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SOMMARIO

ANNO XVIII (2015) - n. 2

RETI FINANZIARIE E RETI COMMERCIALI. OPERATORI ECONOMICI STRANIERI IN PORTOGALLO (XVI-XVII SECOLO)

a cura di Benedetta Crivelli e Gaetano Sabatini

- L'espansione commerciale e finanziaria del Portogallo nella prima età moderna. Un bilancio storiografico* di Benedetta Crivelli e Gaetano Sabatini p. 257
- Il Portogallo, tra Mediterraneo e Atlantico
- NUNZIATELLA ALESSANDRINI, *Reti commerciali genovesi a Lisbona nel secolo XVII: elementi di commercio globale* » 275
- ANTONELLA VIOLA, *Trade and diplomacy: the Ginori family's trading network in the Iberian Peninsula (1660-1700)* » 299
- Individui e istituzioni nello sviluppo dell'economia portoghese
- JÜRGEN POHLE, *Lucas Rem e Sebald Kneussel: due agenti commerciali tedeschi a Lisbona all'inizio del secolo XVI e le loro testimonianze* » 315
- CATIA ANTUNES, *Failing institutions: the Dutch in Portugal and the tale of a Sixteenth-Century firm* » 331
- BENEDETTA CRIVELLI, *Fiere di cambio e finanza internazionale: la rete degli intermediari finanziari tra Milano e Lisbona nella seconda metà del XVI secolo* » 349
- Le reti transnazionali del commercio globale
- AMÉLIA POLÓNIA, *Understanding the role of foreigners in the Portuguese overseas expansion through the lenses of the theories of cooperation and self-organization* » 385

SOMMARIO

- ANA SOFIA RIBEIRO, *Trans-national cooperation: an asset in the Portuguese overseas trade. Foreigners operating in the Portuguese overseas trade, 1580-1590* » 415
- FILIPA RIBEIRO DA SILVA, *Ebrei, olandesi, portoghesi e il commercio atlantico: reti di commercio e di finanze transimperiali, 1580-1670* » 445
- ARTICOLI E RICERCHE
- RITA MAZZEI, *Sete italiane nella Russia della seconda metà del Seicento. La produzione lucchese alle fiere di Arcangelo* » 473
- ALIDA CLEMENTE, *La sovranità vincolata: mercantilismi, guerre commerciali e dispute istituzionali negli anni Settanta del Settecento (Napoli e Venezia)* » 517
- STEFANIA ECCHIA, *Esattori, creditori, funzionari. I notabili provinciali a supporto della politica riformista sul finire dell'Impero ottomano* » 547

FAILING INSTITUTIONS:
THE DUTCH IN PORTUGAL
AND THE TALE OF A SIXTEENTH-CENTURY FIRM

1. *Introduction*

In 2006, Avner Greif stated that «corporations have been in the forefront of the late medieval commercial revolution, the subsequent global commercial expansion, imperialism, colonization, industrialization, and the development of modern science and technology»¹. Therefore, the study of the development of firms is essential for our understanding of economic and social changes in the Western world and beyond. In this sense, Greif pioneered the studies in economic and social history by exploring the transition from a system of firms guided by principles of coalition, i.e. a set of informal regulations, to a system of individual accountability channeled through a set of formal institutions². He positioned the relationship of agency between Maghribis and Genoese and their business representatives as a developmental step from a commercial system ruled by mechanisms of reputation and multilateral coalition within the same group, towards a system of patronship where the best positioned economic agents gained access to the commercial network of the patron³.

Two crucial differences arise from these systems. The coalition system left the Maghribis with little choice but to select business partners and agents within their own coalition (in this case dictated by their religious denomination), whereby individual and collective reputations were essential for one's socio-economic success, while the

¹ A. GREIF, *Family structure, institutions, and growth: the origins and implications of western corporations*, «The American Economic Review», 96 (2006), 2, p. 310.

² ID., *Institutions and international trade: lessons from the commercial revolution*, «The American Economic Review», 82 (1992), 2, pp. 128-133.

³ Ivi, pp. 130-131.

Genoese could afford to move towards a more impersonal system of representation, where reputation was of less importance because future defection or cheating could be handled outside of the firm's network. This last point constitutes the second crucial difference between coalition and systems of patronship. In case of a failing agent, coalitions could do little more than socially ostracize the individual responsible for the transgression, although it was not in the interest of the collective reputation to let that information leak out of the core group. On the other hand, the system of patronship was able to bring the outside agent before a set of institutional arrangements (as was the case of courts or princely authorities) to settle the problems opposing principals and agents⁴. Greif concludes then that

collectivist cultural beliefs led to a societal organization based on the group's ability to use economic, social, and, most likely, moral sanctions against deviants. In contrast, individualist cultural beliefs constituted a part of the second-party enforcement mechanism of the Genoese and induced a low level of communication, a vertical social structure, economic and social integration, and wealth transfer to the relatively poor. These manifestations of individualist cultural beliefs weakened the dependence of each individual on any specific group, thereby limiting each group's ability to use economic, social, and moral sanctions against individual members. Individualist cultural beliefs led to a societal organization based on legal, political, and (second-party) economic organizations for enforcement and coordination⁵.

