

I. ROZPRAWY

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Litkup in the Rural Court Books of Old-Time Poland¹

1. Introduction. *Litkup*² was known extensively throughout medieval³ Europe⁴. In its' most primitive documented form, *litkup* involved the parties to a contract⁵ drinking together upon closure of the bargain, typically making that bargain irrevocable⁶. It has been submitted by many sociological commentators that this act has a distinct extra - legal provenance - both in the binding together of the two parties⁷, and in the 'sealing' of their relationship with some formal pledge of good faith⁸.

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² From '[e]it' = wine, 'k[a]up' = a purchase; also 'winkop', 'weinkauf', 'vinkoop', 'mercipotus'; D. J. Ibbetson: *From property to contract – the transformation of sale in the middle ages*, (1991) *Journal of Legal History*.

³ S. Estreicher; *Początki prawa umownego* [The beginnings of the law of agreements], 121 cites a Croatian text of 1090

⁴ J. Bardach, *Historia państwa i prawa polskiego (do połowy XV wieku)* [A History of the Polish State and Law (to 1450)] (Warsaw, 1965) I, 309. *Litkup* was known in Croatia and Hungary ('aldomas' – from Latin eleemosyne), Bulgaria ('chalwalk' – from Turkish alvaluk, 'sweet food'), Małopolska (Kraków to Lwów), and Ukraine ('mogorycz'/'mohorycz' – from Arabic) and Belarus ('barysz' – of Tartar derivation). The Magdeburg law, as known in Poland, makes express provision for *litkup* in association with the sale of horses and cattle. B. Groicki, *Tytuły prawa magdeburskiego* (text 1567, pub. Kraków 1629, ed. K. Koranyi, Warsaw 1954), 95.

⁵ Sale is, not surprisingly, encountered most frequently in the sources.

⁶ As in Poland; P. Dąbkowski, *Litkup, w dodatku o przysiędze i kłątwie* [*Litkup, with an excursus on oath – taking and curses*] (Lwów, 1906), 34

⁷ cf. the Polish *bruderschaft* (Ger. 'bruderschaft') – the drinking of some alcoholic beverage from the same vessel and an embrace, after which the participants may, for instance, without social censure address each other by forename alone. The gravity of this act is suggested by the fact that the glass is then often broken (symbolising irrevocability?).

⁸ cf. handshaking: Ibbetson, op. cit., 8–11. *Przybicie* (the parties conferring as to price with their palms laid flat together, the seller sliding his hand away across the fingers of the buyer to signify disapprobation of the price offered) is still used in Poland in association with the sale of horses.

II. Litkup in Poland⁹. The territorial dissemination, and extensive use of litkup¹⁰ in mid to late - medieval¹¹ Poland is attested to by the entries recorded in the municipal court books¹², which were the main source employed by Dąbkowski in his turn of the century monograph¹³.

According to the *Słownik Staropolski*¹⁴, 'litkup' can bear at last two meanings in Polish; 'A drink consumed upon the closure of a sale agreement, the custom of drinking for the strengthening of such an agreement', and an earnest paid by the buyer.

Dąbkowski's description of the characteristics and function of the Polish recension of litkup, is, for the most part, consistent with descriptions of litkup elsewhere on the continent. That is, litkup is found as an accompaniment to the sale¹⁵ of land and moveables¹⁶. Another development in common with other regions is the evolution, from the original manifestation of litkup in the drinking of wine, beer¹⁷, or vodka¹⁸, of 'dry' litkup¹⁹ ('suchy litkup'), invo-

⁹ Dąbkowski op. cit., infra n. 6, M. Handelsman, *Litkup – Szkice krytyczne* [Litkup – a critical sketch] in (1) *Przegląd prawa i administracji* (Warsaw, 1906), and (2) *Studia Historyczne* (Warsaw, 1911). There is a German summary of Dąbkowski at (1906) 6 *Bulletin de la société pour l'avancement des sciences* 77.

¹⁰ So extensive, indeed, that by the C17th, the world 'mercipotari' is ordinarily used instead of 'vendere' in Urban court books; Dąbkowski, 6.

¹¹ Dąbkowski's sources date from the mid fourteenth to the eighteenth centuries. Litkup is certainly well rooted in the sources by the end of the fourteenth century. S. Kutrzeba, *Historia źródeł dawnego prawa polskiego* [A History of the sources of former Polish law] (1926) II, 206 – 7 has a lower Silesian text attributable to the first half of the 13th century: 'item si quis alium pro debitis in querimoniam traxerit, nullis testibus iudictis convincere eum poterit, nisi adhibeat illos, qui contractum eorum audiverunt et forte vinum in testimonium rei audite biberint' (cited at J. Matuszewski, *Aqua Abrenuntiationis*, *Czasopismo prawno-historyczne* 4 (1952) 188, 213). The *Słownik Staropolski* has entries for 'litkup' from 1388 (*Księga sądowa Łęczycka 1385 – 1419*; Łęczycka Court Book) and 1400 (*Roty przysięg krakowskich 1399 – 1418*; ed. B. Ulanowski).

¹² Akta Grodzkie i Ziemskie [= 'AGZ'] (23 vols, Lwów, 1868 – 1928). For the sake of completeness, it should be mentioned that the *Correctura Iurium* of 1532 is silent concerning litkup, but that this silence is made conspicuous by the absence of reference to several other modes of strengthening obligations known in medieval Poland, such as oath – swearing, arra, and enrolment in private registers; W. Uruszczak, *Korektura praw, 466 Zeszyty Naukowe Uniwersytetu Jagiellońskiego (135 Prace Prawnicze)* I, 221 (Warszawa – Kraków, 1990).

