[14] *Ibid*., vol. 17, no. 4047 (June 7, 1504): *Exadverso procurator Anne dixit: dom. Iudex, vestra dominacio audivit, quia ego dixi: antequam ad cittacionem et proposicionem Nicolai Romanowszky respondebo, defectus cittacionis non omisi et nunc non omitto in cittacione contentos; et primo dico contra indecenciam cittacionis et assignacionem termini in cittacione contenti, quia in cittacione est scriptum feria sexta prox. ante f. sanctorum Pentecostes et non debet scribi 'sanctorum' tantum debet scribi 'festum Pentecostes', quia tantum est unum festum Spiritus sancti et non plura. Et propter quam indecenciam rogo decerni michi penam cum lapsu citacionis*.

adding the adjective "saints" to the names of Saints John and Paul.[15] The omission of some words in the date of a summons like, for instance, the word "thousandth" (*millessimo*), was also indicated as a cause for the liability of the litigant for some small fines.[16] In their search for mistakes litigants would go as far as to consider the different uses of tenses in the corresponding Latin phrases of *cittacio* and *concittacio* as a serious fault in the summons.[17] It can be suggested that this seemingly insignificant aspect of legal disputes was feared by many litigants. The issue of *indecenta cittacio* could become the object of special regulation between people who came to make a contract concerning property, money, and so on. The exclusion of close examination of the text of a pleading for mistakes was sometimes specifically stipulated as one of the conditions envisaged in case of a future lawsuit which erupted as a result of the violation of the terms of the agreement. The party blamed for the breach and sued at court made a special promise not to look for petty mistakes in the texts of a summons.

Such mistakes in the text of a summons were not to be seen as a serious impediment for bringing the opponent to the court.[18] Most of the abuses that emerged around the written summons and resulted in the scrambling of court procedures were abolished by provisions in the statute legislation. The so-called Customs of the Cracow land, confirmed by King Alexander in 1506, proclaimed that all errors found in a summons, like omissions of titles, mistakes in names, dates, etc., should not bring about an annulment of the legal case. A plaintiff who compiled and presented to a court an erroneous citation was only liable for a penalty of three marks.[19] A similar legal norm was promulgated in a major official collection of legal regulations of Polish procedural law – the so-called *Formula processus* of 1523.[20]

Similar to the cases of *mala*, *inordinata citacio* the uses and misuses of registers provide a good example of how the knowledge of writing and expertise in legal documents became inscribed in the politics of dispute. Due to their role as the principal site of the preservation of written evidence and verification,

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[15] *Ibid.*, vol. 15, no. 2697 (July 28, 1498): *qui Vanyko evasit prefatos homines propter indecentem datam et hoc ideo, quia in ipsa data continetur: 'datum Leopoli feria tercia ipso die Iohannis et Pauli' et non nominavit eos sanctos.*

[16] *Ibid*., vol. 19, no. 86 (June 21, 1474): *Iudicium decrevit tres marc. pene super rev. in Christo patre dom. Nicolao epo. Premisl solvere in manus mfi. Spithko de Iaroslaw Palat. Russie, pro inordinata data in citatione, quia non est descriptus in ea: millessimo*.

[17] *Ibid*., vol. 17, no. 3909 (July 22, 1502): *Et adverso procurator a nob. Iohani Lopaczynsky dixit: domine Iudex, decernatis michi evasione et hoc ideo, quia doms. Vladislaus magis proposuit in concitacione quam in citacione stat capitali prima et hoc in eo, quia in citacione stat, quia ipsum cittat et in concitacione: ideo ipsum citaverat*.

[18] *Ibid*., vol. 18, no. 2348 (April 8, 1494): *et ulterius quod dominus Stanislaus obligatus est, quod si haberem indecentiam cittacionis aut concittacionis, illud non obese sed prodesse mihi debet.* See also Rafacz, *Dawny proces polski*, 114.

[19] *Volumina legum* (henceforth: *VL*), vol. 1 (St. Petersburg, 1859), 149.1: *De data, titulo et literis abecedarij cittaciones destruentis*.