In this article I analyze a late sixteenth-century principal-agent disruption within a Dutch firm located in Lisbon, wherein the defecting agent was also a junior partner in the said firm. The interactions between the senior partners (principals) and the junior partner (agent) reflect and simultaneously justify a set of complex social and economic interactions that ended up with the liquidation of the firm within five years of its establishment⁶. However, the disagreement about this liquidation drove the cheating agent to, in turn, charge the

⁴ ID., *Cultural beliefs and the organization of society: a historical and theoretical reflection on collectivist and individualist societies*, «Journal of Political Economy», 102 (1994), 5, p. 942.

⁵ *Ibidem*.

⁶ This type of liquidations became common practice in Antwerp during the sixteenth century. D. DE RUYSSCHER, *From individual debt recovery to collective liquidation procedures. New ideas on creditors. Rights in sixteenth-century Antwerp*, in *Turning points and breaklines*, Yearbook of Young Legal History, 4, Munich 2009, pp. 193-206.

principals for defection in a court of law within the jurisdiction of the place of birth of the plaintiff. When that local court failed to provide a satisfying answer to the pleas of the principals, they moved away from what they might have considered a set of failing institutions into a commercial environment where they trusted they might be more successful in arguing their case. Based on a set of salvaged printed sources published in the early twentieth century, but well rooted on the original Dutch and Portuguese archival sources of the sixteenth century firm, this article argues that Greif's developmental theory seems to have taken root in the Low Countries and Iberia by the end of the sixteenth century, although the weakness of the institutions that should have guarded the individualist system of exchanges failed miserably in the first instance, leaving opened the question whether the reasons behind the success of commercial regulative institutions in certain (few) urban environments was related to the efficiency of the institutions *per se* or rather the knowledge and experience of a customary commercial law.

2. *Cunertorf, Snel & Janssen – The Firm*⁷

The firm Cunertorf, Snel & Janssen was founded by Gaspar Cunertorf, Jan Snel junior and Jan Janssen in Lisbon, in 1577. Gaspar Cunertorf, head of a commercial house in Lisbon, was the son of Henrick Cunertorf, magistrate in Kampen⁸, whose function had expanded beyond the borders of the town into representation tasks before kings and queens⁹. The Portuguese sources are silent about Gaspar's arrival into Lisbon, although by reading into the available Dutch sources, it is certain that he married in Lisbon before 1572 with Maria Galoa and by that year closed a business alliance with Jan Snel jr, also liv-

⁷ J. NANNINGA UITERDIJK, *Een Kamper Handelshuis te Lissabon, 1572-1594. Handelscorrespondentie, Rekeningen en Bescheiden*, Zwolle 1904. Henceforth cited as *KHL*.

⁸ Kampen was a town in the Low Countries, present day The Netherlands.

⁹ Henrick Cunertorf was the representative of Kampen before emperor Charles V when he visited Amsterdam in 1538. Four years later, he represented the town before the Queen Regent in matters regarding the brokerage of peace between Overijssel and Gelre. For his good advice and loyal service, the Queen Regent invited him as envoy to Denmark, although at that time Mr Cunertorf declined the offer for fear of imprisonment and commercial loss because of the political disputes between the regency and Denmark. NANNINGA UITERDIJK, *Een Kamper Handelshuis*, pp. IX-X.

ing in Lisbon at the time¹⁰. Gaspar Cunertorf's origin is made clear by his business correspondence and registers in Kampen, but the Lisbon authorities enlisted these men as 'German merchants' of Kampen. By the mid-1570s, Cunertorf lived with his wife in the parish of São Nicolau, while Snel lived outside of the city walls and would have stayed at the Nossa Senhora da Esperança convent when in town for business¹¹. Jan Janssen, on the other hand, was a well-known supercargo of the ships arriving from northern Europe and he often stayed at Cunertorf's family home in Lisbon while trading in the city¹².

The idea of bringing Cunertorf, Snel and Janssen under one single firm was forged by Cunertorf's and Snel's common necessity of an agent to deal in the Baltic trades as a complement to their agents in Antwerp and the Hansa towns. In the hope of increasing the efficiency of their business, Cunertorf and Snel decided to join forces and share the risks and the profits of a common agent that they quickly identified in Jan Janssen, a man they knew well, since he had often stayed at Cunertorf's home while in Lisbon and he had served sporadically as agent to both Cunertorf and Snel between 1572 and 1577, year in which the firm Cunertorf, Snel and Janssen was created¹³.

On May 7, 1577, the firm Gaspar Cunertorf, Jan Snel Jr and Jan Janssen was registered in Lisbon. The registration of the firm was the corollary of the sporadic contractual agency relationship between Cunertorf, Snel and Janssen that had started in the beginning of the 1570s. After half a decade of try-outs, the senior partners decided to invite Jan Janssen to become their permanent agent and representative in the Low Countries and itinerary agent wherever they might have business interests, that is mainly in the Baltic. Janssen was expected to live where the agency needs of the firm would dictate and he was given full powers to trade in a diverse portfolio of products, as well as investments, being these business decisions corroborated by the senior partners depending on the yearly reporting of accounts.