¹³ A valuable recent addition to the published sources is the *Decreta iuris supremi Magdeburgiensis castri Cracoviensis 1456 – 1481*, 68 *Studien zur Europäischen Rechtsgeschichte (Ius Commune)*, ed. L. Łysiak & Nehlsen-v-Stryk (Frankfurt am Main, 1995). There are instances of litkup in entries 399 (1461), 448 (1462), 619 (1464), and 1086 (1469).

¹⁴ *Słownik Staropolski* [A dictionary of old Polish] (Wrocław-Warszawa-Kraków, 1950–59), IV.

¹⁵ Predominantly sale, though also lease and exchange.

¹⁶ In the AGZ, most commonly, horses, though also covered slaves; Dąbkowski observes that litkup is encountered much more frequently in association with the sale of horses than with the sale of bulls, cows, or other domesticated animals. Dąbkowski, 4–5.

¹⁷ 11 *Starodawne Prawa Polskiego Pomniki* [The monuments of oldest Polish law], vide n. 12 infra, entry 3868 (1580 – *Księga gromadzka wsi Torki 1569 – 1695*) – sale of a field. 'The buyer paid cash, and 8 grzywnen for beer for litkup with his successors and friends'.

¹⁸ Not water. The consumption of water – known in Polish sources as *aqua abrenuntiationis* – is undertaken only by the seller, and symbolises a renunciation by the seller of all proprietary claim to the item sold. Dąbkowski, 44. Matuszewski, op. cit., n. 11 infra, 207 – 220. *Aqua abrenuntiationis* could be assessed as a form of guarantee by the seller to act in good faith vis-a-vis the buyer, but does not seem in any way beyond this sense to be related more than peripherally to litkup. Contra, Ibbetson, op.cit. n. 2 infra, 13.

¹⁹ Dąbkowski's earliest instance of dry litkup is 1616. op.cit. 13.

living the payment of a sum of money, and dispensing with the act of drinking.

Dąbkowski's discussion has as its' mainstays two contentions. The first is that litkup in Poland, as an institution with legal effect, was made up of three, discrete, elements²⁰:

(i) 'The litkup court' ('sąd litkup')

(ii) The blessing of litkup ('pobłogosławienie litkupu') by the participants, and

(iii) The consumption of litkup ('spożycie poczęstunku').

Dąbkowski encounters some difficulty with what 'to judge' (*sądzić*) litkup may have meant. The texts do little to resolve this difficulty: '*marcipotum iudicavi et bibi*'²¹. In the absence of any clarification of this expression in the AGZ, Dąbkowski construes it to mean that 'the participants judged whether the litkup was appropriate', supposing there to be some requirement (albeit unarticulated in the texts) that the litkup had to be in some way related to the value or significance of the item sold. This requirement would, nevertheless, have to be distinct from the actual act of drinking. To this end, Dąbkowski deploys two entries – of 1359 and 1366²² in an attempt to demonstrate that litkup was monetary, and that this had to be equivalent to about 2–3% of the price. Although the text of the AGZ entries cannot be evaded, Dąbkowski's conjecture is not a particularly compelling one, in that it does not seem quite to fit seamlessly with the rest of his exposition. Dąbkowski does, however, consider 'it to be a certainty that the expression 'to judge litkup' had a still further and wider meaning. Namely it would be that, as in German law, it was associated with litigation, or dispute of the claim. However, further particulars of this apparent process cannot be given, since there is a lack of sources, although it must have fallen completely from use by the middle ages'²³.

The second mainstay of Dąbkowski's assessment of litkup in Poland is the role played by the 'litkupnicy'²⁴. It cannot be doubted that the conclusion of a sale, or, at least, an acknowledgement of the contents and conditions of an agreement already reached between the contracting parties, took place in

²⁰ Dąbkowski, 9–12.

²¹ 2 *Starodawne Prawa Polskiego Pomniki* entry 1595 (ed. Helcel); cited at Dąbkowski, 10 n. 3.

²² Dąbkowski, 11; South-east Poland (Rus), date of source not given.

²³ Dąbkowski, 11.

²⁴ Which I translate, somewhat hesitantly, as 'witnesses'. This hesitation stems from the fact that I would not care to prejudice the discussion below by seeming to concede that the function of the *litkupnicy* was exclusively an evidential one. That the role is wider is suggested by the C18th lexicographer Linde: 'A witness to a sale, taking part in the litkup, sometimes also an intermediary'. Mączyński's *Lexicon* (1564) notes: *Ten ktori między stronami handluye aby się o kupie zgodzili* (that person who deals [handlować] between the parties so that they might agree on a sale).

the presence of other persons²⁵, who, linguistically, were embraced by the act of litkup. Dąbkowski suggests that the litkupnicy – the documents speak of ‘*homines boni probi et honesti*’, or ‘*ludzie uczciwi*’²⁶ (persons of integrity) – could have performed several functions. An obvious role would be that of witnesses. However, there must then be considered the issue of the exact moment at which the presence of the litkupnicy was required. Phrasing this differently, the question becomes ‘to which act were the litkupnicy to act as witnesses’? Was it the moment at which the bargain was struck, or at some later moment (for example, the moment of performance). The answer to this would depend on whether the evidentiary role of the witnesses were conceived as conferring ability to testify to the *content and conditions* of the agreement reached, or, alternatively, whether the role of a witness was just to confirm that the goods had been bought and sold. The latter especially would serve to confer protection from the imposition of criminal liability²⁶ on the buyer, were a third party successfully to challenge the lawfulness of the buyer’s title. This desire on the part of the buyer to safeguard the integrity of the transaction can be viewed, in the light of the sources, as a strong reason to favour the latter hypothesis. In addition, most of the challenges examined by Dąbkowski feature third parties as plaintiffs, suing buyers for the return of allegedly stolen goods – they do not emanate from one of the parties to the deal, either disputing a contractual term, or, more basically, focusing on whether a contract had been concluded at all.