[20] *Corpus Iuris Polonici*, ed. Oswald Balzer, vol. IV.1 (Cracow, 1910), no. 16, cap. 5, p. 50.

court registers emerged as the main reservoir of social memory and developed into one of the elements of noble identity in the course of the fifteenth century. They framed noble identity by inscribing individuals, families, and signs of their daily business into a particular local context. Reference to a specific court register was usually employed to testify that one belonged to a particular local community, a fundamental form of organization in the lives of nobles. This local identity, manifested and supported through constant recourse to the register, was frequently invoked in disputes.

The Polish legal process followed the well-known rule saying that *actor sequitur forum rei*. This meant that the law worked to privilege the defendant in regard to the choice of the court where citation was to be brought and the legal case judged. In Polish medieval law this rule was mainly understood by the reference to the defendant's territorial belonging. The defendant had the right to respond primarily in the court of the district or the land where he resided and where his patrimony was located. A plea or a citation brought to a court situated outside the district of the defendant's residence was regarded as invalid, and the plaintiff himself was liable for the penalty. Some exception to this rule existed in Polish medieval law. These exceptions embraced primarily legal cases that concerned the most notorious criminal offenses and came under the jurisdiction of the so-called captain's four paragraphs. An offender was obliged to respond before the captain and the court of the place where the crime had been committed. Legal cases that came directly to the consideration of the king or the land assembly (*colloquia*) also belonged to this group.

In general, appeals for the "proper" district were widely used by litigants, who sought to dismiss summons from courts of lands where they did not feel sure enough to win the case. One stages of a dispute between two branches of the Voyutycki family exemplifies this litigious strategy. The family originally settled in Przemysl land, and one branch later migrated to the neighbouring L'viv land. The relevant record of dispute was put into the Przemysl land court register under the year 1475. One of the disputing groups requested the judges to allow the case to be transferred to the court of L'viv land. Records of tax payments and copies of the purchases of the disputed property were consulted in the register of the L'viv land court to prove the belonging of that branch of the family to the land's noble community.[21]

The case between Tyczka and Czajkowski is also revealing on the point of litigants benefiting from the opportunities created by the establishment of the

[21] *AGZ*, vol. 18, no. 631 (March 7, 1475): *Nob. Stanislaus Capustka cum procuratorio dixit: ... ut ipsos velitis remittere cum pena ad distr. Leopol. Exadverso Osswyączym dixit: quo diceret districtum. Capustka respondit: ipsi docent et approbant regestrum, quia ibi in Leopolim semper contributiones et fumales regales dant et etiam docent, quia ibi Leopoli emptio dictorum bonorum in libro terr. inscripta est. Sed quia nec regestra predicta nec literas aliaquas dicte empcionis coram iudicio reproduxerunt, igitur domi. Iudex et subiudex prehabito consilio ipsorum assessorum [de]creverunt, quia hic in isto districtu respondere debent.*

court register; the case highlights, in particular, the litigants' capacity and shrewdness in utilizing the registers for a systematic check of the oral or written statements of proof. The functioning of the court registers turned out to be crucial for transforming the whole framework of factual reference and the system of proof operating in court proceedings. The case testifies to a widespread practice in which the veracity of a party's oral statements and arguments spoken during court debates were subjected to control and challenged by comparing them with the texts of pleading or contracts, written in court registers earlier.

Cross-examination of legal writings with the assistance of the register encompassed a broad spectrum of texts related to various procedures, involved in the pursuit of a dispute. This kind of scrutiny sometimes helped to identify considerable discrepancies between two versions of a text, that is, between the copy of a charter, which belonged to one of the disputants and was presented by him/her in the court as a legal proof, and the copy, which had been inserted in the register earlier.[22] In similar fashion, the content of the text of the first citation, taken from the register, could be surveyed to check the facts presented or compared with the text of the second citation to refute an allegation of an adversary. The evidence shows that the copies of citation extracted from the register were also used to check on the testimonies of the witnesses called to support the litigant's statement. Differences between factual statements presented in the text of a citation and a witness's testimony were considered enough to dismiss claims of the opponent and cancel the lawsuit.[23] Making recourse to the court register legitimized the claim of the litigant who intended to oppose the decision of the court judges. In one case, for instance, the litigant rejected obedience to the court's attempt to settle the dispute, which favored his opponent, on the grounds that the terms of settlement ran against the record of the agreement that the disputants had made previously and inserted in the court register (*et non est*