Cunertorf and Snel agreed to invest a maximum of 10.000 guilders in the firm, while Janssen would remain a junior partner with an investment of about 700 ducats¹⁴. The partners agreed that the yearly

¹⁰ Ivi, p. XI.

¹¹ *Ibidem*.

¹² *Ibidem*.

¹³ Ivi, p. XII.

¹⁴ In the markets of the Dutch Republic circulated several currencies, although guilders, Flemish pounds and ducats were the most current. The ducats and the Flem-

capital inputs were to be only used in trade, automatically excluding the possibility of extending credit to third parties. The profit of the firm was to be distributed among the partners proportionately to their initial investment. For that reason, Jan Janssen was to receive one eighth of all the profits generated by the firm. However, his position as partner was concomitant to his role as agent. For his services of agency, the firm paid him a travelling, lodging and boarding allowance, topped up with a yearly income of fifty ducats (in the form of wages for his services). In case of disagreement or conflict, the senior partners were free to bring Janssen before a court of law in Lisbon or in any other city or town where the firm might have commercial interests¹⁵. Little did they realized that this clause was to have great consequences in the future.

To start up a firm with business interests in Portugal and the Low Countries in 1577 was a bold move in the general context of late sixteenth century. The Eighty Years War ravaged most of the Low Countries since the beginning of the Dutch Revolt in the 1560s and the Habsburg rulers were growing impatient with the actions of the Dutch rebels in the southern Low Countries. In the years preceding the establishment of the firm, Spanish troops brought Antwerp under siege in reaction to the Dutch rebels incursions on the Scheldt river and over land, resulting the blockade in the ravaging of the city, with all the well-known consequences for merchants and trade¹⁶. Jan Janssen witnessed in person the consequences of the so-called ‘Spanish Fury’ of 1576 – when the Spanish troops mutinied and plundered the city – when he stayed at Gaspar Pels’s house in the summer of 1577, together with his partner Jan Snel. Snel recounts the dire situation of the city in his letter of October 16, 1577¹⁷, in which he advises Jan

ish pounds were the most stable of these three currencies and thus used for international investments and payments during the last quarter of the sixteenth century. This explains why in the original contract establishing the firm two different starting up capital currencies were simultaneously used.

¹⁵ *Acte van Vennootschap van Gaspar Cumerdorff en Jan Snel met Jan Janssen, 1577, 7, Mei (KHL, pp. 525-535).*

¹⁶ F.M.A. ROBBEN, *Brandstichters en boekenkopers: Spaanse militairen als klanten van Plantijn en Raphelengius na de ‘furie’ van Antwerpen in November 1576*, in *Tussen twee culturen: de Nederlanden en de Iberische wereld 1550-1800*, Nijmegen 1983, pp. 135-149; E. ROOMS, *Een nieuwe visie op de gebeurtenissen die geleid hebben tot de Spaanse Furie te Antwerpen op 4 November 1576*, «Bijdragen tot de Geschiedenis», 54 (1971), pp. 30-55.

¹⁷ Letter by Jan Snel to Jan Janssen (in Enkhuizen), October 16, 1577 (KHL, pp. 22-27).

Janssen in Enkhuizen to store his goods away from Antwerp, offering as a viable option the towns in Zeeland, especially Flushing and Middelburg, a move corroborated by a business pattern that witnessed, after the sacking of Antwerp, a shift in the economic gravity in the Low Countries towards the province of Zeeland¹⁸. Janssen, however, insisted in staying in Enkhuizen and only after some to and fro he acquiesced to move to Zeeland to safeguard the interests of the firm, since the ports in Zeeland stood open even during the winter and exchange of correspondence was easier throughout the year.

By November, Jan Snel's intake on the situation in the Southern Low Countries was far from positive. In his letter to Adriaan Speelman, an important merchant in Antwerp, he expressed his concerns for the economic future of the city and of the Low Countries in general. In the same letter, he suggested that Speelman should consider moving his business towards Lubeck or Dantzig in order to avoid the conflict in the region¹⁹. In the return mail, Speelman tried to pass word to Cunertorf and Snel in Lisbon, via a letter to Jan Janssen, where he underlined that all would be well «as long as the waterways are free» of conflict²⁰.

In the early spring of 1578, Adriaan Speelman changed his cautionary words to his fellow merchants in Amsterdam and Lisbon into a subtle invitation for continuous investment in the Antwerp market²¹. His advice coincides with Jan Snel's proposal to maintain the Northern European trades with Iberia because the Spanish were absorbed by the war effort and, due to the unrest over land and at sea, Portuguese and Spanish skippers had grown afraid of risking their investment into the Northern European markets. This seems to have been reason enough for Jan Snel to argue for a growing investment in this trading route that most were trying to avoid, but still provided the opportunity for very high profits²². He furthermore insisted in the maintenance of the firm's close connections with Adriaan Speel-

¹⁸ J.P. SIGMOND, *Nederlandse zeehavens tussen 1500 en 1800*, Amsterdam 1989, p. 31.