Apart from witnesses, Dąbkowski suggests that the litkupnicy could have acted as intermediaries between the contracting parties (for instance, checking and counting the coin tendered²⁸), as persons ensuring that all the formal requirements (e. g. registration) for validation the sale were satisfied, or as *jednaczy* (‘arbitrators’)²⁹. However, this latter hypothesis is forwarded but tentatively, supported by just two texts which appear just to confirm the fact that the litkupnicy were often those persons with the most extensive knowledge of a transaction.

²⁵ Dąbkowski, 24 – 25: Ordinarily, there seem to have been between 2 and 9 such persons (although one 1366 document identifies 30). The number of such persons does not seem to have been dependent on the nature of the subject matter of the contract – for instance, the sale of an immoveable does not seem typically to involve more persons than the sale of moveables.

²⁶ Dąbkowski, 22.

²⁷ Civil liability in this instance was different. The production of witnesses to a sale was usually sufficient to absolve an innocent buyer from criminal penalty. However, in terms of civil liability, the buyer was still obliged to return the goods (without payment) to the rightful owner, and to seek damages (not limited to the price paid) from the seller; Dąbkowski, 50

²⁸ Dąbkowski, 26 nn 5, 6; between buyer and seller was a certain Janusz ‘*per cuius manus pecunia transivit et numerata fuit pro eadem scoltetia*’ (Kodeks Małopolski III, 942), ‘*y bił gesm przitem litkup sandził y penandze liczył*’ (1400; *Roty przysięg krakowskich 1399 – 1418*) (and there was by them someone who judged/assessed the litkup and counted the money).

²⁹ Dąbkowski, 28 – 29.

Marceli Handelsman³⁰ in a response to Dąbkowski, poses four focal questions:

(1) Did litkup – especially the later ‘dry’ litkup – function as a form of earnest (*zadatek/arra*)?³¹

(2) Bearing in mind the fact that, from an early date onwards, registration before a court of agreements relating to land alone carried the weight of endowing such an agreement with validity, why did people continue to make use of litkup for such agreements?

(3) What was the role of the *litkupcy*? Associated with this, can any convincing exegesis of the expression ‘*sądzić litkup*’ be offered?

(4) Dąbkowski only examines the municipal acts. Did rural practise differ in any respect?

Handelsman’s discussion is founded on a manuscript rural court book held by the University of Warsaw³², which contains entries dating from between 1581 and 1714, with most entries grouped clustering towards the beginning of the period. His conclusions, although drawn on this small scale, are:

(3) ‘*Sądzić litkup*’: Handelsman³³ supposes this expression to be descriptive of the *sąd kupny* – a court with a bench typically composed of the *landwojt* (‘lord of the manor’) and seven (or, rarely, five³⁴, or nine³⁵) sworn lay members³⁶, acting as a court of first instance in respect of almost all aspects of life within their jurisdiction. Handelsman believes that, since the acts of sale (as well as gift) was executed with most complete effect only before the court, that the bench acted as *litkupnicy*. Hence, the act of litkup (being made up of the first – *sąd* – and third – *spożycie* [consumption] parts of Dąbkowski’s classification) and the act of registration are a composite (though, in theory, still divisible) whole. A further feature is that, in tandem with the gradual secularisation of the courts, the second aspect of litkup identified by Dąbkowski – the blessing (‘*błogosławieństwo*’) – atrophies, and, accordingly, is not found at all by Handelsman in his source.

(4) Handelsman contests the accuracy of two observations advanced by Dąbkowski, viz: (i) that litkup fades away during the course of time, supplanted by registration³⁷, and (ii) that litkup tended not to be found in association with transactions involving immoveables³⁸. Whilst these may have been true for the AGZ,

³⁰ vide supra, n. 9.

³¹ Handelsman, 271.

³² Handelsman, 277; *Księga sądowa wsi Siary*. (Warsaw MS 2 6/16). There is a typewritten transcript in the Institute of Legal History, Kraków.

³³ at 286.

³⁴ e.g. *Księga sądowa klucza Uszew, wieś Jaworsko 1514 – 1753*.

³⁵ e.g. *Księga sądowa wsi Łętownia koło Myślenic 1525 – 1792* (ed. Roman) f. 8 (1555).

³⁶ *Księgi gromadzkie wsi Głębowie 1670 – 1786* (Biblioteka Jagiellońska, Kraków 5818) f. 12 gives the form of oath.

³⁷ Dąbkowski, 35 – 36.

³⁸ Dąbkowski, 7.

Handelsman is not able to confirm them from his rural source. On the contrary, Handelsman objects, peasants are buying and selling land all the time, and litkup 'as a principle'³⁹ is found recorded as an element of these transactions.

Unfortunately, Handelsman is not able to offer any substantial source – based response to either of the first two questions.

III. Wiejskie księgi sądowe (*The Rural Court books*). In the early 1950s, a research group was established at the Chair (Katedra) of the History of Law at the Jagiellonian University, Kraków, working under the direction of Professor Adam Vetulani⁴⁰. The purpose of this research was investigation of the Royal Court books, the manuscripts of which largely had been overlooked as a useable source of material by the Polish school⁴¹ of historians of medieval Polish law⁴². Up till the 1950s, historians had tended to rely on the series of municipal court acts as the foundation for their discussions. The Kraków work resulted in the invaluable preparation of transcripts of a considerable volume of court books⁴³. However, a substantial proportion of these transcripts to date remain neither indexed nor edited. This paper takes into account all those which have been published⁴⁴, and a selection of those which have not been⁴⁵.

