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*Cessio* in the documents of Thomasinus de Saverre,  
*notarius iuratus* and *scriba communis*  
in Dubrovnik 1277-1286

Henrik-Riko Held

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## Special Issue

### **Il Notaio nella società dell'Europa mediterranea (secc. XIV-XIX)**

### **The Notary in the Mediterranean European Society (14th-19th centuries)**

A cura di / Edited by

Gemma T. Colesanti - Daniel Piñol - Eleni Sakellariou



## RiMe 9/I n.s. (December 2021)

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## *Cessio* in the documents of Thomasinus de Savere, *notarius iuratus* and *scriba communis* in Dubrovnik 1277-1286

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### *Abstract*

Author analyses *cessio*, or transfer of obligation from one creditor to another as a transaction pertaining to Roman law and Roman legal tradition, in the documents of Thomasinus de Savere, a late 13<sup>th</sup> century notary in Dubrovnik (Ragusa). First he analyses *cessio* in doctrine and early notaries' formularies of the 13<sup>th</sup> century as a conceptual background of the analysis. After a short historical context, documents are specifically analysed. *Cessiones* are approached from a threefold perspective, first generally in comparison with other documents, and then regarding their structure and contents.

### *Keywords*

*Cessio*; Notaries; *Ius commune*; Dubrovnik.

### *Riassunto*

L'autore analizza *cessio*, o il trasferimento dell'obbligazione da un creditore all'altro come transazione pertinente al diritto romano e alla tradizione giuridica romana, nei documenti di Tomasino de Savere, un notaio della fine del XIII secolo a Dubrovnik (Ragusa). Prima analizza il *cessio* nella dottrina e nei formulari dei primi notai del XIII secolo. Dopo un breve contesto storico, i documenti sono specificamente analizzati. *Cessiones* sono analizzati da una triplice prospettiva, prima generalmente in confronto con altri documenti, e poi riguardo alla loro struttura e contenuto.

### *Parole chiave*

*Cessio*; Notariato; *Ius commune*; Dubrovnik.

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*Introduction.* – 1. *Cessio* in the doctrine and in the early notaries' formularies. – 2. Historical context of the documents. – 3. *Cessio* in the documents. – 3.1. General observations. – 3.2. Structural analysis of the *cessio* documents. – 3.3. Content-related analysis of the *cessio* documents. – 4. Conclusion. – 5. Bibliography. – 7. Curriculum vitae.

*Introduction*<sup>1</sup>

Subject of the article is *cessio* (cession, assignment) in the documents of Thomasinus de Savere, notary in Dubrovnik (Ragusa) in the period 1277-1286. *Cessio* is a transfer of an obligation from one creditor (assignor) to another (assignee) originating from Roman legal tradition. Although Roman law, strictly speaking, did not allow an actual transfer of an obligation, certain modalities existed which practically achieved same results. Details and the entire development are of course not relevant for the present discussion. Essentially, in a more developed stage the assignor would appoint the assignee as his representative in the procedure as a *cognitor* or *procurator in rem suam*<sup>2</sup>, authorising him to sue the debtor in his own name and keep the winnings<sup>3</sup>. The assignor was still technically considered to be the “real” creditor, and was the only person entitled to the *actio directa* associated with the claim. However, the assignee was granted an *actio utilis* and other means to protect the transaction, eventually even regardless of the representation<sup>4</sup>. In a sense, it could be said that *cessio* in Roman law originally existed as a kind of a transfer of authorisations associated with an *actio*. At any rate, the underlying reason or immediate cause and the *cessio* itself were separated, in the sense that the reason for conducting the transfer was not known from, or legally relevant for, the transaction itself. The claim could have been transferred to another for a counter-performance, as a fulfilment of a debt, as a donation or as dowry (*dos*) etc (Kaser, 1971, p. 654; Harke, 2008, pp. 5 ff.). In that sense *cessio* was an abstract contract (Hattenhauer, 2007, pp. 2293 f.).

Roman law strongly influenced the development in *ius commune*, which remained heavily dependent on its terminology and associated conceptual setbacks (Hattenhauer, 2007, p. 2299; Zimmerman, 1992, p. 63)<sup>5</sup>. This situation persisted in doctrine and practice up until the middle of the 19<sup>th</sup> century, which

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<sup>1</sup> Abbreviations used: CD = *Codex diplomaticus regni Croatiae, Dalmatiae et Slavoniae*; MHR = *Monumenta historica Ragusina*.

<sup>2</sup> *Cognitor* was a representative appointed according to the older, strictly formal procedure (Kaser, Hackl, 1996, pp. 210 ff.). *Procurator* was appointed informally by a *mandatum* (Kaser, Hackl, 1996, pp. 213 ff.). More on this in Gehrich, 1963.

<sup>3</sup> Guarino, 2001, p. 818; Zimmerman, 1992, p. 60 f.; Kaser, 1971, p. 653.

<sup>4</sup> Guarino, 2001, pp. 818 f.; Zimmerman, 1992, pp. 62 f.; Kaser, 1975, pp. 452 f.; Kaser, 1971, p. 654.

<sup>5</sup> More on *cessio* in the period of glossators and postglossators in the older literature in Fränkel, 1910a, pp. 328 ff.; Fränkel, 1910b, pp. 79 ff. and more recently in Luig, 1966, pp. 11 ff., all with ample references to sources and further literature.

was decisive in forming *cessio* as it exists today<sup>6</sup>. At any rate, what could be said both for the developments in Roman law and *ius commune* is that there were always certain modalities of essentially achieving a transfer of obligations from one creditor to another. In broad terms, in Roman law that was achieved nominally and substantively within the context of *actiones*. In *ius commune* nominally the same terminology pertaining to *actiones* was retained. On the substantive level numerous doctrinal matters existed<sup>7</sup>, but practically, from the 13<sup>th</sup> century onwards, as in other legal matters of the time, notarial documents had a crucial role in performing a *cessio*.

There are several reasons why an analysis of *cessio* specifically in the documents of Thomasinus de Savere should have high merit. The first non-ecclesiastical notary in the medieval city of Dubrovnik, he came from northern Italy where he likely received some kind of legal education. Very prolific and extremely meticulous in his work<sup>8</sup>, he left behind a great lot of expertly written and systematically organised documents<sup>9</sup>. It is no surprise that this did not escape the attention of many researchers who dealt with his documents when analysing late 13<sup>th</sup> century Dubrovnik (Lučić, 1967, p. 468)<sup>10</sup>. However, except for a couple of passing references (Danilović, 1957, p. 90; Lučić, 1970, p. 584), *cessio* in his documents was not comprehensively and systematically analysed.

This analysis may provide a contribution for a better understanding of the transmission of legal concepts from the centres of the time to more peripheral areas. It may help in establishing a more thorough knowledge of the development of certain Roman legal institutes in the medieval setting and the role of the written legal culture therein<sup>11</sup>. On a more specific level the analysis may provide an insight into curiosities of legal and economic life in a particular

<sup>6</sup> Ranieri, 2009, pp. 1183 ff.; Hattenhauer, 2007, pp. 2299 ff.; Zimmerman, 1992, pp. 63 ff.; Huwiler, 1975, especially pp. 149 ff.

<sup>7</sup> For details see literature in previous note.

<sup>8</sup> By his own admission in the testament, it was widely known that he acquired his wealth by working literally day and night: “ex labore continuo manuum mearum scribendo die noctuque et exercendo artem et officium notarie, sicut est publicum et notorium, omnia que habeo stabilia at mobilia acquisiui et lucratus fui” (CD VI (Smičiklas, 1908), p. 455; MHR II (Lučić, 1984), p. 326; Lučić, 1967, p. 467).

<sup>9</sup> Čremošnik even calls Thomasinus “the real founder of the Dubrovnik archives” (Čremošnik, 1951, p. VI; Lučić, 1967, p. 468; Marinović, 1985, p. 12).

<sup>10</sup> Thomasinus and his work generally are analysed in Jireček, 1903, pp. 501 ff.; Jireček, 1904, pp. 161 ff.; Čremošnik, 1927, pp. 231 ff.; Marinović, 1985, pp. 7 ff. His documents have been published in MHR I (Čremošnik, 1951), MHR II and MHR III (Lučić, 1988).