¹⁹ Letter by Jan Snel to Adriaan Speelman, November 2, 1577 (*KHL*, pp. 31-34).

²⁰ Literally, «alsoo langhe Als wy het water ende de vaert liber hebben», Letter by Adriaan Speelman in Antwerp to Jan Janssen, December 10 and 11, 1577 (*KHL*, pp. 41-46).

²¹ Letter by Adriaan Speelman in Antwerp to Jan Janssen in Amsterdam, April 25, 1578 (*KHL*, pp. 98-105).

²² Letter by Jan Snel in Lisbon to Jan Janssen in Rotterdam, February 14, 1578 (*KHL*, pp. 66-69).

man in Antwerp, that according to him should remain the firm's preferred market for the Iberian-Baltic exchanges²³.

The business opportunities identified by Snel were still driven by the political developments in Portugal. In the winter of 1578, rumors in Lisbon spoke of a royal campaign in the North of Africa to take place in the late Spring or early Summer. The royal warehouses were stocking up on all types of warfare victuals, as well as grains and cloths from Holland (for the nobles to parade before the departure of the troops). What the partners of the firm did not know was that there was a royal edict in the making, allowing seizure of all ships in Portuguese ports so they could be used in the service of the royal troops for the crossing to Morocco. This news reached Antwerp at the moment that the King had already died in the battle of Al Quasr al-kibr, taking with him a young generation of Portuguese noblemen who either died or were imprisoned, and leaving a vacant throne, since the king had no progeny²⁴. Even if Snel underlined the complex political situation that arose from the untimely death of the king, he was still able to stress the possibility for profits that the firm would now be able to have. The period of mourning demanded specific attire for noblemen and common men and that opened new business perspectives for the firm, especially on the imports of serge.

Jan Snel could not have anticipated the turmoil of the next two years. After the short reign of Cardinal Henrique, uncle to the deceased King Sebastião, Philip II, King of Spain, contended for the Portuguese Crown and defeated Henrique's nephew, Antonio, in the early summer of 1580. The defeat of Antonio's troops by the Duke of Alba brought about a wave of pillaging in the surroundings of Lisbon, where many of the firm's warehouses were located, as well as the house and personal possessions of Jan Snel. The losses included significant quantities of cereals, timbers, tar, ropes and ivory²⁵. But plundering was just one of the many problems which the firm had to cope with. In the same year, and as consequence of the war, the plague broke out in Lisbon, followed by Philip II's war at sea against Dutch ships, as well as his well-known embargoes that haunted the

²³ Letter by Jan Snel in Lisbon to Jan Janssen in Antwerp, February 26, 1578; Letter by Jan Snel in Lisbon to Adriaan Speelman in Antwerp, February 27, 1578 (*KHL*, pp. 74-77 and 78-82).

²⁴ Letter by Jan Snel in Lisbon to Adriaan Speelman in Antwerp, August 27, 1578 (*KHL*, pp. 140-147).

²⁵ Letter by Gaspar Cunertorf in Lisbon to Jan Janssen in Dantzig, December 14, 1580 (*KHL*, pp. 311-324).

Dutch-Iberian trade and political relations until the monarch's death in 1598.

The list of goods pillaged during the confrontation between Antonio and Philip II is illustrative of the type of products Cunertorf, Snel and Janssen dealt in. The bulk products arrived from the Baltic and were mainly represented by shipbuilding materials (timbers, tar, ropes) and cereals. In these imports, the representatives and itinerary agency of Jan Janssen in Lubeck and Dantzig were essential for a successful and continuous flux of exchanges, notwithstanding the dire political situation of the 1570s and 1580s²⁶. In the reverse direction, from Portugal to the Low Countries and the Baltic, the firm exported mostly colonial products, like ivory, but more often still Brazil wood and cotton (from the island of São Tomé and from Brazil)²⁷.

3. *Janssen vs Cunertorf & Snel – The Conflict*

Unfortunately for Gaspar Cunertorf and Jan Snel, Jan Janssen failed to fulfil his duties and they were forced to file a complaint against their agent and bring him before a court of law (from 1582 onwards) using the clause inserted in the original contract that established the firm, according to which disputes between the partners could be brought before a court of law in Lisbon or any other town where the firm had business interests. Janssen's failure to comply with the agreements of the firm established in 1577, followed by strong suspicions and plenty of rumors about his laxity and dishonesty, left little room for the senior partners but to demand from their agent all the accounting books back and the dissolution of the firm, by withdrawing all powers of attorney conceded earlier to their agent²⁸. Instead of complying with the partner's demands and settle the case

²⁶ For information about the imports of bulk products see: Letter by Jan Snel in Lisbon to Jan Janssen in Dantzig, March 24, 1579; Letter by Kersten Petersen in Lubeck to Jan Janssen in Dantzig, July 2, 1579; Letter by Jan Snel in Lisbon to Jan Janssen in Dantzig, February 18, 1580 (*KHL*, pp. 179-184, 214-216 and 278-284).