³⁹ Handelsman, 278.

⁴⁰ S. Płaza, *Źródła drukowane do dziejów wsi w dawnej Polsce* (1975) 374 *Zeszyty Naukowe Uniwersytetu Jagiellońskiego* (65 *Prace Prawnicze*) 79 – 83 gives an outline description of this work.

⁴¹ centred on the Jan Kazimierz University, Lwów (now The L'viv State University, Ukraine).

⁴² Notable exceptions were Bolesław Ulanowski, and his short monograph *Wieś polska pod względem prawnym od wieku XVI do XVIII* [The legal Aspects of Rural Poland from the 16th to the 18th century] (*Rocznik Akademii Umiejętności* [Yearbook of the Polish Academy of Experts], Kraków, 1893/4), and H. Polaczkówna's edition of the *Najstarsze księgi sądowe wsi Trzeźniowa 1419 – 1609* (Lwów, 1923) = Tr.

⁴³ Transcriptions of the court books of 35 localities (which figure includes those already in print) are held in Kraków.

⁴⁴ To be found in the second series of *Starodawne Prawa Polskiego Pomniki* [The Monuments of oldest Polish law]; (Zakład im. Ossolińskich Polskiej Akademii Nauk, Wrocław – Warszawa – Kraków – Gdańsk).

Part 2 (Prawo wiejskie):

vol 1; Z: Księga sądowa Uszwi dla wsi Zawady (Southern Poland, near Nowy Sącz), 1619 – 1788 (ed. A. Vetulani), (1957) [*PAN Kraków MS 3646*]

vol 2; KL: Księgi sądowe wiejskie Klucza Łąckiego (Southern Poland, near Nowy Sącz), 1526 – 1739 (ed. A. Vetulani), (1962) [*National Archive, Kraków, MSS I. T. 235b, Dep. 420*]

ZG: Księga sądowa Zagorzyńska (Southern Poland), 1559 – 1702 (ed. A. Vetulani) [*National Archive, Kraków, MS Dep. 421*]

vol 4; K: Księga sądowa Kresu Klimkowskiego (South – west Poland, near Przemyśl), 1600 – 1762 (ed. L. Łysiak), (1965) [*MS National Archive, Kraków, varia 101*]

vol 5; KJ: Księgi sądowe wiejskie Klucza Jazowskiego 1663 – 1808 (ed. S. Grodziski), (1967)

vol 6; I: Księga sądowa wsi Iwkowej 1581 – 1804 (ed. S. Płaza), (1969)

vol 7; T: Akta w sprawach chłopskich hrabstwa tarnowskiego z połowy XVIII wieku (ed. S. Grodziski) (1970)

vol 8; W: Księga sądowa Wsi Wary, 1449–1623 (ed. L. Łysiak), (1971) [*MS Jagiellonian Univ 6389*]

⁴⁵ B: Księga sądowa wsi Bielcza 1483 – 1753 [*MS Polska Akademia Umiejętności 1946*]
L: Księga sądowa wsi Łętownia koło Myślenic 1525 – 1792 (ed. S. Roman) [*MS Wojewódzkie Archiwum Państwowe, Lublin, 202*].

IV. What was litkup supposed to do? Litkup in the rural courts, ('prawo zwyczaj/obyczaj'⁴⁶, 'prawo pospolite'⁴⁷), appears from the sources most commonly to have been used to 'confirm' (and, the entries sometimes read, to mark 'for better faith'⁴⁸) transactions involving land, even in cases where the appropriate formalities (for instance, registration) had been complied with⁴⁹.

V. Of which acts was litkup comprised? 1. Drinking: With the exception of a scattering of entries, express reference drinking is infrequent. Drinking could, of course, lie implicit within other forms of words⁵⁰, or, a little more speculatively, it could be suggested that drinking was so established a part of the context of sale that it scarcely merited mention⁵¹. In favour of the latter hypothesis, almost all the sources reviewed note that the court assembled in the village tavern (*karczma*).

There seem to have been at least two varieties – the first, with just the parties themselves drinking⁵², and, more unusually, other people taking part in the ritual: 'There occurred a targ [market] between X and Y, X's son... X sold one of his fields to Y... payment to be made by instalments... At this targ were trusty men... the lord of the manor and 4 sworn adjudicators and many other trusty folk, who drank litkup at this sale. Amen'⁵³.

Groicki's account of the Magdeburg law makes clear – at least in respect of the sale of horses or cattle – that both the buyer and seller and other people are expected to participate in the drinking of litkup⁵⁴. However, the evi-

⁴⁶ *Akta prawne miasta Kościerzyny 1579 – 1589* [The legal affairs of Kościerzyna], nr. 1584/49: *ySzye byely przy Kupye w StawiSkach y przy Potdawanya na czo I litkup tamSzye pyeli Iako tego obyczaj yeSt* (1584), cited in *Słownik Polszczyzny XVI wieku* [A dictionary of 16th century Polish] (Wrocław – Warszawa – Kraków – Gdańsk, 1957–) XII, 293.

⁴⁷ Z 118 (1670).

⁴⁸ Z 130 (1675), Z 140 (1680) *et passim*.

⁴⁹ Tr. 1373 (1583) 'I MD acknowledge that I sold a field for 15 grzywien, taking 5 grzywien under the green rod, and for the remainder to be paid at the rate of 1 grzywna annually until full payment and for better faith and notoriety I write who was there, ..., there also happened *mohoricz*' (a rare instance of *mohoricz* in the sources).