<sup>11</sup> More about this development on the eastern coast of the Adriatic in Lonza, 2013.

place, thus contributing to a general assessment of the historical development of the eastern coast of the Adriatic and the Mediterranean generally. The 13<sup>th</sup> century being the formative period for the notaries' profession<sup>12</sup>, the context of the analysis is their role in all the above-mentioned processes.

In order to provide proper context, after a doctrinal explication of *cessio* in the relevant time period, the structure and contents of the formulas for *cessio* in the most significant notaries' formularies of the time are analysed. After that general historical circumstances of the relevant time period are presented, alongside basic information about Thomasinus de Saverre. In the part specifically dedicated to *cessio* in his documents, first general observations are given, providing an outlook of the *cessionones* and their relevance in comparison with other documents. Finally, structure and contents of the *cessio* documents are analysed.

## 2. *Cessio in the doctrine and in the early notaries' formularies*

Doctrinally, as already suggested in the introduction, the whole of *ius commune* may be said to have been heavily under the influence of cession such as it was in Roman law. That included concepts and terminology stemming from different stages of its development, assembled in Justinian's codification regardless of some of them not being completely applicable in new and reformed legal circumstances. That caused no small amount of confusion for glossators and postglossators (Zimmerman, 1992, p. 63; Hattenhauer, 2007, p. 2299). The main problem seems to have been the apparent untransferability of claims ("nomina ossibus inhaerent"<sup>13</sup>), inherited from classical Roman law, though that notion was effectively abandoned already by Justinian (albeit while retaining classical terminology) (Zimmerman, 1992, p. 63). Still, there is ample evidence from the sources, for example *glossae* and comments to the relevant

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<sup>12</sup> More on this in Orlandelli, 1994. Development on the eastern Adriatic is analysed in Grbavac, 2010. On a general level, the cities on the eastern Adriatic usually closely followed the developments in Italy (Grbavac, 2010, p. 321; Čremošnik, 1927, p. 232).

<sup>13</sup> Meaning that claims are inherent 'in the bones' of the creditor (cf. Hattenhauer, 2007, p. 2299; Luig, 1966, p. 12). In a similar vein is the statement that claims and actions could not be separated from their owner no more than a soul could be separated from the body (Accursius, *glossa In nominibus* to D. 15, 1, 16 (Iulianus 12 Dig.) (CIC vol. 1, p. 1495): "(...) nomina, sive actiones non possunt separari a domino, sicut nec anima a corpore (...)"). Cf. Hattenhauer, 2007, p. 2299, n. 53; Luig, 1966, p. 12, n. 68, with sources and further relevant literature.

parts of Justinian's codification, which testify to numerous instances in which a *cessio* of sorts was effectively and practically allowed or required<sup>14</sup>.

Of course, there were diverging opinions on particular issues. For example, the transfer of a claim could have been achieved by making the assignee *procurator in rem suam* of the assignor in the procedure or by instituting an *actio utilis* for him (Luig, 1966, pp. 12 f.; Fränkel, 1910b, pp. 79 ff., 83 ff.). When a claim was in that manner transferred the question remained whether the assignor was still entitled to an *actio (directa)* of his own, and if the debtor should be released from his debt by fulfilling his obligation to assignor after the *cessio* (Luig, 1966, p. 14 f.). Both glossators and postglossators seem to have held that *cessio* required a *causa*, or an immediate cause and basis for the transfer itself (Luig, 1966, p. 15). Later development confirms different doctrinal and practical difficulties which apparently persisted throughout centuries. For example, treatises on *cessionones iurium et actionum* (assignments of rights and actions) from the end of the 17<sup>th</sup> century by Alphonsus de Olea and Carolus Antonius de Luca tackle numerous doctrinal and practical issues, among them some addressed already by the glossators and postglossators<sup>15</sup>.

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<sup>14</sup> For example, when actions were ceded from a creditor to a person who fulfilled the debt of another (*cf.* Vivianus, *casus Data* on C. 4, 10, 1 (Imperator Gordianus) (CIC vol. 4, p. 811)), or when a husband acquired a claim of his wife as part of a dowry (*Vivianus, casus Nominibus* and Accursius, *glossa Emerit* to C. 4, 10, 2 (Imperatores Diocletianus, Maximianus) (CIC vol. 4, p. 813)). In situations where more debtors existed for the same debt (for example, as *fideiussores*) and one of them fulfilled the whole debt, the *actio* of the creditor was not *ipso facto* transferred with the fulfillment, it was held that a particular *cessio* of an action was required before the fulfillment occurred (*cf.* Accursius, *casus Modestinus respondit* on D. 46, 3, 76 (Modestinus 6 resp.) (CIC vol. 3, p. 1183 f.); Accursius, *casus Si dubitet* on D. 46, 1, 10 (Ulpianus 7 disp.) (CIC vol. 3, p. 1084)). In the case of the transfer of inheritance on another person it was asked whether a personal surety (*fideiussio*) made towards the transferor is also automatically transferred with the inheritance, but it was held that the *actio* had to be ceded ("non transeat, nisi fuerit cessa") (Accursius, *casus Heres a debitore* on D. 46, 1, 21 (Africanus 7 quaest.) (CIC vol. 3, p. 1091)).

<sup>15</sup> For example, whether the debtor who is unaware of the transfer can be gratuitously released by the assignor after a completed *cessio* (Luca, 1695, pp. 35 ff.) or which *actiones* are transferred by a *cessio*, *utiles* or *directae* (*ibi*, pp. 68 ff.); the question whether an *instrumentum cessionis* should contain reference to the *titulus cessionis* (Olea, 1699, pp. 26 ff.) or should a *cessio iurium* always require written form (*ibi*, pp. 30 ff.). These treatises contain an exhaustive and systematic account of *cessionones iurium et actionem* in the period, both on a doctrinal and practical level. More on *cessio* in *ius commune* generally in that period and later times in Luig, 1966, pp. 16 ff.; Hattenhauer, 2007, pp. 2302 ff., with ample references to sources and further literature.

All in all, in the relevant time period it was entirely possible to effectively achieve a *cessio*, but the doctrine behind that possibility relied terminologically on classical Roman law and its conceptual bond with procedural representation. However, a completely novel addition seems to have been the emphasis of importance of the written document associated with the *cessio*, the so-called *instrumentum cessionis*, which contained information about the transfer and all the relevant authorisations. On a practical level, it could be even said that more comprehensive instruments effectively made the mentioned doctrinal misgivings irrelevant for legal practice and everyday use of *cessiones*<sup>16</sup>. Very illustrating in that sense may be a statement of Bartolus de Saxoferrato (1313-1357), who explained how notaries use all the possible expressions for the transferral of a claim when composing *instrumenta cessionis* (such as *dedit*, *cessit*, *concessit*, *transtulit*, *mandavit* etc.) in order to make sure that both *actio directa* and *actio utilis* are transferred<sup>17</sup>.

Regarding the *cessio* in the notaries' formularies, while the development of general legal scholarship was in that period already well underway<sup>18</sup>, the 13<sup>th</sup> century was decisive for the development of the *ars notaria*<sup>19</sup>. Not only was there a sudden rise in sheer number of notarial legal documents, they also dramatically influenced legal system on the conceptual level. Therefore, transactions and legal acts became, as it were, embodied in notarial instruments, in the sense that a legal document did not have only evidentiary value, but itself actually constituted a legal relationship or a change thereof<sup>20</sup>. In a way, the legal system as a whole became essentially based and dependent on the legal document, with which a new age of the written legal culture was initiated. *Cessio* was not an exception to this process, and there were numerous templates for the creation of the so-called *instrumenta cessionis*, which were, alongside other templates and formulas, collected in different compilations of the time.

The aim of this part is to analyse *cessio* instruments in a number of the most important formularies from the 13<sup>th</sup> century. Among those is numbered, firstly,

<sup>16</sup> Cf. in the same vein Fränkel, 1910b, p. 119.