²⁷ For information about the import and re-export of colonial products see: Letter by Jan Snel in Lisbon to Adriaan Speelman in Antwerp, February 9, 14, 15, 1578; Letter by Adriaan Speelman in Antwerp to Jan Janssen in Amsterdam, August 12, 1578; Letter by Jan Snel in Lisbon to Adriaan Speelman, April 24, 1579 (*KHL*, pp. 59-66, 134-140 and 198-204).

²⁸ *Acte of withdrawal of power of attorney by Gaspar Cunertorf to Jan Janssen, April 1586* (*KHL*, pp. 548-549).

outside the institutional world, Jan Janssen responded to Cunertorf and Snel by using the court of Kampen to issue a claim on the assets of Cunertorf and Snel in the Low Countries, a grave decision that threatened the liquidity and reputation of the firm and of the senior partners²⁹.

In an attempt to avert major disasters, Simon Cunertorf (brother to Gaspar Cunertorf) and Henrick van Wilsem (uncle to Jan Snel) agreed to stand as guarantors for Janssen's demands in Kampen³⁰. This decision was not taken lightly, but both men were sure that the court would rule in favor of their family members against Janssen because of the documents Gaspar and Jan had sent from Lisbon to state their case. According to these letters and ledger books, it was clear that Janssen had broken the original agreement that settled the firm in 1577 and that he had blindly robbed the firm in more than one occasion, besides adding socially reproachable behavior to his commercial and financial demeanors, as will become apparent later.

Jan Janssen's claim brought before the magistrates in Kampen was simple. As a reaction to the dissolution of the firm requested by Cunertorf and Snel in Lisbon because of Janssen's mismanagement and dishonesty, he demanded the restitution of his share of the investment in the company (700 ducats), as well as his yearly income (fifty ducats)³¹ between 1577 (year of the official establishment of the firm in Lisbon) and 1585 (year in which he accepts the collateral provided by Simon Cunertorf and Henrick Wilsem while proceeding against Cunertorf and Snel in Kampen)³². These demands did not impress Simon and Henrick. They were certain that the court would demand the accounting books and business correspondence for the eight years under scrutiny from the partners. These books and letters, they were certain, not only would clearly show that Jan Janssen had been paid for as long as he had provided the services agreed in

²⁹ NANNINGA UITERDIJK, *Een Kamper Handelshuis*, p. XCII.

³⁰ Notarial registration of Simon Cunertorf's and Henrick van Wilsem's guarantee for the demands by Jan Janssen before the court in Kampen, leaving untouched the assets of Gaspar Cunertorf, April 7, 1584 (*KHL*, pp. 426-438).

³¹ Even if the total of Jan Janssen's yearly wage was 50 ducats, in the original source, the amount is expressed in Portuguese *cruzados* amounting to the same value. This statement was accepted in the court because of the witness account of Pieter van de Moer and Henrick de Haze who testified to the exchange rate of the Portuguese *cruzado* in Lisbon in relation to the ducats circulating in the Low Countries in 1587 and 1588, November 1588 (*KHL*, p. 544).

³² NANNINGA UITERDIJK, *Een Kamper Handelshuis*, p. XCVII.

the contract of 1577, but they would also reveal a world of mismanagement and concealment of vital informations, which had been the primary reason for the senior partners to dissolve the firm and informally demand from Janssen their dues. In the end of the day, Simon and Henrick were certain that the magistrates would find out that it was Janssen who still owed money to the company and therefore to his senior partners in Lisbon³³.

Simon Cunertorf, besides believing in his brother Gaspar and his partner Jan Snel in Lisbon, had one other good reason to serve as guarantor against the demands by Jan Janssen. In a letter of July 12, 1585, Berent Rotgerss informed Jan Janssen that Gaspar Cunertorf was about to be declared bankrupted in Lisbon³⁴. In order to safeguard his brother's liquidity and reputation in Northern Europe, especially in Antwerp, Amsterdam and throughout the Hansa towns, Simon decided to show faith and trust in his brother's financial situation by making available a significant part of his assets and wealth as collateral to the court in Kampen, in a sign to the merchant community that he was confident in the outcome of the court proceedings in favor of his brother and of his partner.

After a number of postponements on the part of the court provoked by the endless providing of evidence and counter-evidence to the magistrates, orchestrated by Janssen and the representatives of Cunertorf in Kampen, the lower court decided, on January 31, 1587, in favor of Janssen in his claims against his senior partners in Lisbon³⁵. By decision of the Kampen court, Gaspar Cunertorf was sentenced to pay what Jan Janssen demanded in his first petition to the court. This payment was executed by the court by confiscation of the assets of Gaspar's brother, Simon, namely his house in Kampen, taken from the Cunertorf family in 1588³⁶. What is curious about the sentencing of the Kampen court is the fact that the decision was made based on the written statements of Jan Janssen and Gaspar Cunertorf to the court, instead of on the accounting books and merchant correspondence delivered by both parties while the dispute was being

³³ Ivi, p. XCII.