⁵⁰ For instance 'pod jawnością prawa' ('under notoriety of law'), 'co temuż prawa według zwyczaju zaświadczył' (Krasna, 1680s–)

⁵¹ Or that instances are subject to qualification (my emphases):

I 101 (1586) – sale of a field: 'Which sale for better notoriety *and according to the ancient custom* the parties in the presence of the court improved with litkup'.

I 159 (1590) – sale of farmhouse – 'In the presence of the lord and the mayor and the benchers, and of many other persons, the sale happened through litkup supervised/assessed by the mayor *according to the custom of the realm*'.

⁵² I 312 (1614) – sale of farmhouse, 'The seller gave to this buyer under the green rod and [with?] litkup they drank a bit'.

⁵³ e.g. L ff. 34 – 34v (1583) 'Stał się targ między V. M y M., jego syn... V sprzedał rolie szwoie własna... Przy kthorim targu były mężowie godny... woyth y... przysięgniki y ynich wiele godnych ludzi, kthordzy przy thym ze kupnie litkup pily. Amen.'

⁵⁴ 'If someone has sold a horse or cattle and both sides have drunk litkup – that means the buyer and the seller with other people – then the transaction between them is closed, and one ought to give the other a certain sum as earnest.' vide Groicki, *Tytuły prawa magdeburskiego*, n. 4 *supra*, also L 44 (1537) – seller recognises that he has sold and conveyed a field, producing witnesses and drinking litkup with them.

dence of the sources points clearly to the conclusion that, where litkup involved the consumption of alcohol, the participation of anyone apart from the buyer and seller was not an indispensable juridical element. Further even than this, there are texts which suggest that litkup performed by one party alone could suffice⁵⁵: 'The seller freely acknowledged that full payment for the field which he had sold under the green rod had been made, which the seller confirmed with litkup'.

2. *Benediction/blessing*: As Dąbkowski points out, the entries are often unrevealing, informing us that the parties 'blessed', but not granting us any sight of what this blessing entailed: 'mercipotum benedixerunt et biberunt.'⁵⁶

Blessing does seem to have played some substantive and integrated role in the scenario detailed in one entry⁵⁷ – that of cementing a family settlement. A father and his eldest son, both in debt, have died. The second son agreed that he would 'pay the debts of his father and brother with his own money and would maintain his mother and sister in law in peace for as long as he can'. Two younger brothers have not taken any part in the settlement of the debts, and the court directs that they ought to resign, under the green rod, and in favour of the second son, from all distributive claims against the family property, 'which was confirmed with his mother and his younger brothers with litkup... and his younger brothers gave and blessed under the green rod, handing over to him with good wishes, and they drank litkup, everyone promising to live in peace, which *dekret* took place in the local tavern in the presence of 6 *wojt* and many other people invited'.

A significant proportion of the texts in which blessing is mentioned are drawn from the same source⁵⁸, and, temporally, cluster together (1728 – 1742). This phenomenon may be attributable to some quirk of the clerk, and comments made on the basis of these texts are made subject to the caveat that the scope of these conclusion is a narrow one. Only one entry seems unequivocally to couple litkup and blessing⁵⁹. However, it is worth noting that the blessing mentioned by two of the texts seems to be associated with the green bough⁶⁰, with litkup appearing to perform a freestanding, confirmatory, ro-

⁵⁵ L f. 21 (1563).

⁵⁶ 11 SPPP (1st series) entry 2359 (1461).

⁵⁷ U 105–106 (1675) Bo on to groszem swoim opłacił y długi ojca swego podjął się zapłacić y matkę przy sobie zachowywać w pokoju, także y bratwa póki będzie mógł. Czego z litkupem z bracią swoją y matką sobie zobolonie potwierdzili... Y bracia zdali y błogosławili różgę zieloną oddawszy do ręki jego zycze y litkup wypili, obiecując w pokoju mieszkać wszyscy. A ten dekret stał się... w karczmie jaworskiej.

⁵⁸ Wsi Zawady.

⁵⁹ Z 177 (1742) Co sobie zdali pod zieloną różdżką I litkupem sobie potwierdzili i pobłogosławili sobie obie stronie.

⁶⁰ Z 167 (1728) ...mu zdaje i błogosławi pod zieloną różdżką i litkupem potwierdzili

Z 175 (1738) Ktorego błogosławię i zdaję mu pod zieloną różdżką, i litkupem sobie potwierdzili, nic a nic się upominając, ale się wszyscy wyrzekają ani zostawiając, ale go błogosławią.

le. A futher text omits any mention of litkup, merely commenting that the parties enrolled the sale of a manor house, 'and blessed'⁶¹.

It is suggested that 'blessing' did not, in fact, constitute any part of the litkup itself, but was simply an additional feature of some sales, merely comprising, at its most unsophisticated, the parties wishing each other good fortune of their part of the bargain:

'the buyer and seller confirm namely with litkup that the seller renders under the green branch, in order that God Almighty will grant good fortune to the buyer of the item sold, and the seller of his money, which they confirm to each other, so that one may bless the other'⁶².

'He sold his field for 40 zloty, not reserving any right for himself, or for his kin, or for his children... wishing him [the buyer] all the best, saying 'May God bless you', which both sides confirmed with litkup and shook hands before those present. And the seller gave over to the buyer under the green rod'⁶³.

VI. Other modes of litkup: There seems to have been at least one other, although slightly incongruous, manner of performing litkup in Poland which, although it appears in only one text⁶⁴ (and that a municipal one), deserves mention, if only for the incongruity of certain of the features which it discloses. The seller being incapacitated by an injured leg, the buyer and the seller met in the seller's house (that subject matter of the sale), in the presence of an 'extraordinary court' of wójt and ławnicy (benchers). The buyer laid down the cash on the table, which the seller picked up, saying 'to you my house, to me this sum of money, laid down by you, which from this moment belongs to me'. Then, 'for the sake of greater clarity and for the confirmation of the agreement, the seller, according to custom, took up a beaker of Malmsey and cried "litkup, litkup, litkup", which the buyer and the rest of the company fulfilled'⁶⁵.