<sup>17</sup> Bartolus, commentary on C. 4, 10, 1 (Imperator Gordianus), no. 10 (Saxoferrato, 1588, p. 390) (cf. Luig, 1966, p. 14).

<sup>18</sup> Cf. Stein, 2004, pp. 43 ff. with references to further literature.

<sup>19</sup> More in Angeli, 2001; Giansante, 2000; Orlandelli, 1994; Carniello, 2002; Valleriani, 2012; Zabbia, 2009.

<sup>20</sup> Feo, Iannacci, Zuffrano, 2016; Astuti, 1968, pp. 446 ff. For the comparable development on the eastern coast of the Adriatic see Lonza, 2013, especially pp. 1216 ff.; Grbavac, 2010, pp. 82 f.



the oldest of notaries' formularies, *Formularium tabellionum*, stemming from the beginning of the 13<sup>th</sup> century<sup>21</sup>. This formulary was the basis for the *Ars notariae* of Rainerius Perusinus, made sometime between 1214 and 1216<sup>22</sup>. *Ars notariae* of Bencivenne, a work situated around 1235<sup>23</sup>, is also analysed. Finally, the most important formularies, those made by the famous masters of the *ars notaria*, Salathiel around the middle of the 13<sup>th</sup> century<sup>24</sup> and Rolandinus sometime later<sup>25</sup>, are also part of the analysis.

*Cessio* instruments can be divided into regular parts of the medieval notarial document, such as an elaborated *dispositio* which contains the main declaration regarding the right which is being transferred, alongside a possible *sanctio*, or penalty for non-compliance with the transfer<sup>26</sup>. However, the aim of this part is to roughly dissect *instrumenta cessionis* into substantively and thematically different parts notwithstanding the usual division. This may help to possibly find certain systematical similarities both between the formularies as well as in their relation to *cessio* in the documents of Thomasinus de Savere. In such a dissection the elements that may be found are as follows: transfer of one or more rights from the assignor to the assignee, reference to the original document which constituted the right being transferred, reference to the transfer of that document to the assignee, enumeration of authorisations regarding the right being acquired by the assignee, and finally an explication of a counter-performance of the assignee. In order to present this more clearly, the mentioned elements are ordered in the following table<sup>27</sup>.

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<sup>21</sup> Grbavac, 2010, p. 78. *Formularium* itself can be found in Palmerio, 1913.

<sup>22</sup> Wahrmond, 1962, pp. VII ff., which contains the formulary itself.

<sup>23</sup> Bronzino, 1965, pp. V ff., which also contains the formulary.

<sup>24</sup> Orlandelli, 1971, pp. V ff., where the formulary is also contained. On different aspects of Salathiel's life and work see Ferrara, Feo, 1994.

<sup>25</sup> Ferrara, 1983, pp. V ff., which contains the Rolandinus' work *Contractus* with templates for many different contracts, while the basic formulary of the author, *Summa artis notarie*, can be found in Rolandinus, 1559. More on life and work of Rolandinus, "the prince of notaries", in Tamba, 2002.

<sup>26</sup> More on intrinsic parts of the medieval notarial document in Pratesi, 1987, pp. 73 ff.

<sup>27</sup> The formularies are ordered chronologically and the elements of the instruments according to their usual layout, although in some of the formularies there are slight divergences as to the order. For example, in the *Ars notariae* of Rainerius Perusinus the explication of the counter-performance comes before the enumeration of the authorisations, while it is usually the other way around. Also, understandably, there are some overlappings, as for example in the formula of Perusinus the counter-performance is mentioned already in the reference to the original document. Additional text, such as the guarantees of the assignor (found, for example, in enumeration of authorisations in the Rolandinus' template), is not crucial for the

	<i>FORMULARIUM TABELLIONUM</i>	PERUSINUS	BENCIVENNE
TRANSFER OF RIGHT(S)	Lucius dedit, cessit atque mandavit Gaio et eius heredibus omnia iura, omnesque rationes et actiones reales et personales ante solutionem sibi faciendam, que et quas, iure vel usu, habebat adversus Titium	Deotaidi de Fonte-bona dedit et cessit atque mandavit titulo venditionis Scarlato de Castro florentino et eius heredibus ante solutionem sibi faciendam omnia iura, omnesque actiones reales et personales que et quas iure vel usu habebat vel habere poterat adversus Guidonem de Ungiano vel eius heredes nomine X lib. bon. quos dictus Guido ipsi Deutaidi debebat	Petras olim Sempronii dedit et cessit atque vendidit Martino quondam Titii omne ius omnemque actionem realem et personalem utilem et directam quod et quam habebat vel habere poterat adversus Iohannem Alberti vel eius bona vel suos heredes adque successores nomine vel occasione .c. libraram Volaterranorum ab eo sibi debitarum
REFERENCE TO THE ORIGINAL DOCUMENT	nomine talis debiti, scripti per manum talis notarii in quo principalis vel fideiussor ipsi Lucio extitit [...]	ut apparet per scripturam publicam manu Angeli notarii confectam pro pretio VII lib. bon.;	ut in instrumento scripto manu Iacobi notarii continetur

present discussion and was not separately categorised. For reasons of clarity and an in an attempt to keep the formulas as cohesive as possible, the overlappings and additional texts have not been strictly split between the elements.

	FORMULARIUM TABELLIONUM	PERUSINUS	BENCIVENNE
REFERENCE TO THE TRANSFER OF THE ORIGINAL INSTRUMENT	X	X	X
ENUMERATION OF AUTHORISA- TIONS	ut adversus dictum Titium et suos heredes possit idem Gaius agere et experiri directis et utilibus actionibus in rem et in personam, excipere et replicare, et se tueri confitendo, negando et omnia faciendo, que idem Lucius posset, ut ipsemet posset. et eum in rem suam procuratorem constituit	ut adversus ipsum Guidonem et heredes possit idem Scarlatus directis et utilibus actionibus agere ac experiri in rem et personam, et excipere, replicare, et se tueri confitendo, negando, et omnia faciendo, que ipse Deotaidi posset ut ipsemet, et eum in rem suam constituit procuratorem	constituens ipsum in rem suam procuratorem et ponens eundem in locum suum ita ut a modo nomine dictarum .c. librarum Volater-ranorum possit ipse Martinus adversus ipsum Iohannem et eius heredes et alium quemlibet possidentem vel detinentem de bonis ipsius Iohannis agere et experiri, excipere ac replicare, seseque tueri et omnia et singula tam in iudicio quam extra iudicium facere et libere exercere tam de sorte quam de pena et omni interesse et de omnibus et in omnibus que ipsemet facere possit
EXPLICATION OF THE COUNTER- PERFORMANCE	pro tali debito quod dictus Titius ei debebat, vel pro tot denarios quos, facta cessione, a dicto Gaio recepit, vel concessus fuit se recepisse, renuntians exceptioni non numerate pecunie	quod totum Scarlatus presentibus supra-scriptis testibus integre dicto Deotaidi numeravit atque solvit	pro pretio .c. librarum Volater-ranorum quod facta cessione supra-scripta predictus Martinus ipsi Petro numeravit et solvit presentibus testibus infra scriptis et me notario, quam cessionem et dationem predictam pro se suisque heredibus promisit idem Petrus iamdicto Martino pro se suisque heredibus stipulanti firmam et ratam perpetuo habere atque tenere omneque dampnum et expensas quod et quas in iudicio vel extra iudicium fecerit vel sustinuerit dictus Martinus vel eius heredes pro predicta pecunia exigenda integre resarcire, nec

	<i>FORMULARIUM TABELLIONUM</i>	PERUSINUS	BENCIVENNE
			contra predicta vel aliquod de predictis per se vel alium aliquando facere vel venire aliqua occasione vel exceptione sub pena .cc. librarum Volaterranorum ab ipso Petro ipsi Martino solempni sti-pulatione promissa, et ea soluta vel non predicta nichilominus rata sint et firma

Table 1/2. Elements of the cessio instruments in the main notaries' formularies of the 13<sup>th</sup> century