[22] In 1463 Jan Budzywoy required from Jan Karas payment of debt in the amount of 40 marks. In support of his claim he presented to the court the charter, in which the mentioned amount of debt had been indicated. However, upon consulting the register that contained the copy of the agreement between two parties, it became revealed that the sum of debt comprised not forty but thirty marks. Afterwards, Jan Karas condemned Budzywoy's letter as false. See *ibid*., vol. 13, no. 5236 (September 6, 1463). See also *ibid*., vol. 14, no. 2914 (August 10, 1453).

[23] *Ibid.*, vol. 17, no. 2782 (December 7, 1495): *Iudicium decrevit, ex quo doms. Nicolaus Zavyanza prout obtulerat se probaturum, quod debuit statuere testes iuxta inscripcionem superius in actis contentam quod videlicet obdestinabat dom. Iohannem Fredro de Pleschowicze iuxta proposicionem et conversionem eorum et testis unus nobil. Demettrius testificatus est, quia locatus fuerat per eundem nobil. Zavyanza in iudicio, sed non recognovit, quod equitaret in legacione et nuncio ad ipsum Fredro. Et Fredro memoriale posuit in hec verba: ex quo non probavit sufficienter quia testis aliter testificatus est et aliter acta canunt et petivit sibi adiudicari equos cum curru illumque pena puniri Iudicium memoriali accepto equos pariter cum curru in duabus septimanis ita bonos sicut tres marce adiudicavit restitucionem ipsi Iohanni per Zavyanza ipsumque Zavyanza punivit pena trium marc. parti et iudicio alia. Memoriale iudicium recepit.*

sibi factam iuxta inscripcionem libri).[24] Some litigants went so far in their challenge of court judgments as to claim their readiness to prove, with the assistance of the register, the ignorance and the oblivion of the judges (*quod iudicium recepit ex ignorantia et oblivione*), who had first adjudicated them to be free from advanced charges, but then "forgot" and began to judge their case again.[25] It was also common to debate the proper or improper way of putting down or extracting the needed document from the register. During such debates the litigants called attention to the absence of the judge from the court at the time of recording or questioned the hand of the court notary responsible for writing the document into the register.[26]

The question of seals, which had to be attached to the copies issued, was the point on which the parties focused perhaps the most often in such debates on expertise. The legal practice in the castle court as well as statutory law stipulated that copies of documents which came out of the court chancelleries and were based on the registers must be substantiated by the seals of the men supervising the court activity and register: the captain as the head of the castle court, the court judge, the vice-judge.[27] The rules were not strictly applied, however, and disputants before the court judges often questioned the acceptability of charters which were not sealed according to the prescribed norms. Documents submitted to the court as legal proof in disputes sometimes lacked the necessary seals of the court officials. This gave opponents an occasion for dismissing the charter presented. For instance, debate erupted on the point of whether a charter with the seal of the vice-captain, suspended on the parchment instead of that of the captain, could be considered legitimate enough to be used in a dispute. The party who presented the document sealed in such an incorrect way argued, nevertheless, for its validity on the grounds that the case's settlement was commissioned by the captain himself to his assistant – the vice-captain.[28] In a debate over seals a party could support his/her position by resorting to other sorts of expertise of legal writing. In one case the disputant presented the charter to the court sealed

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[24] *Ibid*., vol. 14, no. 2715 (November 20, 1452).

[25] *Ibid.*, vol. 18, no. 3901 (June 4, 1499): *Postmodum veniens Iwaszko Blazowsky cum causam suam predicta Fyedka Baranyeczska que debuit iurare non dans neque coram iure committens, posuit memoriale, volens evadere pro decem marcis et totidem damni, posteris alias naposzlyadkv, quod iudicium recepit ex ignorantia et oblivione, et sibi eadem evasio est inscripta in acta.*

[26] *Ibid*., vol. 17, no. 2796 (January 11, 1496*): a quo nobil. Andreas Rosborsky stans tanquam procurator, cui causam suam coram iure commiserat personaliter, controversiam non intrando dixit: domine Iudex, hec res minus iuste et indirecte in librum intravit et hoc ideo, quia non est manus Notarii castrensi neque Iudex castri pro tempore illo fuit neque idem nobil. Adam Lowcze personaliter coram iure erat*.