⁶¹ Z 172 (1732) ...dwor wiecznością mu zapisują i błogosławią

⁶² Z 132 (1677) '...którzy ci kupcy, tak przedawca, jako i kupiec, teraz sobie potwierdzają, mianowicie litkupem i zdają sobie pod zieloną różgą, aby Bog Wszeczmogący jego raczył szczęście na kupnie, jego także i przedawce na piniąndzach jego, dlatego sobie litkupem potwierdzają, aby jeden drugiemu błogosławił'.

⁶³ U 94-95 (1737) 'przedał roli... nie zostawując na siebie ani na swoje krewne ani na dzieci... życząc mu wszystkiego dobrego, mówiąc: niech cie Bog błogosławił. Co sobie obiedwie strony litkupem potwierdzili y ręce dali przy ludziach'.

⁶⁴ Maria Wojciechowska; *Dwa opisy litkupu z aktów poznańskich* [Two litkup entries from the Poznań rolls], *Kronika Miasta Poznania* 6 (1928), 360-65; the transcription is taken from *Scabinalia Posnaniensis* 1542-1550, f. 218 (1551): [sale of house] ...*Tibi domus mea, mihi vero pecuniarum summa hic per te reposita legitimo iure iam ex nunc spectet ac concernat. Accepto deinde poculo vino Malmatio repleto, in signum maioris evidentiae et propter ratificationem praesentis contractum consuetudine usitata exclamavit: Lithkup, Lithkup, Lithkup. Quod [S] cum ceteris ibidem assidentibus vicissim prestitit...*

⁶⁵ Wojciechowska, *Kurier Poznański* 42 (1927), 8, suggests that this may have been accomplished by the buyer and other persons present echoing the declaration.

VII. The second life of litkup? One peculiarity is the way in which, in many of the texts, references to litkup appear towards the end of the C16th, and then quickly (within a quarter century or so) proliferate, appearing almost without exception in almost every entry throughout the C17th recording a sale, with the mention of litkup looking very much like a standard formal clause – that is, a perfunctory statement that ‘both parties confirmed to each other with litkup’⁶⁶, with no expansion of meaning. For example, in the Bielcza court book, commencing in 1484, there is no mention of litkup until 1600 (although there are abundant instances of *zielona różga*, the earliest from 1499⁶⁷), after which date the phrase ‘which with litkup they confirmed’ comes to appear as the final sentence of practically every entry recording a sale of land⁶⁸ (which tend to be the only sales recorder in the rural books).

Alongside this comes regular allusion to litkup being done ‘for better faith’⁶⁹ or notoriety, although this is also given – with similar frequency – as the justification for several other things apart from litkup, for instance, registration⁷⁰, or presence of witnesses⁷¹. The entries do not make clear whether there is any qualitative distinction between performing litkup ‘for better faith’, or (for example) having witnesses ‘for better faith’.

VIII. Litkup and the sale of moveables: The sale of moveables makes but very rare appearances in the rural books. One example involves the sale of a heifer at market⁷²:

‘The buyer (a butcher) bought a heifer for slaughter for 16 zloty, which money he had with him, and wanted straight away to count out and give to the seller, but the market supervisor and other people didn’t let the buyer hand the money over because he was drunk. However, there was litkup and the buyer went home, taking with him the money and the heifer, and waited for the seller to come for the money. Four days later, the seller came to get the heifer back, and didn’t want to accept any money, since the seller had since sold the heifer to another butcher. The buyer complained both that he had lost the heifer he had wanted, along with the the chance to have bought another heifer at market, and also that he had wasted the expence of litkup. The seller answered that the buyer either didn’t have, or didn’t want to pay the seller any money, and that the seller needed money immediately, and the sel-

⁶⁶ e.g. ‘Czego sobie obie stronie litkupem potwierdzieli’: U 85 (1646).

⁶⁷ B 20 (1499) ‘S resignavit sub ramo viridi’, *et passim*.

⁶⁸ B 267–268, 2272, 274, 279–280, 291–296, 301–305.

⁶⁹ e.g. B 274 (1665) – sale entered incourt book before people of good faith, ‘improved/finished off’ with litkup ‘for better faith’.

⁷⁰ L f.33 (1585) ‘przy ktorych zapys then yest obwarowany dlya dobrego y dlya pewney-szego wyedzenia’.

⁷¹ e.g. L f.32 (1585) ‘dlya lyepszey wyedomoschy y pewnoschy swyadome wystawy’.

⁷² T 31 (not dated).

ler took away the heifer. ...It was held by the court that the seller had to give the buyer 1 złoty for litkup'.

This text pulls in two directions, in that it suggests both that the litkup paid by the buyer was ineffective in closing the bargain, but also recognises the integrity of that litkup in ordering the seller to reimburse the buyer for it. It should be noted that this takes place against a background of considerable and long standing antagonism between the parties, and that the overall sympathy of the court was firmly against the buyer – he was fined and sentenced to 30 lashes as punishment for accumulated instances of ill conduct directed against the seller.

IX. The setting for litkup: The sources describe local courts⁷³ consisting of the wójt, sitting with a sworn bench of local men (ławnicy), 'in order that there might be law'. These are often referred to as 'worthy', 'faithful', 'virtuous'. It seems that the litkup often took place in the presence of the court. On occasion, a 'targ' (market) was convened before the court⁷⁴, although this did not constitute any forum for bargaining but rather was the setting for the public execution of a sale, the terms of which already had been agreed upon.