	SALATHIEL	ROLANDINUS
TRANSFER OF RIGHT(S)	Rainerius dedit et cessit adque vendidit Palmirollo omne ius omnemque actionem realem et personalem utilem et directam quod et quam habebat vel habere poterat contra Titium et eius bona et heredes et successores nomine et occasione .xx. librarum bononinorum quas sibi dare tenebatur	Antonius ex causa venditionis dedit, cessit, transtulit, & mandavit Corrado pro se & suis haeredibus recipienti omnia iura & actiones, reales & personales, vtilis & directa, quae vel quas habebat, vel habere poterat aduersus Philippum, & Andream, quemlibet eorum in solidum, & eorum heredum, & in ipsorum bonis nomine & occasione debiti centum librarum Bononiensium, quas dicti Phillip. & Andreas predicto Antonio ex causa mutui dare & soluere tenebantur
REFERENCE TO THE ORIGINAL DOCUMENT	sicut patuit evidenter per instrumentum factum a tali notario a me infrascripto notario visum et lectum et coram testibus recitatum	vt patet in instrumento scripto manus talis notarii
REFERENCE TO THE TRANSFER OF THE ORIGINAL INSTRUMENT	X	Quod instrumentum tradidit, & dedit ibidem
ENUMERATION OF AUTHORISATIONS	constituens ipsum procuratorem tanquam in rem suam et eundem ponens in locum suum ita quod a modo dictarum .xx. librarum bononinorum nomine aduersus ipsum Titium et heredes eius et alium quemlibet possit ipse Palmirolus agere experiri excipere replicare et se tueri et omnia et singula tam in iudicio quam extra facere ac libere exercere que ipse Rainerius poterat tam de sorte quam de pena et omni interesse in omnibus et per omnia	constituens procuratorem eum tanquam in rem suam, & ponens ipsum in locum suum. Ita quod amodo suo nomine actionibus vtilibus & directis possit aduersus predictam Andream & Phillipum, & quemlibet eorum in solidum, & eorum haeredes, & in ipsorum bonis nomine & occasione dicti debiti agere & experiri, excipere & replicare, consequi & se tueri, & petere dictum debitum, fortem, poenam, damna, expensas & interesse, & bona obligata: & omnia & singula facere, quemadmodum ipse poterat. Et paciscens atque conueniens, quod nulli alij hactenus cessit iura praedicta. Et quod tempore huius contractus vere creditor erat huius debiti praetaxati. Necnon promittens

	SALATHIEL	ROLANDINUS
		solenni stipulatione Corrado praedicto dictam concessionem. Et omnia & singula suprascripta firma & rata habere, & tenere, & non contrafacere vel venire aliqua ratione vel causa de iure vel de facto: Et praedicta iura & actiones sibi legitime defendere, & autorizare. Si vero apparuerit ipsum hactenus alteri dicta iura cessione, aut creditorem dicti debiti huius contractus tempore non fuisse: & si non defenderit, vt dictum est, & omnia & singula in hoc contractu non obseruauerit, aut in aliquo contrauerit, promisit eidem persolvere atque dare duplum ipsius quantitatis pecuniae poenae nomine, stipulatione in singulis capitulis huius contractus insolidum promissa: qua soluta vel non, praedicta omnia & singula suprascripta & infrascripta firma perdurent. Item rescire & restituere sibi omnia & singula damna, expensas, ac interesse litis & extra
EXPLICATION OF THE COUNTER-PERFORMANCE	pro pretio .xix. librarum bononinorum, quod pretium post factam sibi cessionem eidem Rainerio numeravit et solvit pre-sentibus testibus infrascriptis et me notario, quam cessionem et venditionem predictam pro se suisque heredibus ipse Rainerius promisit Palmiolo predicto pro se suisque heredibus stipulanti firmiter et ratam perpetuo habere adque tenere nec contra, etcetera, omneque dampnum, etcetera, sub pena dupli, etcetera.	Obligando pro his omnibus & singulis obseruandis eidem omnia sua bona pro pretio quoque & nomine pretij eiusdem cessionis, ipsis iuribus & actionibus primo cessionis, confessus et contentus fuit dictus Antonius se ab ipso Corrado habuisse & recepisse centum libras Bono-nienses, exceptioni sibi non dati & non soluti pretij, doli mali, conditioni sine causa, in factum actioni, & omni alij iuris auxilio omnino renuntians

Table 2/2. Elements of the cessio instruments in the main notaries' formularies of the 13<sup>th</sup> century

There are certain negligible differences between the formularies, such as different names or currencies used for examples. Otherwise, both structurally and substantively all the templates are very similar, save for a fact that chronologically newer formularies are more extensive. Of course, the parties and notaries could choose which expressions pertaining to their peculiar situation to use. The analysed templates also contain a formula for the sale of a claim (explication of the counter-performance) which, of course, could have been left out, but its inclusion testifies as to its apparent frequent practical use. In that sense, the basic *cessio* in the formularies was not an abstract contract as it was in Roman law, since the immediate cause for it was actually a sale (*cessio iuris & actionis ex causa venditionis facta*, as Rolandinus would put it)<sup>28</sup>.

In the present analysis two details are of significance. First, every formulary contains references to *actiones utiles* and *directae* as being transferred, as well as the mention of the assignor making the assignee as the *procurator in rem suam*. Those are clear references to *cessio* in Roman law, but without almost any practical significance. As it has been suggested earlier, while *cessio* in Roman law may be considered a kind of a transfer of the authorisations contained in *actiones*, in *ius commune* *cessio* is carried out via a written document, or more precisely, it is contained in the written document and constituted by it. Second, only Rolandinus' formulary contains a reference to the transfer of the document which originally constituted the right being transferred. Similarly, but ultimately without the transfer, Salathiel's template refers to reading of the original document in front of witnesses. The significance of the transfer of the original document is explained within the part dealing with *cessio* in the documents of Thomasinus de Savere.

## 2. Historical context of the documents

Before the analysis of the documents a short contextual explanation is required in order to provide basic historical and geographical information about the time and place of their creation, as well as some basic information about their author. Dubrovnik at the time was a small commune on the southern stretch of the

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<sup>28</sup> Rolandinus, 1559, p. 334. Rolandinus relays formulas for other *cessiones*, such as those performed as a donation (*Ibi.*, p. 348). But in those again the respective cause is mentioned (for example, *ex causa donationis*), and therefore they could also not be considered abstract. All his formulas for *cessiones* can be found in *Ibi.*, pp. 334 ff.; Ferrara, 1983, pp. 157 ff.

eastern Adriatic, previously to 1205 under Byzantine protection and from 1358 onwards having “a kind of independence”, as Harris would put it. In the period between, which is relevant for the present discussion, Dubrovnik was under the rule of Venice (Harris, 2006, pp. 33 ff., 46 ff., 62 ff.). During the course of the 13<sup>th</sup> century it took advantage of its geographical position, making use of its maritime orientation as well as its openness towards the hinterland, gradually acquiring wealth and security through trade and able diplomacy<sup>29</sup>. Of course, this did not happen without certain setbacks. Especially in the second half of the 13<sup>th</sup> century, on the one hand frictions with Venice, sometimes very serious, and on the other wars with Serbian rulers, were not rare<sup>30</sup>. Still, in general terms this period was one of economic growth, and commercial communication within the legal framework of the time, both with Venice and other Italian cities, was very intense<sup>31</sup>.

Such a communication must have strongly influenced legal development in Dubrovnik in every possible manner. However, even more direct influence and a momentous impact was achieved with the arrival of Thomasinus de Savere. He was summoned by the city authorities sometime in 1277 or 1278<sup>32</sup>, most likely due to a sudden rise in demand for expertly written notarial documents. This was the consequence not only of a general economic growth mentioned previously, or of an overall rise of the importance of the notarial profession on the eastern Adriatic, which happened with only a slight delay, if any, in comparison with Italian cities (Grbavac, 2010, p. 321; Čremošnik, 1927, p. 232). The immediate cause is most likely a provision included in the *Liber statutorum civitatis Ragusii*, or Statute of Dubrovnik, originally composed in 1272 (Šoljić, Šundrica, Veselić, 2002). The provision at hand stems from 1275 and stipulates

<sup>29</sup> Analysis of different aspects of the rise of Dubrovnik's economy in the period can be found in Krekić, 1997 and Krekić, 1980.