[27] See, e. g., the words of one of the procurators concerning the proper way of sealing the issued charters: *litere hujusmodi nihil probant, quia non alie littere debent teneri in iure nisi ille, que sigiliis Regie Maiestatis et Capitanei aut Iudicum et Subiudicum terrarum essent sigillate et roborate*. In *ibid.*, vol. 18, no. 4340 (March 4, 1505).

[28] *Ibid*.

only by the court judge, but lacking the seal of the vice-judge; he claimed his readiness to prove its authenticity by checking the hand-writing of the court notary responsible for issuing the copy.[29] Those who held charters sealed in an improper way might also succeed by swearing the oath or calling on the support of witnesses' testimonies. Recourse to supernatural support in the form of oath-taking was especially needed, or even required, by the opposing party if the charter presented had only a damaged seal or none at all.[30]

The usage of registers evolved into the most significant instrument of power relations in the context of the disputing process. Access to the court register, the possibility of writing down a protest, appeal or summons, and efforts to assert one's power over the output of the court chancelleries became the part of a power game, showing one's empowerment to control and manipulate the resources of the law in litigation. As for the power to manipulate the registers in the disputing process, the sources are particularly revealing on the role of court officials charged with the responsibility of controlling the work of the court chancelleries and supervising the input and output of documents into and out of the registers. The sources sometimes offer insights into the court notary's ability to decline or accept the request to write down a protest or summons in the register and thus provide a legitimate basis for the next phase of the dispute. The judges' arbitrary use of registers sometimes resulted in accusations of their involvement by one of the disputing parties or partial judgment.[31] Some nobles voiced their protest against the abuse of the registers by court judges in a straightforward way. In one revealing example, Andrij Pankratovych of Czajkowychi, noble of Przemysl land, advanced an accusation against the L'viv land judge, Jan Golambek of Zymnawoda, claiming that the judge *male et false littere exiret de iudicio terrestri.* However, Golambek managed to win over the opinion of local nobility, who agreed to confirm that he was not guilty of such charges: *prout nobiles super eum famabant, ut esset iustus istius negocii infamie*.[32]

In this regard, one of the most illuminating cases is provided by the record of the controversy between Jan of Sienno, the captain of Olesko, and Hlibko of Chylchyci, noble of the Olesko district. In 1449, Hlibko brought a case against Jan Oleski to the L'viv castle court, blaming the latter for unjust seizure of two

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[29] *Ibid*., vol. 15, no. 2755 (December 15, 1498): *Pyrka dixit: domine Iudex, ista litera non est sufficiens, quia tantum Iudicis sigillum habet et subiudicis non. Et procurator Andree dixit: hic in ista litera est manus Notarii terrestris, qui protunc hic sedit et si difimas hanc literam, ego volo ipsam subiuvare iuxta iuris formam.*

[30] Consider the following example: in a record from 1442, the Ruthenian priest Vasylko of Peredrymikhy, while passing the charter on the part of the village Nahorci to a certain woman Panka, had to swear oath with another priest before the judges of the L'viv castle court to the fact that the aforementioned charter had been given to his father without the seal, see *ibid*., vol. 14, no. 368 (March 9, 1442). For making usage of witnesses to confirm the validity of damaged seals see *ibid*., vol. 11, no. 35 (March 18, 1424).

[31] *Ibid*., vol. 18, no. 1165 (December 1, 1478).