³⁴ Letter by Berent Rotgerss in Amsterdam to Jan Janssen in Kampen, July 12, 1585 (*KHL*, pp. 412-413).

³⁵ Accounts and provisions presented to the court by Jan Janssen and Gaspar Cunertorf (*KHL*, pp. 439-524).

³⁶ Registration of the transference of assets from Simon Cunertorf to Jan Janssen in view of the sentencing of the court in Kampen regarding the dispute between Jan Janssen, Gaspar Cunertorf and Jan Snel in Lisbon (*KHL*, p. 548).

considered, as demanded by Cunertorf and Snel in the beginning of the process.

Confident in the successful conviction of Gaspar Cunertorf and subsequent sequestration of assets of his brother and guarantor Simon Cunertorf, Janssen moved against Jan Snel Jr and his uncle, Henrick van Wilsem. Using similar arguments, approach and documents, Janssen addressed the court once more and demanded his dues. However, this time he would be surprised. Aware of Janssen's success against the Cunertorf family, Van Wilsem handed in a new set of arguments to disavow Janssen's claims before the court³⁷. He stated that Janssen could not receive his share in the firm's capital and salaries twice, which would happen if the court complied with Janssen's petition as it had done with his claims against Simon Cunertorf. Following on his argument, Van Wilsem underlined the fact that after the seizure of Simon Cunertorf's house in Kampen, all the possible debts of the firm had been paid for. In practice, that would mean that Van Wilsem's assets as proxy to Snel's assets were not to be touched for the purpose of paying Janssen³⁸.

Henrick van Wilsem went still further in his arguments, though. He made it clear to the court that he had agreed to stand as guarantor for the payments of the firm to Jansen, as long as the latter could prove in a court of law that the firm owed him his capital investment and yearly wages, as he claimed in his first petition to the magistrates. However, to Van Wilsem's knowledge, Jan Janssen had presented the magistrates neither with the accounting books, nor with the merchant correspondence. Therefore, he had not, in fact, made any proof of the debt the firm supposedly had³⁹.

It has to be noted that with this argumentation, Van Wilsem was hinting at a very serious procedural problem within the functioning of the court as an institution for the mediation of commercial conflict. The magistrates seem to have decided upon the premise of debt without ever having inspected the accounting books and merchant correspondence that could (dis)prove Janssen's demands. This situation possibly reflected three underlying problems. In the first place, it was possible that the court was resolving this issue in a traditional

³⁷ Accusations of Henrick van Wilsem against Jan Janssen, petitioned to the court in Kampen, 1589 (*KHL*, pp. 423-435).

³⁸ Response by Henrick van Wilsem to the Kampen court on October 16, 1588 (*KHL*, p. 543).

³⁹ *Ibidem*.

manner by only reading the written petitions and the witnesses' accounts presented by the contending partners. The second possibility is that the court had acted according to precedent and by doing so excluded the possibility of proof. The third and last possibility is that the magistrates simply ignored the accounting books and the merchant letters for lack of understanding of how they would help to sort out this dispute⁴⁰.

Van Wilsem added insult to injury when he stressed that he had kept copies of the accounting books and the merchant correspondence that Cunertorf and Snel had sent from Lisbon (before handing another copy to the court), containing the correspondence and accounting of the firm between 1577 and 1582 (the last time according to the records that Janssen had sent accounts to Lisbon). According to Jan Snel's uncle, it was clear from the content of these documents that the firm had paid Janssen all his salaries, his travelling and boarding expenses while visiting the different towns where the firm had commercial partners or interests. Also according to those same documents, it was clear that Janssen's mismanagement of the firm's assets had been far superior to the share he had initially invested in the firm, which still owed a handsome amount of money to the senior partners. In this respect, he went as far as bringing to the presence of the magistrates the merchants Thiman Martens and Johan Molckenbuir, who testified under oath on December 9, 1588, that it was well known in the merchant communities in the North Sea board, especially in Antwerp, Amsterdam, the Hansa towns and even Kampen that Jan Janssen had stopped working for the firm altogether in 1582 (the last year he had sent Cunertorf and Snel the yearly accounts of his activities, but also the last year in which the firm paid his wages). For this reason, Martens and Molckenbuir, as merchants themselves, saw no reason for the firm to pay Janssen any further wages and therefore it was difficult to understand the reason why the magistrates had seized Simon Cunertorf's property and were about to seize Van Wilsem's in order to provide for Janssen's wages between 1582 and 1585⁴¹.

⁴⁰ In the late Medieval and Early Modern period, difficulty in understanding the contents and mechanisms of accounting was a fact for people outside the commercial circuits. W. FUNNELL-J. ROBERTSON, *Capitalist accounting in sixteenth century Holland: Hanseatic influences and the Sombart thesis*, «Accounting, Auditing and Accountability Journal», 24 (2011), 5, pp. 560-586.