<sup>30</sup> Harris, 2006, pp. 49 ff.; Vekarić, 2019, pp. 272 ff. More on the trilateral relationship between Venice, Dubrovnik and the Slavic hinterland in Krekić, 1973.

<sup>31</sup> Cf. Vekarić, 2019, p. 274. Different aspects of the commercial relations between Dubrovnik and Venice in the period are analysed in Krekić, 2007, pp. 9 ff.; Lučić, 1970; Krekić, 1990 (with a translation in English in Krekić, 1997 and Krekić, 2007 pp. 47 ff.). It is not surprising that Dubrovnik had strongest commercial ties with Venice during the period of its political dominance, but it also independently developed relations with other Italian cities such as Bari, Rimini, Ferrara, Fano or Ravenna (Vekarić, 2019, p. 270; Harris, 2006, pp. 46, 49). More on commercial relations of Dubrovnik with Italy of the period generally in Krekić, 1979; Krekić, 1977; Krekić, 1976; Lučić, 1967; Krekić, 1962. General maritime and commercial relations of Dubrovnik within the Mediterranean of the time are analysed in Lučić, 1971.

<sup>32</sup> For the discussion as to the exact year see Čremošnik, 1927, pp. 232 f.; Čremošnik, 1935, pp. 106 f.; Voje, 2003, p. 19.



that every credit purchase of goods valuable more than 10 *ypperperi*<sup>33</sup> must be accompanied by a notarial instrument<sup>34</sup>.

At any rate, Thomasinus de Savere came and started his work both as a *notarius iuratus* and a *scriba* (or *cancellarius*) *communis*<sup>35</sup>. Son of Guido de Savere, he came from Regium de Lombardia (today Reggio nell'Emilia)<sup>36</sup>. Him coming from northern Italy, the centre of legal knowledge and education of the time, his sophistication and expertise in composing legal documents as well as him using the title *magister* all indicate high probability of some kind of a thorough legal education (Marinović, 1985, p. 12; Čremošnik, 1927, p. 232). However, details are not known, and it can at least be stated that he was not matriculated in the notaries' organisation of the time in Bologna<sup>37</sup>. At any rate, he performed his duties very professionally and conscientiously, signing the documents as "sacri palatii et communis Rag. iur. notarius" (Čremošnik, 1927, p. 239). He was involved in local life both professionally and personally. In his own documents he is often mentioned as a buyer, seller, creditor, debtor, *procurator* etc<sup>38</sup>. Leaving his position as a *notarius iuratus* in 1284 (most likely being overwhelmed by work) and spending the last two years of his life only as a *scriba* (Marinović, 1985, p. 15; Čremošnik, 1927, pp. 235 f.), he left behind an impressive estate valued at 3400 *ypperperi* (Lučić, 1967, p. 468). His two brothers, Severinus and Petrus, were also living in Dubrovnik, at least for a time, which is known from them being mentioned in the documents on numerous occasions (*Ibidem*). He married a local girl, Stana<sup>39</sup>, but also managed

<sup>33</sup> Currencies used and their value are discussed in the part dealing with *cessio* in the documents.

<sup>34</sup> *Liber statutorum civitatis Ragusii lib. VIII, cap. XXII* (Šoljić, Šundrica, Veselić, 2002, p. 426). The argumentation can be found in Čremošnik, 1927, p. 231.

<sup>35</sup> As a *notarius iuratus* he was a notary sworn in by the local authorities and dealt with private legal matters. *Scriba* or *scribanus* is a term peculiar to Dubrovnik, but essentially it denotes the office of *cancellarius* which included service for the rector and the judiciary such as recording judicial proceedings, statements of witnesses, criminal charges etc. (Marinović, 1985, pp. 13 ff.; Lučić, 1967, p. 467; Čremošnik, 1927, pp. 233 ff.).

<sup>36</sup> This, alongside most other personal details, is known from his testament which he composed himself (MHR II, 326/1291 (first number indicates the page, and second the numeration of the document. This system is applied throughout the text for sources both from MHR and from CD); CD VI, 454/383).

<sup>37</sup> His name is not found in the *Liber sive matricula notariorum comunis Bononie* for the thirteenth century (Ferrara, Valentini, 1980).

<sup>38</sup> Lučić, 1967, p. 468, with references to the documents.

<sup>39</sup> Stana is mentioned in his testament (MHR II, 326/1291), in MHR I, 116/405 and after Thomasinus' death in MHR III, 268/778.

to beget a daughter, Maria, out of wedlock, to whom he left a part of his estate (*Ibidem*). Most importantly for the present discussion, he left behind a great number of expertly written and systematically organised documents, among which *cessionones* can also be found.

### 3. *Cessio in the documents*

#### 3.1. *General observations*

Among numerous documents of different types in the analysed sources, a number of documents deals exactly with the transfer of a claim from one creditor to another, which is to be understood as a *cessio*. To be precise, 24 documents containing 25 *cessionones* have been singled out<sup>40</sup>. *Cessio* could be placed alongside other types of asset transfer, the most important of which are sales and donations. The *cessio* documents are also conceptually linked to instruments of debt, since they essentially consist of the transfer of debt constituted by those instruments<sup>41</sup>. Consequently, in order to put the mentioned numbers in perspective comparison of *cessionones* with all the documents and transactions, as well as those dealing with sales and donations of different items and those containing instruments of debt is needed. In total, ca. 3017 documents can be numbered<sup>42</sup>, but some of them contain more than one transaction, especially those dealing with the instruments of debt. If every instrument of debt is counted as a specific transaction<sup>43</sup>, and if we also consider that one document contains two *cessionones*, we come to the staggering number of approximately 4472 transactions and other notarial documents. Out of those, ca. 2443 are instruments of debt, 337 are sales and donations (219 of immovables

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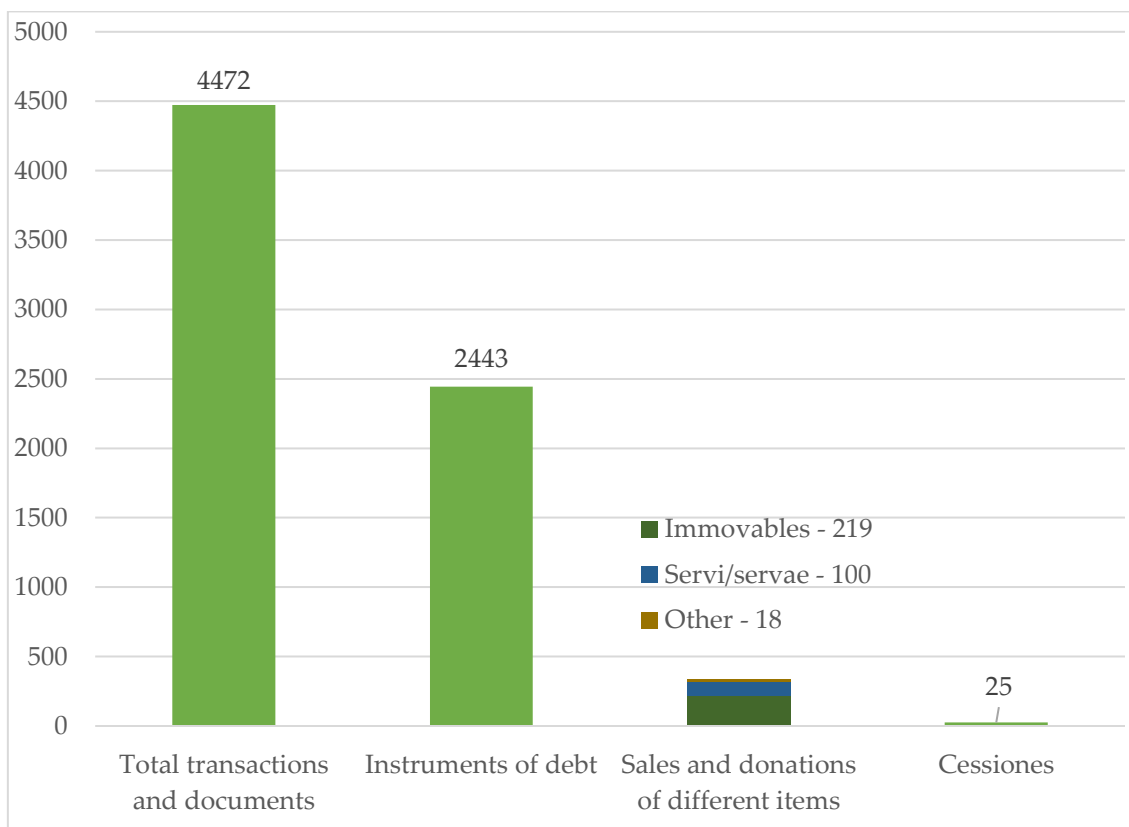
<sup>40</sup> MHR I, 142/481, 143/482 (those two are referring to a same transaction, first conceived abstractly and then revoked and drafted as a sale. They are counted as two *cessionones* due to different forms in which they were conducted), 148/491, 155/509, 160/524, 166/542, 176/570, 195/623, 206/659, 211/675, 220/708, 236/746, 257/837, 288/960, 288/961, 310/1048; MHR, II, 185/808, 239/990, 260/1060, 275/1117, 298/1203, 303/1218, 306/1230 (two *cessionones* in the same document), 314/1250.