X. Litkup and the transfer of property – The green wand⁷⁵ and litkup. From the texts, the practice of green wand was universal. As the *Correctura lurium* of 1532 makes clear, two acts were required – an agreement to transfer property (lying squarely within the realm of contract) and the transfer itself. This latter was accomplished with the green wand.

It must be asked why any confirmation involving litkup should have been necessary at all, given that transfer under the green rod and enrollment would together appear to satisfy all the evidentiary and formal demands for a sale.

A solution to this conundrum is proposed by Łomnicki, who suggests that the symbol of green wand possessed two, distinct, meanings. The first (and, he contends, more ancient) meaning, of Germanic origin, was that the bough symbolised that land itself, with the offer of the bough by seller to buyer effecting conveyance of ownership⁷⁶.

⁷³ See text accompanying nn. 32–35 *supra*. Variouslly 'sąd (wielki) gajony', 'iudicium banitum'.

⁷⁴ L f. 28v (1577) – sale of field, L ff34–34v (1586).

⁷⁵ See A. Łomnicki; *Symbol zielonej różgi w wiejskim prawie polskim* [The symbol of the green wand in Polish tutal law], in *Pamiętnik 30-lecia pracy naukowej prof. dr Przemysława Dąbkowskiego* [Festschrift] (Lwów, 1927), 149–50; the use of such a symbol in the conveyance of immoveable property is evidenced by court entries from at least 1485, although this is not intended to suggest that it was unknown earlier. Łomnicki uses volumes 11 and 12 (ed. B. Ulanowski, Kraków, 1921) (transcriptions of court books for 37 localities, spanning the period 1408 to 1818) of the first series of *Prawa Polskiego Pomniki* as the sources for his study.

⁷⁶ It can also be suggested that the bough signified a transfer of the fruitful capacity of the land.

However, there also exists a second group of entries (occurring across the whole range of sources) noting sales which, although performed under the green bough ('pod zieloną różgą'), fall with neither ease nor intelligibility under the first head:

'The price straightaway after writing was laid down, and [the price] transferred to the seller under the green wand, confirming it with litkup'⁷⁷.

Łomnicki contends that here the phrase 'under the green wand' should be read to mean that the acts were performed 'before the court'. This further sense of the phrase generates – although not in relation to all the entries surveyed – no distress at a doctrinal level for sales noted to have been done both 'pod zieloną różgą' and with litkup⁷⁸.

X. The role of litkup: There is abundant textual evidence that litkup – whichever practice (or combination of practices) this may have signified in reality – featured as a typical⁷⁹ (although not, if the texts tell the full story, a standard) element of transactions involving land well into C18th, apparently displaced neither by the green rod nor by registration. The court books are replete with statements that the parties 'confirmed'⁸⁰ or 'improved' transactions with litkup. Such references are often found alongside statements that the transaction had also been enrolled, and/or done *sub ramo viridi*⁸¹.

Differing from Łomnicki, there are many entries which do not respond readily to the construction suggested by him. A fuller, more stable, sense is imparted to these texts if the transaction of sale is broken down into its elements. In rural areas, the resignation of proprietary interest is, without any doubt, effected by the symbolic (but still, during this period, necessary) use of the green bough. As such, the seller has performed his side of the bargain. In order to perform his obligations, the buyer must pay the price. Textually, the former, without exception, precedes the latter.

It is difficult to fathom, at least in the context of the sale of immoveables (since the sale of them is imperfect without the green rod), the reason, if litkup ensures the performance of any still outstanding obligations, why both

⁷⁷ Z 94 (1647).

⁷⁸ Since one can, with a certain intelligibility, refer to 'piciu litkup pod zieloną różgą' (to mean, the drinking of litkup before the court); Łomnicki 154; 12 *SPPP* nn 470 (1634) – sale of mill; the full price the S took and drank with litkup by the green bough; 'summa zupełna S wzięwszy litkupem tego kupna przy zielonej rozdzie podpił'.

12 *SPPP* 7011 (1668) – sale of field; 'to kupno obie stronie... litkupem pod zieloną roszczką przy prawie sobie podpiali i potwierdzili'.

11 *SPPP* 4309 (1758) 'and we drank litkup under the green bough'.

⁷⁹ I 523 (1706) 'This piece of the field was sold in 1599, with all things which needed to be done having been done, litkup, witnesses': 'I ten kawalek roli kupił A z B w roku 1599, wszystkie należności, litkup, insze około kupne otrzymawszy...'

⁸⁰ L f21 (1563) – sale of field.

⁸¹ e.g. I has 17 instances of litkup (1584–1733), of which 7 also involve zielona różga.

parties needed to participate in litkup, since the seller has already performed. It is suggested that litkup in fact commonly acted as a type of guarantee accompanying the perfection of the sale, and that, in such a guise, litkup is not substantively confined to sales, but is able to impart an independent weight to an agreement of any content.⁸²

Litkup seems to have acted as a guarantee of several things:

(1) When a person (for instance, the issue of a seller) took part in litkup, that person was subsequently barred from making any claim against the property sold.

(2) The seller undertook to guarantee/indemnify the buyer quiet enjoyment against third party claims⁸³.

(3) The seller paid only part (or none) of the price, guaranteeing further performance with litkup⁸⁴.

With reference to the latter, earnest (*zadatek/arra*) was known in rural Poland, and did play a role in the sale of land⁸⁵. Only one source, Trześńiowa, seems consistently to suggest a role as earnest to a monetary litkup⁸⁶. However, this text exhibits a somewhat exotic range of entries, also equating *virido ramo with mercipotum*⁸⁷.