⁴¹ Witness testimony by Thiman Martens and Johan Molckenbuir, December 12,

Henrick van Wilsem's case against Jan Janssen was not settled yet. Besides bringing to the table issues directly regarding the inputs, functioning and outputs of the firm, Van Wilsem also went on to explain that Janssen's dishonesty was not only of an economic nature, but also of a social nature. According to his statements to the court, Jan Janssen had been engaged to Ana Galoa, Gaspar Cunertorf's sister-in-law. The engagement, marriage contract and dowry had been settled in Lisbon and had been sponsored by Cunertorf, who saw the marriage as a social way of binding Janssen to the firm and the family⁴². The agreement was simple. Janssen was to marry Ana after serving the firm in Northern Europe and, for this purpose, Gaspar Cunertorf provided him with a dowry of 300 mil *reis*, which Janssen used as his initial capital in the firm. He would not have had the resources otherwise. When Janssen returned definitely to Lisbon, he would officially marry Ana in church and until then, he would remain in Cunertorf's house, aiding his wife on the daily chores⁴³. Still based on the information provided by the witnesses Pieter van de Moer and Henrick de Haze about currency exchange between Lisbon and the Low Countries, Van Wilsem concluded that 300 mil *reis*, at a rate of 1 mil *reis* for 5 guilders, the total of the dowry, and therefore Janssen's capital investment in the firm, had been reduced to between 500 and 550 ducats and not 700 as he claimed based on the contractual settlement of the firm⁴⁴.

Historically, when one analyses the accounting books that Gaspar Cunertorf and Jan Janssen presented to the court, it seems that Henrick van Wilsem was quite cautious in his accusations. Evidence shows that when Jan Janssen started to fail as agent, Gaspar Cunertorf extended credit to his representative in order to help him settle his accounts, for an amount of 248 _ mil *reis*. Besides this loan, it is also clear from the correspondence that Janssen owed Kersten Petersen in Lubeck 73 mil *reis* for products he had bought⁴⁵. Although the cargo

1588, in Response by Henrick van Wilsem to the Kampen court on October 16, 1588 (*KHL*, pp. 542-543).

⁴² Marriage contract between Jan Janssen and Ana Galoa, June 8, 1577, in Response by Henrick van Wilsem to the Kampen court on October 16, 1588 (*KHL*, p. 535).

⁴³ *Ivi*, pp. 535-537.

⁴⁴ Witness account of Pieter van de Moer and Henrick de Haze, who testified to the exchange rate of the Portuguese *cruzado* in Lisbon in relation to the ducats circulating in the Low Countries in 1587 and 1588, November 1588 (*KHL*, p. 544).

⁴⁵ Letter by Kersten Petersen from Lubeck to Jan Janssen from Kampen, now in Enkhuizen, March 4, 1578 (*KHL*, p. 83).

was negotiated with Petersen in the name of the firm, the export of the products was made in the name of Janssen alone, for which he should be solely liable for the debt to Petersen. However, the firm had paid Petersen for fear of having the access to the Lubeck market blocked because of Janssen's dishonesty⁴⁶. The combined debt, the loan as well as the advancement for Petersen, amounted to more than the dowry that Cunertorf paid for Janssen's marriage to Ana Galoa that he had used as initial capital investment in the firm.

The issue of the dowry was painful also in other ways. When one reads the marriage contract between Jan Janssen and Ana Galoa, it also becomes clear that the earnings Janssen would make within the firm would be accumulated within the firm and not paid out. Janssen only had the right to cash his part of the profits together with Ana, for a total of one eighth of the total profits as stated in the firm settlement of 1577. However, Jan Janssen had refused to keep true to his word and fulfil the marriage contract, which meant that, in fact, he only had the right to demand one sixteenth of the profits of the firm, half of what was rightfully his and Ana's⁴⁷.

Nonetheless, Van Wilsem was not done with Janssen still. He invited Gese van Wilsem, widow of Hans Wendelinck, a local merchant in Kampen, to testify regarding her dealings with Janssen. After her husband's death, out of respect for his soul, the Cunertorf brothers Simon and Gaspar had agreed to rent her one of their houses in Kampen for a fair price. Jan Janssen was to collect the rent at regular intervals. In the agreement she had with the Cunertorfs, Gese should pay her rent in 'light money', although it seems that Janssen had always forced her, under threat, to pay in 'heavy money', that is a total of 36 carolus guilders (of 20 stuivers each guilder). In her account of the facts, Gese van Wilsem stated that she and everyone else in Kampen knew that Jan Janssen forwarded the 'light money' to Cunertorf and Snel in Lisbon and kept the difference between 'heavy' and 'light' money for himself⁴⁸.

Henrick van Wilsem also responded to Janssen's claim that the

⁴⁶ Letter by Jan Snel Jr from Lisbon to Jan Janssen from Kampen, now in Enkhuizen, March 15, 1578 (*KHL*, pp. 84-89).

⁴⁷ Marriage contract between Jan Janssen and Ana Galoa, June 8, 1577, in Response by Henrick van Wilsem to the Kampen court on October 16, 1588 (*KHL*, pp. 535-537).