<sup>41</sup> Details are analysed in the part dealing with the structure of *cessio* documents.

<sup>42</sup> The numbers are based on numeration in the published sources, but they can only be approximated, as some documents contain more than one transaction (sometimes labeled with the same number and an added letter), and for some documents it has been established that they do not actually stem from Thomasinus de Savere (such as MHR II, 336/1296).

<sup>43</sup> This approach was assumed, for example, by Čremošnik, 1927, p. 235 ff. in counting instruments of debt. Also, such an approach makes sense if *cessionones* are to be put in perspective with other transactions.

such as houses, vineyards, construction sites, etc., 100 of *servi* and *servae*<sup>44</sup> and 18 of items such as ships, planks, grain, salt, wine, cattle, bees, etc.) and, as already noted, 25 *cessiones* of claims. The data is best presented in a graph.



Graph 1. Comparison of cessiones with other transactions in the documents

According to these numbers, although *cessiones* definitely did occur, they were not as frequent as simply constituting a debt via notarial instrument. However, their occurrence is comparable with that of sales or donations of various items other than immovables or *servi* and *servae*, such as ships, building material or foodstuffs. Therefore, it can be concluded that an obligation near the end of the 13<sup>th</sup> century Dubrovnik was definitely considered a transferable asset, and its transferral was part of regular commerce.

<sup>44</sup> For lack of an appropriate translation (since the word *slave* and its connotations associated with the antiquity may not be completely applicable for medieval law (Budak, 1985)), original Latin expression is used.

The details regarding the contents of *cessio* documents are dealt with later on, but here a short account of the value of obligations usually transferred may corroborate such a conclusion. The values are prevalently expressed in *solidi denariorum grossorum*, which was the main measure of value and currency at the time. In the period, of course, Venetian coins (mostly silver, *denarii grossi*)<sup>45</sup> dominated the commerce in Dubrovnik, but Byzantine coinage still circulated, and only near the end of the 13<sup>th</sup> century did Dubrovnik start to mint its own copper coinage<sup>46</sup>. The most usual measure of value at the time were *solidi*, which were not an effective gold coinage but an accounting classification as per Charlemagne's medieval system according to which 12 silver *denarii* were counted as one *solidus* (Mantello, Rigg, 1996, p. 495). *Ypperperus*, obviously stemming from the Byzantine golden *hyperpyron*<sup>47</sup>, was also sometimes used and had the same function and value (Rešetar, 1924, p. 56). Consequently, as a measure of value, one *solidus*, or *ypperperus*, consisted of 12 *denarii grossi*, and every *denarius grossus* consisted of 30 copper *follari* (Rheubottom, 2000, p. 34). At any rate, the amounts in *cessionones* range from as low as only 2 to sometimes more than 200 *solidi*. Again, this is best presented in a graph<sup>48</sup>.

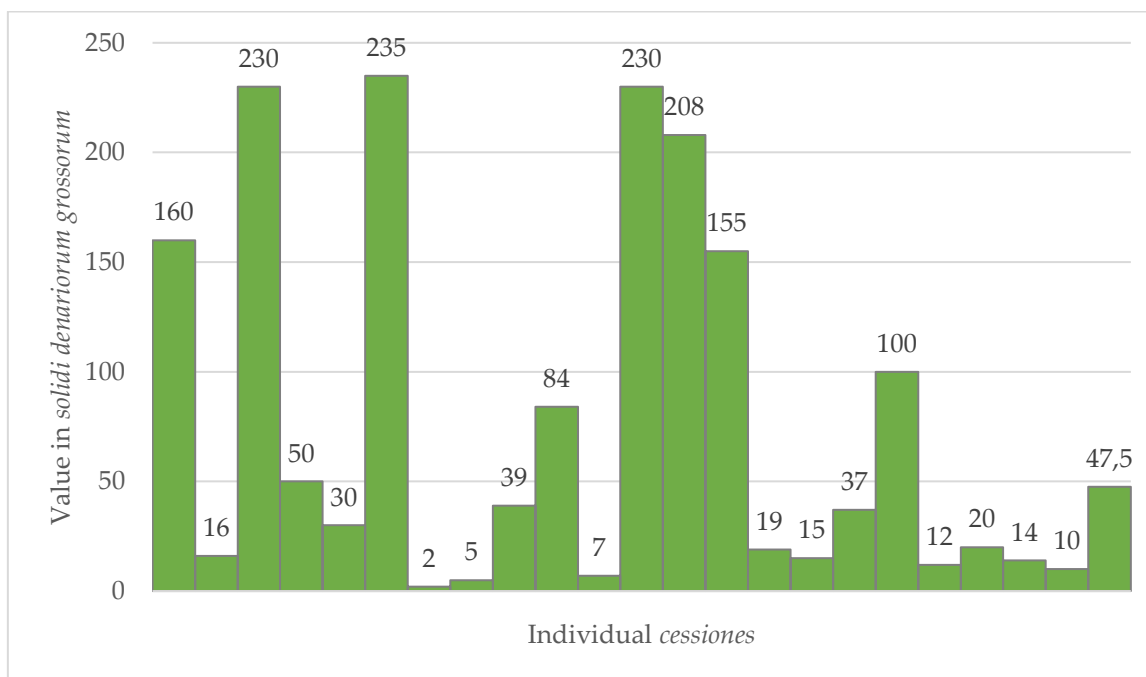
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<sup>45</sup> More on Venetian money in Day, Matzke, Saccocci, 2016, pp. 627 ff.

<sup>46</sup> Rešetar, 1924, p. 470. Detailed and systematic analysis of money, coinage and monetary system in Dubrovnik generally in *ibid.* and Rešetar, 1925. Coins in circulation are also described in the famous description of Dubrovnik by Philippus de Diversis from the 15<sup>th</sup> century (Janeković-Römer, 2004, pp. 199 ff.).

<sup>47</sup> More on Byzantine money in Grierson, 1999.

<sup>48</sup> *Cessionones* are ordered chronologically from the earliest to the latest. One *cessio* is not included (MHR I, 160/524) since the part of the document indicating value is not there. Two documents referring to essentially one transaction (MHR I, 142/481 and 143/482) have been counted only once, since the amount is the same. Numbers indicate *solidi denariorum grossorum* in most cases, with *ypperperi* (having the same value) in MHR I, 211/675, MHR II, 303/1218, 314/1250. In the interest of clarity, *grossi* (12<sup>th</sup> part of a *solidus*) and *follari* (30<sup>th</sup> part of a *grossus*) sometimes added alongside *solidi* are not included.