[32] *Ibid*., vol. 14, no. 2042 (April 5, 1448).

oxen. Responding to the accusation, Jan Oleski stated that the said oxen had been taken by him as a fine that had been adjudicated upon Hlibko in the local castle court of Olesko. To support his statement, he produced minutes of the judgment, issued by the chancellery of the court in Olesko. Hlibko countered this claim by uttering the opinion that Jan of Sienno, as a head of the court in Olesko, "could write down in the register, what he wanted" (*potuisti facere scribere, quid voluisti*). This was, without doubt, a very strong allegation. In his reply Oleski could not even help concealing his bewilderment at such dire talk, which was noted by the scribe of the controversy in the following words: "and you vigorously discredit the register" (*et forte derogas acta*).[33]

It is striking to find out how similar Hlibko of Chylchyci's arguments sounded to those of Nicolas Czajkowski. In both cases the litigants explicitly expressed their doubt about the validity of the written evidence, presented by their opponents. In both cases the litigants articulated with particular clarity their suspicion on the point of their rivals' ability to control the output of the documents from the register and turn it to their benefit in the dispute. The vituperation of written proof found in those two cases was by no means exceptional in the disputing practice of the fifteenth-century Rus' palatinate. The same sort of worries about the veracity of documents combined with charges brought against the register and the judge are reported in the account of the dispute between Peter Mzurowski and Jan Hermanowski. The dispute was held in the Przemysl land court in 1447. Peter Mzurowski inculpated the charter of Jan Hermanowski which the latter produced in the court as a proof of Mzurowski's obligation to pay thirty marks for surety taken on behalf of another local nobleman, Stanislas Stroski. Mzurowski claimed that the document was issued by the court chancellery in the wrong way (*quia ista litera exivit infideliter vulgariter nyeweyrnye wised*) and therefore could not be estimated as trustworthy (*est idem litera infidelis*). To confront this challenge, Jan Hermanowski set out to expurgate the charter by consulting the register in which the text of the agreement had been previously put down. The comparison of the charter with the register proved the correctness of Hermanowski's claim. It did not stop Mzurowski, however, who afterwards inculpated the register, stating that the text of the agreement was inscribed in the register in an incorrect form. When the judge wanted to expurgate the register, Mzurowski went further and accused the judge by saying that the latter had allowed the charter to be issued incorrectly. The outcome of the debate was the prorogation of the case for the next court hearing in order to have time to take counsel of the body of dignitaries who were to attend the session of the land judicial assembly (*colloquia*) in Vyshnya.[34] Underlying such defamation of

[33] *Ibid.*, no. 2183 (January 31, 1449).

[34] *Ibid*., vol. 13, no. 3138 (January 22, 1447): *Nob. Iohannes de Hermanowicze proposuit contra nob. Petrum Mzurowski tali condicione videlicet pro intercessione pro Stanislao Stroski pro novem kmethonibus in Knezicze obligatis in triginta marcis, si cum literam posuit super eandem obligacionem idem Iohannes, tunc Petrus eadem infamavit vulgariter przyganyl dicens, quia ista litera exivit infideliter vulgariter nyeweyrnye wysed et est idem*

letters, registers, and judges was a suspicion of fraud on the part of judges of the court, who could plot together with an adversary with the aim of falsifying the documents.

The vituperation of letters appeared not only as a corollary or reaction to an increase in abuses of writing in the course of disputes, reflecting social distrust or anxieties. It seems that the practice itself could easily be turned to systematic abuse by the litigants. Thus, the vituperation of charters appeared as a disputing pattern that contributed to a rich repertoire of crafty strategies of litigation. To question the validity of the charter first, but withdraw the accusation and recognize the document as genuine in the following stage of the lawsuit was a move employed in the fifteenth-century practice of dispute.[35] Cases in which the litigants failed in their accusation against written proof and their rivals succeeded in proving the validity of the defamed charters also suggest that distrust of writing could be pragmatically played with as a deliberate stratagem in the disputing game. For instance, a record of the Przemysl land court from 1438 relates that following the mandate which had passed during the gathering of the local diet in Mostyska, Frederick of Jacimierz, nobleman of Sanok land, expurgated himself and his written document, which he used in his dispute with a certain Dorotha Komanowa. The expurgation was supported by the assistance of seven witnesses, recruited among local nobles. The witnesses testified under oath that Frederick of Jacimierz had not invited the cleric to his house and had not ordered him to compose false documents which could be damaging for other men.[36] From an earlier record inserted in the Sanok castle court's register and dated November 25, 1435 one can learn that the first charges, advanced by the attorney of the said Komanowa against the charter of Frederick, were built on another sort of suspicions. The rivals of Frederick doubted whether the charter had ever been issued by the court chancellery. According to this suspicion, the