⁴⁸ Witness account by Gese van Wilsem, March 10, 1589, in Marriage contract between Jan Janssen and Ana Galoa, June 8, 1577, in Response by Henrick van Wilsem to the Kampen court on October 16, 1588 (*KHL*, p. 538).

firm owed him 700 Polish florins for an advancement he had made from his salary to pay for the firm's debts in the Baltic by stating that in a letter of December 10, 1588, Cunertorf had paid 360 Polish florins to Janssen, leaving an open debt of 340 Polish florins, half of this debt being owed to Ana Galoa (under the clauses of the marriage agreement) and not to Janssen himself⁴⁹. Even if the court would consider this an outstanding debt, Janssen had received from the confiscation of Simon Cunertorf's properties on a total of 350 golden guilders that would be more than sufficient to liquidate the said debt. After all accounts were done, Janssen had not only cashed out his whole investment in the firm, but he had still come to own 1.663 guilders and 7 stuivers that did not belong to him, but partly to the firm and partly to his fiancée in Lisbon. On the question of the yearly salaries of fifty guilders, that salary should only pertain to the time the firm functioned (for a period of three years instead of five as intended in the foundational contract). However, Janssen had kept collecting his wages for five years after the liquidation of the firm in Lisbon, by foreclosing on debts owed to the firm and captivating those resources for the payment of a salary that he had no right to have, as Johan Molckenbuir and Thiman Martens had explained in their report on December 9, 1588. Furthermore, Henrick van Wilsem was also adamant that Janssen should return the firm all the money he had received for costs with lodging and boarding while in Dantzic. The partners were informed as of late that Cornelis Loefsen, a well-known business partner of the firm, had provided Janssen with free boarding and lodging while in town. All in all, it was clear to Van Wilsem that, instead of litigating against his former partners, Jan Janssen should have travelled to Lisbon, paid his debts to the firm and moved on with his life.

Even if Henrick van Wilsem still demanded from the Kampen court that all the accounting books and letters brought to the magistrates by Janssen should be presented to a selected group of Amsterdam specialists in the trade with Portugal for their neutral advice, the Kampen court still decided, on October 14, 1589 in favor of Janssen. As happened with Simon Cunertorf, Henrick van Wilsem's assets were confiscated for payment of the debts claimed by Jan Janssen in the court. Van Wilsem did not see this action come to an end

⁴⁹ Marriage contract between Jan Janssen and Ana Galoa, June 8, 1577, in Response by Henrick van Wilsem to the Kampen court on October 16, 1588 (*KHL*, p. 535).

though, since he died before the execution of his assets took place. In the end, Jan Janssen was to receive 700 ducats of capital invested in the firm, as well as ten years of wages à fifty guilders *per annum*, for his services to the firm.

4. *Cunertorf & Snel vs Janssen – The Solution*

Gaspar Cunertorf and Jan Snel did not accept the Kampen's court decision. In view of the danger of losing their reputation as honest merchants, they moved on Jan Janssen's assets for his debts to the firm, this time in what they thought was a more sympathetic court. The case was brought before an Amsterdam court by Andries Glauwe, having a power of attorney from Cunertorf in Lisbon. Glauwe demanded from the Amsterdam court the arrest of all of Janssen's assets in Holland, to be put under administration of Isaac Peters and Lambert Bubbert (merchants in Amsterdam), until a final decision by the court. Faced with Cunertorf's bold move, the court of Kampen finally decided, on September 12, 1594, that all accounts between Cunertorf & Snel vs Janssen had been settled. This decision did not come as a surprise, though. Kampen was not looking forward to a jurisdictional confrontation with Amsterdam, as little as Jan Janssen was willing to be economically paralyzed by the arrest of his assets in Holland, which would have rendered him financially incapable of earning his daily bread.

The curious case of Cunertorf, Snel and Janssen reflect the typical case study that Avner Greif had in mind when referring to the advantages of individualist firms and their competitive advantage when dealing with principal-agent problems. However, as exemplified in this tumultuous instance, individualist firms did not function well without a set of efficient and trustworthy institutions, as the court of Kampen failed to be, in order to frame, regulate and decide when conflict arose. The cunning setting of the case anew under what Cunertorf and Snel thought as a more favorable institutional environment for the resolution of commercial conflict, namely within the merchant community of Amsterdam and later on within the city's court system, comes to show that litigation was an accepted, although time consuming and expensive inevitability for Early Modern firms. The move to the Amsterdam jurisdiction happened under the guise of the specialist knowledge that the Amsterdam merchant community held about the trade with Portugal. This knowledge presupposed, in the

view of Cunertorf and Snel, a certain set of accepted rules and practices among merchants that the Kampen court and magistrates failed to understand. Looking for this specialized knowledge constituted a last resort for the senior partners in Lisbon, but it mostly reflected what Oscar Gelderblom considers to have been the soul of Amsterdam's commercial success: «Although a merchant tribunal was never created in Amsterdam [many evidences show] the constant concern for the alignment of legal institutions with business practice»⁵⁰

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⁵⁰ O. GELDERBLOM, *Cities of commerce. The institutional foundations of international trade in the Low Countries, 1250-1650*, Princeton & Oxford 2013, p. 126.