Graph 2. Values of obligations transferred by a *cessio*

The median value of *cessiones* in the documents is 37 *solidi* and the average value of an obligation transferred is around 75 *solidi*. Single digit amounts make up a minority of only 3 *cessiones*, while the three-digit amounts of 100 and more *solidi* make up almost a third of the total number. Those amounts are in accordance with the usual prices of immovables and other items or different sums loaned. For example, a house could have been sold for the amount of 25<sup>49</sup> or the amount of 160 *solidi*<sup>50</sup>, and a vineyard for 40<sup>51</sup> or for 238 *solidi*<sup>52</sup>. A ship may have gone for a 100 *ypperperi*<sup>53</sup> and a *serua* for 4<sup>54</sup> or 12 *solidi*<sup>55</sup>. Fifteen cows have been sold for 35 *solidi*<sup>56</sup>, and thirty-two horses and donkeys for the amount of 160 *solidi*<sup>57</sup>. Finally, the instruments of debt could go from as low as 2,5 *solidi*<sup>58</sup>

<sup>49</sup> MHR I, 130/449.

<sup>50</sup> MHR I, 120/417.

<sup>51</sup> MHR II, 245/1009.

<sup>52</sup> MHR I, 226/722.

<sup>53</sup> MHR II, 247/1018.

<sup>54</sup> MHR II, 248/1021.

<sup>55</sup> MHR II, 246/1013.

<sup>56</sup> MHR II, 290/1175.

<sup>57</sup> MHR II, 313/1245.

<sup>58</sup> MHR II, 240/768.

to 200<sup>59</sup> or more<sup>60</sup>. Generally, from 1281 onwards the number of loans and amounts loaned seems to be steadily rising, with individual loans being around 200 or 300 *solidi*<sup>61</sup>. All things considered, the number of *cessio* documents and the amounts of the obligations transferred strongly indicate that *cessio* in the late 13<sup>th</sup> century Dubrovnik was both a relatively regular day-to-day transaction and a relevant business instrument.

### 3.2. Structural analysis of the *cessio* documents

*Cessio* in the documents does not follow any one of the previously analysed notaries' formularies in a strict structural sense. That actually runs contrary to the usual trends. Notaries on the eastern coast of the Adriatic have been said to have predominantly used formularies of Rainerius Perusinus and Bencivenne in the earlier period, and initially sporadically but with time progressively more the one by Rolandinus (Grbavac, 2010, p. 322). However, at least regarding *cessio* and our notary Thomasinus de Savere, the documents seem to be oddly peculiar. Namely, for *cessionones* Thomasinus used the so-called *inserti*, in which a relevant part of the original document was reproduced, and then formulas were added according to which the rights from the original documents were transferred to another person<sup>62</sup>.

However, this technique is not restricted to *cessionones*, nor exclusive to Thomasinus de Savere. It is noted in notarial practice in Dubrovnik as early as 1256, regarding a sale of salt and the transfer of the title thereof<sup>63</sup>. In the documents at hand it was also used for transactions other than *cessionones*, such as sales, pledges (*pignus*), land tillage contracts and even one execution of a testament, alongside much more frequent standard instruments used in those cases<sup>64</sup>. Regarding *cessio* within the documents *inserti* are exclusively used, bar

<sup>59</sup> MHR II, 3/13.

<sup>60</sup> MHR II, 7/29, indicating a debt of ca. 342 *solidi*.

<sup>61</sup> Lučić, 1970, pp. 578 ff., with references to the sources.

<sup>62</sup> More on *inserti* in Pratesi, 1987, p. 106; Čremošnik, 1931, pp. 28 f. *Inserti* differ from *copia authentica*, *vidimus* or *transsumpti*, where the entire original document is copied in the new document (Pratesi, 1987, Stipišić, 1972, pp. 164 f.; Čremošnik, 1931, p. 28).

<sup>63</sup> CD V (Smičiklas, 1907), 17/551.

<sup>64</sup> MHR I, 99/359 (sale of a vineyard), 103/370 (sale of a vineyard), 109/386 (transfer of a house), 127/441 (transfer of land), 147/487 (sale of a vineyard), 192/613 (sale of a *serva*); MHR II, 184/803 (sale of a *serva*), 187/818 (sale of a *serva*), 190/832 (sale of a *serva*), 192/841 (pledge of a vineyard), 198/863, 241/997 (sale of *servae*), 255/1046 (sale of a vineyard), 257/1051 (sale of a *servus*), 262/1071 (land tillage contract), 265/1081 (sale of a house), 278/1132 (execution of a testament), 289/1172 (transfer of land), 291/1183 (land tillage contract), 295/1195 (land tillage

only two cases<sup>65</sup>. *Inserti* have been used both for *cessiones* and other transactions by a later notary in Dubrovnik Andrea Bennessa (1295-1301)<sup>66</sup>, but Thomasinus seems to have locally initiated the use of the technique in the context of *cessiones*. At any rate, this technique has been recognised, though only in passing, as a distinctive feature of *cessio* in the law of medieval and late-medieval Dubrovnik (Margetić, 1997, p. 226; Voje, 2003, p. 77).

*Cessio*, as any other document, contains the usual elements, such as the date and *indictio* at the beginning and corroboration of the evidentiary value of the document and names of witnesses at the end. The transaction itself consists of the following parts: first the assignor presents (*ostendit*) the original document, and then the relevant part of that document is literally reproduced, wherein details of the debt are described (when and in what amount was the debtor obligated to the assignor, when is the payment due, etc.). After that, the transfer of the original document from the assignor to the assignee is referred to (*Quam cartam [...] dedit*), along with all its inherent legal validity (*cum pleno vigore et*

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contract), 317/1261 (sale of a vineyard). Of course, regarding those transactions the standard instrument, simply describing the matter at hand, is much more common (for example, regarding sales of immovables in MHR I, 202/647, 306/1033; MHR II, 194/850, 179/784, regarding sales of *servi* or *servae* in MHR I, 295/989; MHR II, 178/776, 178/777, regarding a pledge of an immovable property in MHR I, 200/641, regarding the execution of a testament in MHR II, 121/535 etc.). In the cases of transactions other than *cessiones* where *inserti* were used they apparently had the function of the transfer of the title, maybe for evidentiary purposes in certain cases when parties especially required it, or where it was for other reasons necessitated by circumstances. Such a conclusion may be corroborated by the fact that documents where *inserti* are used (beside *cessiones*) almost exclusively contain transactions associated with immovables and *servi* and *servae*. It is likely that in those cases, due to a higher value and importance of transactions, transfer of the original document was sometimes deemed useful or necessary.

<sup>65</sup> MHR I, 143/482, where the form used is the one otherwise used for sales of immovables and other items. This *cessio* is also the only one in the documents where the transfer is explicitly conceived as a sale, as the debt valued at ca. 160 *solidi* is being sold for 100 *solidi*. In MHR II, 303/1218, although the transfer of the original document is not referred to, still the wording explicitly mentions the giving over (*do*) of *omnem potestatem et auctoritatem meam quam habeo de [...]*.

<sup>66</sup> MHR IV (Lučić 1993), 22/14 (*cessio*), 25/29 (*cessio*), 32/58 (sale of a *serva*), 55/165 (sale of a *serva*), 66/209c (sale of a house), 70/223 (*cessio*), 74/242 (sale of a *serva*), 77/255 (sale of a *serva*), 78/262 (sale of land), 81/276 (*cessio*), 84/288 (*cessio*), 85/292 (*cessio*), 85/293 (*cessio*), 86/296 (sale of a vineyard), 89/307 (sale of a *serva*), 100/354 (sale of a vineyard), 100/355 (*cessio*), 101/357 (*cessio*), 105/374 (*cessio*), 106/381 (*cessio*), 108/390 (*cessio*), 110/397 (*cessio*), 112/410 (transfer of a service contract), 115/426 (*cessio*), 124/470 (*cessio*), 128/485 (*cessio*), 131/497 (transfer of a house), 132/498 (sale and transfer of a vineyard), 134/510 (*cessio*), 136/519 (sale of a *serva*).

*tota potestate sua*). Reference to the original document also very usefully contains the date and witnesses<sup>67</sup>. Finally, there is an enumeration of the authorisations acquired by the assignee, in which it is stated that the assignee can sue for the debt in the court or out of it, and that he can do as he pleases with the document and the authorisations within it. In order to present the matter more clearly, again, these elements, having only slight variations in the sources, may be systematised in a table.