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litera infidelis. Tandem Iohannes libro incepit expurgare et liber terrestris concordatus est cum eadem litera taliter, prout in eadem litera scriptum est. Et Petrus eciam librum infamavit dicens, quia et in libro infideliter est inscriptum Nyewyerne yest pysano. Et Iudex sedens in presencia volebat librum expurgare et ipse eciam Iudicem infamavit dicens, quia infidelicet literam de libro fecit dare. Idcirco Camararii eandem causam receperunt ad iinterrogandum ad dominos in colloquio Wislicien. Et terminum habent ad alios terminos. Et in terminis prox. debent ipsos sentenciare.

[35] *Ibid*., vol. 13, no. 1481 (January 2, 1441): *Znyn literam acceptavit alias spravil, quam prius increpavit dicens, quia est bona litera. Ibid*., no. 1513 (January 30, 1441*): Stanko de Chlopicze subcubit penam iudicio tres marcas, quia literam increpavit, post ea ipsam in iudicio solus approbavit, eam esse bonam et veram.* See also the document of the concordance between Thomas Lopaczenski and Stanislas Czelatycki from 1476. By the terms of the concordance Czelatycki acknowledged to the veracity of Lopaczenski's letter of mortgage, which he had previously vituperated as false; see *ibid.*, vol. 18, no. 833 (February 8, 1476).

[36] *Ibid*., vol. 13, no. 803 (February 24, 1438): *ita nos Deus adiuvat et s. Crux, quod Fridrich predictus de Iaczimirz clericum non recepit in domum suam et non fecit sibi literas falsas scribere in membrane, que essent nocive alicui persone vel ad lucrum vel ad perdicione*.

charter lacked the judge's seal, which should have been suspended next to the captain's seal.[37]

It is interesting to note that a decade later Frederick of Jacimierz resorted to the same disputing strategy in his lawsuit with Margaret of Bolestraszice. Frederick of Jacimierz refused to pay to Margaret the amount of four hundred marks, which he had pledged in the agreement between himself and her. Frederick supported his denial by defaming the letter of pledge, which contained the mention of this sum and which Margaret produced in the court to prove the rightness of her claims. In his words, the document presented by Margaret did not agree in its content with the copy in the court register. Upon the vituperation of the document the judges read both Margaret's and the register's copies aloud to check their contents on the point of concordance. In the sentence the court judges confirmed the concordance of both copies and adjudicated the case to Margaret. However, this did not mean the end of the lawsuit. After that, both copies underwent the procedure of comparison twice more by being read aloud and discussed. The second time it was during the proceedings of the king's court held at the Diet in Lublin. There the king, who stood at the head of the gathered lords, confirmed by his verdict the correctness of the previous sentence of the local land court in Przemysl. Then both letters were again sent back to Przemysl for the consideration of the local land court. Once more the reading aloud and expertise of both copies was set out and the final judgment (*sententia deffinitiva*) was passed in favour of Margaret.[38] In general, such cases testify to the existence of a pattern in the dispute process which played on the ambiguous attitude and even mistrust in writing on part of some litigants.

There is a certain danger of one-sided and oversimplified interpretation in considering the multiple cases of the examination of the authenticity of written documents as only a sign of the advanced and sophisticated skills of the art of the charters' critique that evolved under the influence of the rapidly growing sphere of pragmatic literacy. The cases of *vituperatio litterae* show that mustering the usage of written documents in the disputing process sharpened the awareness of opportunities for abusing and manipulating the written word in the legal context. The practice of the vituperation of charters also suggests that the perception of writing in Galician society was characterized by anxiety and distrust towards the written word. This spread of the feeling of distrust was most likely due to the strong dependence of the legal process and litigation on the oral means of transmission. Thus, the feeling of distrust towards writing as well as the manipulation of the fears connected with the uses of writing should be situated at the crossroads of both the written and oral modes of transmission utilized in administering justice in fifteenth-century Galicia.