Many entries record that litkup, performed in the presence of the court, accompanied the payment⁸⁸ (or promise of payment) of the 'ostatka', i.e., 'the remainder' of the price⁸⁹, rounding off the deal. There is generally no indication in the texts that any litkup prior to that noted before the court had taken place. By this point the parties, having already reached agreement as to the terms of the contract, have nothing left to do, bar the securing of a mode of redress should (for instance), a third party challenge the right of the seller to have sold the land. This latter, it is contended, leads some way towards explanation of another distinctive feature of rural litkup – that, although it is not recorded as having occurred in all sales, it does appear almost without exception in 'domestic', non – commercial transactions, typically, the settlement or allocation of family property between a father and sons, or between siblings

⁸² U 105–106 (1675), n. 56 *supra*.

⁸³ Z 68 (1643).

⁸⁴ A. Brückner, *Z rękopisów petersburskich średniowieczne słownictwo polskie (1457)*, V, 14: (Arra...dicitur pignus... quod datur sponse a sponso vel dicitur pars precii et hoc si tenet pro empicione, ut rata teneatur, proprie lythkup). Cited in *Słownik Staropolski*, see n. 9 *supra*.

⁸⁵ e.g. Tr. 1161 (1563) 'There occurred a targ between SS and YJ, in which YJ recognised before the law that he had sold his field for 13 grzywien. This YJ acknowledged that he taken 3 gr as earnest, and in the summer will take theremainder of payment'.

⁸⁶ Tr. 758 (1533) Sale of field – 'Idem S penes almazium solvit B suo avo unam marcam'. Tr. 978 (1549) '...et B sub almatio potus alias pod lythkupem duas marcas posuit'.

⁸⁷ Tr. 1314 (1579) 'sub virido ramo seu marcipoto'.

⁸⁸ U 132 (1581) 'B blessed the S and wished him good fortune and gave him the *ostatka*'.

⁸⁹ U 109 (1673) 'A ostatka obiedwie stronie litkupem sobie tego kupna potwierdzieli przy ludziach', 'And with litkup both parties confirmed to each other the *ostatka* before witnesses'.

(almost always brothers)⁹⁰. These settlements are often cast – though not altogether spuriously – in the form of a sale, the setting for which was often described as a *targ* (market)⁹¹:

‘There was a court and the litkup happened before the *landwojt* and seven benchers. A father sells land to his son for 10 *grzywien*. The son has already paid 5 *grzywien*, and the father does not want any more. The father also given to the son 2 horses, a cart, a cartchassis, a plough, 2 rakes, and axe, hoe, fork and seed. The son agrees to look after the father and mother until their deaths, and the father agrees to mend the roof over the room which he will share with his wife. Through this notice and litkup the *landwojt* asked one, twice, three, four times whether anyone considered themselves to have any more claim to the land than the son, and the father promised the son to defend any such claims. The second and third sons and the daughter and son-in-law all acknowledged before the court that they had already received enough... The father gave to his son under the green rod and they drank litkup with one another. The son provided 2 guarantors, professing him to be a good farmer, and guaranteeing that he would not waste the land’.⁹²

In the rural environment, with land easily the most important asset, there are unlikely to be third party claims emanating from ‘strangers’, especially if all transactions are notorious. On the other hand, what a buyer (whether that buyer happens to be an older son or a stranger) will expect is the sure exclusion of any future claim by any relatives. Hence, litkup does seem to assume a headline role in such transactions – at the very least, all the participants needed to be in one place at the same time, and there can have been little doubt in anyone’s mind what they were agreeing to.

XII. Conclusion: The evidence of the rural court books paints a picture which differs substantially to Dąbkowski’s account. This observation is made subject to the comment that litkup appears in the rural texts predominantly in association with the sale of land (since the sale of moveables was not generally noted in the rural books). Drinking and blessing make no more than sporadic appearances in the texts, and do not seem to have carried any freestanding juridical weight, and there does not seem to have been any intrinsic nexus between them. There seems to have been no (nominate) rural equivalent of the ‘*sąd litkup*’, or instances of ‘judging litkup’. There are frequent references to litkup, but many of these are merely standard entries, are not fleshed out, and there does not seem to be any substantive distinction between those transactions carried out with litkup, and those without. Litkup

⁹⁰ U 85 (1646) [brothers], B 230 (1626) [brothers], 233–235 (1644) [brothers], 242 (1629) [brothers and uncle], 272 (1687) [sale of field by two brothers, and unequal distribution of the price between themselves].

⁹¹ See n. 71 above, and accompanying text.

⁹² Handelsman 278–281; Księga sądowa wsi Siary, ff.134–136.

generally seems to have taken place not at the time of agreement, but at the time of transfer – that is, at the time of perfection of the agreement, and does not seem to be equated with, or a necessary incident of, earnest.

Overall, in that context revealed by the rural court books, litkup does not possess any clear – cut obligatory function within sale, but comes to the fore most vividly as a non – obligation imposing appendage to domestic, and non – commercial transactions.

LITKUP DANS LES LIVRES JUDICIAIRES DES COURS RURALES DE LA POLOGNE MÉDIÉVALE

Résumé

L'analyse des livres judiciaires ruraux visait à présenter l'institution de litkup. L'étude des sources historiques avait amené l'auteur aux conclusions contradictoires avec celles que jadis présentait le professeur Przemysław Dąbkowski dans son livre intitulé „Litkup, avec dans le supplément: le serment et le jurement” (Lvov 1906). Selon l'auteur de l'article – litkup paraît être plutôt une coutume locale qu'une institution juridique à caractère séparé.