Oral transmission mediated the presentation of written evidence in the court in several significant ways. In order to obtain a legitimate meaning of legal

[37] *Ibid.*, vol. 11, no. 757.
[38] *Ibid*., vol. 13, no. 3717 (November 8, 1448); *ibid*., no. 3771 (December 4, 1448).

proof, the written document had first to be vocalized, that is, read aloud in the court room, and exposed to the judgment and consideration of the noblemen present in the court. This suggests that the meanings and interpretation of written evidence in the courts were elicited as a result of the public debate held in the courtroom. This made the presentation of the written text too contingent on the oral, performative context of case hearings.[39] This performative dimension, found in the nobles' attitudes towards writing, is highly important for understanding how the use of written documents was subjected to and governed by a set of sometimes odd and strictly formalistic rules of conduct in presenting proofs and exchanging arguments in the courtroom. The sources are clear on the point of how the usage of writing was deeply embedded in the formalistic structure of the legal process. Nobles were perfectly aware of this and utilized any opportunity opened by the dependence of writing on the rituals and formulas of oral performance. It is worth noting in this regard that debates over the rules of conduct and of the presentation of cases mattered sometimes more to the parties and judges than the factual evidence, which gave rise to conflict.

The procedure of reading charters aloud also involved a problem of knowledge, understanding and interpretation of the Latin language in general and Latin judicial terminology in particular. The evidence suggests that the understanding of the Latin text of charters by disputing parties could be wrong or sometimes differ substantially from the real content of a document. The sources reveal that due to a poor knowledge of Latin some litigants were not always sure on the content of documents that had been issued in the court by its officials in the previous phases of dispute. For instance, the record of the dispute between Stanislas Krysowski and Nicolas Mzurowski, written in the Przemysl castle register on September 5, 1491, gives information about the unusual controversy between these two nobles.[40] The parties varied in opinions concerning the type of accusation in the letter of summons by which Mzurowski sued Krysowski to respond to before the court. Krysowski claimed that the letter of summons contained no mention of the violent assault on a private house. Therefore, he saw it legitimate to appeal to the land court, because according to the law the case did not belong to the castle jurisdiction. Instead, Mzurowski insisted that the text of summons classified the violent conduct of Krysowski as a violent assault on the house and, thus, he was liable for the penalty of the castle court. Both litigants presented their copies of the summons for the scrutiny by the court officials. At this point comes the most interesting moment of the controversy. It turned out that Krysowski was mistaken concerning the content of the document he had in his possession. The summons indeed made reference to the violent assault.

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[39] On this aspect of the interrelation of the oral and textual in the context of the medieval disputes see especially Patrick Geary, "Oblivion between Orality and Textuality", in *Medieval Concepts of the Past. Ritual, Memory, Historiography*, ed. Gerd Althoff, Johannes Fried, and Patrick J. Geary (Cambridge: Cambridge University Press, 2002), 111-122.

[40] *AGZ,* vol. 17, no. 2404.

Another important aspect of the interplay of textuality and orality in court was that the questioning of written evidence resulted in altering the framework of proof in the dispute. It meant a shift in preference from the written to the oral means of proof. The institution of oath-helpers, whose testimonies were widely used in the court to support vituperated written evidence contained in the written documents, was perhaps the clearest manifestation of this dependence.[41] But the repertoire of oral techniques of proof and transmission was by no means restricted to witnesses' testimonies. The sources, for example, make reference to material objects used to memorize and strengthen legal actions or claims grounded on written evidence. The legal record of the dispute between Sonka of Stanymyr and Nicolas Slappa from 1453 is particularly revealing in this regard.[42] Blamed for the death of Sonka's child by cutting off the cords of the cradle, Nicolas Slappa wanted to escape judgment by referring to his ignorance of the lawsuit. He insisted that he had never received the letter of summons to the court to respond to Sonka's allegation. However, the court bailiff's testimony, given in court, contradicted Slappa's statement. In the course of his interrogation by the judges, the bailiff confirmed the fact of the delivery of the summons. In support of his recognizance, the bailiff produced before the court a piece of wood (*signum*) which he had cut off while summoning Nicolas to the court session (*Ministerialis recognovit, quia cittavit Nicolaum et signum ostendit, quod excidit, dum eundem Nicolaum cittavit*). In their turn, the judges ordered the bailiff to prove his statement. According to the court decision, the bailiff was obliged to visit Nicolas' estate again and re-apply the piece of wood to the place from where it had been felled. Afterwards he had to decide whether the piece fitted or not.[43]

In general, it might be suggested that the kind of mistrust that was expressed in the practice of vituperation of written documents was inherent in a worldview still deeply rooted in oral culture. It seems that in fifteenth-century Galicia lasting and firm relationships could not be built upon the power of the written document alone without having permanent recourse to the resources of oral transmission and being open to a ceaseless process of negotiation and adjustment every time one of the parties involved felt it necessary. Within this culture of mistrust of written proof, the uses of the vituperation of documents were endowed with a certain degree of legitimacy and generated an incessant demand for oral testimonies necessary to support written documents.

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[41] *Ibid.*, vol. 13, no. 1373 (December 5, 1440): *Hryn debet literam supportare sex testibus om quatuor septimanis, quia Stanko increpavit ipsius litere asserens ipsam falsam*. *Ibid*., no. 1571 (January 9, 1441): *Symek ministerialis aquisivit iure XX marcas super Vaskone de Premislia et induxit testes super eodem debito, qui iuramento literam supportaverunt, quia Vasko literam increpavit.*

[42] *Ibid*., vol. 14, no. 2804 (April 21, 1453).

[43] *Ibid*.: *ministerialis debet equitare ad Nicolaum et applicare signum ligneum excissum in illum locum, ubi excidit et in duabus septimanis ministerialis debet recognoscere, si signum conveniat loco, an non*.

M E D I U M A E V U M

Q U O T I D I A N U M

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KREMS 2008

HERAUSGEGEBEN
VON GERHARD JARITZ

GEDRUCKT MIT UNTERSTÜTZUNG DER KULTURABTEILUNG
DES AMTES DER NIEDERÖSTERREICHISCHEN LANDESREGIERUNG

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Inhaltsverzeichnis

Vorwort

Der vorliegende Band von *Medium Aevum Quotidianum* wird besonders dadurch bestimmt, dass wir die Möglichkeit erhalten haben, einen Beitrag zur Alltagsreligiosität in englischer Übersetzung zu publizieren, den Aron Ya. Gurevich, einer der bedeutendsten Mediävisten des 20. Jahrhunderts[1], im Jahre 1988 in russischer Sprache verfasst hatte und welcher 2005 in einem Sammelband der Arbeiten des Autors, neuerlich auf Russisch, wieder abgedruckt wurde. Der Aufsatz beschäftigt sich mit der Analyse von *Exempla*, einer Quellengruppe, welcher sich Gurevich in seiner wissenschaftlichen Karriere des öfteren gewidmet hatte.

Ein zweiter Beitrag, verfasst von Yuriy Zazulyak (L'viv), setzt sich mit dem Alltag der Gerichtspraxis im spätmittelalterlichen Galizien und der dabei auftretenden Rolle von Schriftlichkeit auseinander. Gertrud Blaschitz analysiert schließlich einen im Jahre 2006 entdeckten Wandmalerei-Zyklus in einem Wohn- und Repräsentationsraum der sogenannten ‚Gozzoburg' in der Stadt Krems an der Donau (Niederösterreich), einem Baukörper aus der zweiten Hälfte des 13. Jahrhunderts, als dessen Bauherr der damalige Kremser Stadtrichter Gozzo gilt.

Der Band versucht somit neuerlich, die Breite, Vielfalt und Interdisziplinarität der Forschungsfelder einer Geschichte von Alltag und materieller Kultur des Mittelalters aufzuzeigen. Er soll dadurch auch wieder anregen, sich stärker mit jener wichtigen Teildisziplin der Mittelalterforschung zu beschäftigen.

Gerhard Jaritz (Herausgeber)

[1] Siehe den Nachruf durch János M. Bak, Elizabeth A.R. Brown und Yelena Mazour-Matusevich, in: Speculum 82 (2007) 826-828.