Table 2. Elements of *cessio* in the documents of Thomasinus de Savere

	CESSIO IN THE DOCUMENTS
ASSIGNOR PRESENTING THE ORIGINAL DOCUMENT	(assignor) <i>ostendit unam cartam notarii, que sic incipit</i> <sup>68</sup>
LITERAL RELAY OF THE RELEVANT PART OF THE ORIGINAL DOCUMENT	for example: “(date, witnesses), ego (debtor) usque ad primum pasca resurrectionis debeo dare (assignor) s. den. gross. (amount <sup>69</sup> )” <sup>70</sup> , ut in dicta carta continetur
TRANSFER OF THE ORIGINAL DOCUMENT AND LEGAL VALIDITY THEREOF	Quam cartam notarii suprascriptam cum pleno vigore et tota potestate sua dictus (assignor) dedit (assignee) <sup>71</sup>
ENUMERATION OF AUTHORISATIONS	ut ipse (assignee) de predicta carta et toto illo quod continetur in illa faciat in curia et extra curiam in omnibus velle suum <sup>72</sup>

<sup>67</sup> For that reason it is very helpful when the original document has not been preserved (see use of *inserti* in Čremošnik, 1927, pp. 232 f.; Čremošnik, 1931).

<sup>68</sup> If more than one document is referred to, that is of course reflected in the formula (for example, *ostendit duas cartas* in MHR I, 220/708). Formula *que sic incipit* exists when only a part of the original document is used, and for an entire copy different wording applies, *cuius tenor talis est* (for example in MHR II, 212/910, 279/1136; Čremošnik, 1931, p. 28). Later on such a differentiation does not exist, as notary Andrea Benessa, for example, uses both expressions when only using a part of the original document (formula *que sic incipit* is more often, while *cuius tenor talis est*, although only part of the document is reproduced, is used in MHR IV, 32/58 (sale of a *serva*), 81/276 (*cessio*)).

<sup>69</sup> Usually the entire amount owed according to the original document is transferred, but in some cases only a part thereof (MHR I, 166/542, 206/659; MHR II, 306/1230). In MHR I, 211/675 obligation is alternatively defined as an amount of wine to be produced in the forthcoming season or a certain amount of money.

<sup>70</sup> Sometimes a penalty for defaulting exists, usually in the form of an additional obligation of paying *pena de quinque in sex per annum* (paying six *solidi* for every five defaulted, or in other words paying the interest of 20% a year) for example in MHR I, 142/481.

<sup>71</sup> Variations include “Quam cartam (notarii) scriptam” or “Quas ambas cartas” if there were two, different placement of “cum pleno vigore et tota potestate”, slightly different formulation of the latter expression as “cum toto vigore et potestate” etc.



As it has been stated earlier, *cessio* in the documents is structurally peculiar in comparison with the forms in the notaries' formularies. Still, certain elements are definitely akin in substance. Where the formularies contain wording of the actual transfer from the assignor to the assignee, here the assignor presents the relevant part of the original document. Explication of the obligation transferred in the formularies is given descriptively, while in the documents this happens by transcribing a part of the original document (perhaps somewhat more practically). However, even the formularies do contain a reference to the original document. Both the formularies and the *cessionones* in the documents analysed contain an enumeration of authorisations transferred.

One of the most salient features of *cessio* in the documents is the transfer of the original document and the legal validity therein from the assignor to the assignee. Perhaps most strikingly, this actually does appear in at least one of the analysed formularies, the one by the famous Rolandinus. The technique of *inserti* here used is in itself older, although, according to the extant sources, not regarding *cessionones* but other transactions. Therefore it is not very likely that this particular similarity is derived from a direct and literal influence of Rolandinus<sup>73</sup>. Perhaps only on a functional and practical level the transfer of the original document involved in a *cessio* was deemed helpful or necessary both by Rolandinus in his theoretical setting (no doubt inspired partly by practice and practical considerations) and by Thomasinus in his local practice in Dubrovnik. Thus the exigencies of notarial and general legal practice may have shaped the form of *cessio* both in the formularies (most systematically Rolandinus') and in the documents of a local notary in a commune on the eastern Adriatic. Possibly the latter was at least slightly and on a functional level under the influence of the former, but at any rate both came to very similar results.

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<sup>72</sup> Variations include expressions such as “de dicta carta loco et nomine persone (assignor), in omnibus sine contradictione aliqua velle suum, sicut (assignor) facere posset si presens esset” etc. In one instance it is explicitly stated that the fulfillment of the debt renders the original document invalid (“Et quando dicti duo solidi fuerint soluti, predicta carta nullius sit valoris” in MHR I, 206/659; cf. Voje, 2003, p. 77). In MHR II, 303/1218 further authorisations are included (“possit petere et recipere a pitropis dicte (debtor) et eis finem et remissionem facere”).

<sup>73</sup> On a side note, Thomasinus de Savere apparently did use Rolandinus' formulary for the appointment of procedural representatives in court (*procuratores ad litem*). More on that issue, together with an analysis of *advocati* in the same documents, in Held, 2020.

### 3.3. Content-related analysis of the *cessio* documents

Aside from the value of obligations transferred discussed previously, the first issue related to contents of the *cessionones* is the immediate cause for which they occurred. Only in one case it is apparent that the obligation was sold, and in that sense the immediate cause for a *cessio* was a sale<sup>74</sup>. In that case a claim for ca. 160 *solidi*<sup>75</sup> was sold for 100 *solidi*, but this *cessio* is an example of a deviation from the usual form of the *cessio* documents, being in a regular form for sale. In other examples *cessio* is structured as explained previously, and thus its immediate cause was unknown and legally irrelevant for the transaction at hand. In that sense *cessio* was a completely abstract transaction as it was in Roman law. In fact, *cessio* in the documents is in this respect more similar to Roman law than *cessio* in the notaries' formularies. All of them contain an explication of the counter-performance to the transfer, thus shaping *cessio* in its basic form as a sale of an obligation.

That is not to say that in many cases, if not in all, the obligation in the documents was transferred for a price, most likely agreed upon verbally or at any rate outside the *cessio* document<sup>76</sup>. But a *cessio* could have also occurred as a fulfillment of a previous debt<sup>77</sup>, or simply as a donation or a dowry etc. At any rate details are not discernible from the documents themselves, and there are only occasional glimpses of a possible context. For example, in one document from August of 1281 after a regularly structured transfer of an obligation valued at ca. 235 *solidi* a note was added on the edge stating that the document (*carta*) will not be given over unless the assignee or the debtor pay the assignor 5 *ypperperi*<sup>78</sup>, which is most likely a down payment. In another *cessio* from March of the same year valued at ca. 160 *solidi* but sold for 100 *solidi*<sup>79</sup> a note was added which stipulated that the document will not be given over unless the assignee provides a pledge (*pignus*). That may suggest that the whole transaction (both an original abstract *cessio* which was revoked and the sale of the same

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<sup>74</sup> MHR I, 143/482.

<sup>75</sup> As in the previous part dealing with values, in the interest of clarity only *solidi* are indicated, without references to additional *grossi* or *follari* which sometimes appear.

<sup>76</sup> This is the supposition of Voje, 2003, p. 77 regarding *cessio* in Dubrovnik in the 15<sup>th</sup> century.

<sup>77</sup> Cf. Lučić, 1970, p. 584, with references to sources.

<sup>78</sup> MHR I, 195/623.

<sup>79</sup> First conceived abstractly in MHR I, 142/481, but then revoked and on the same day drafted as a sale of an obligation in *ibid.*, 143/482. The contents, bar the price which is lacking in the abstract document, are completely identical. In the second document the obligation valued at ca. 160 *solidi* is sold for 100 *solidi*.

obligation agreed afterwards with a price well below the actual value) may have been a simulation, while the actual transaction was a loan from the assignor to the assignee, expected to be returned in one way or another.

Another aspect regarding the contents of the *cessio* documents are demographics of the persons involved, at least such as can be deduced from the texts. Sometimes foreigners are involved in *cessionones*, as well as in other transactions<sup>80</sup>. In the previously mentioned *cessio* of a claim valued at ca. 160 *solidi* from March of 1281 the assignor is Furlanus Basilio de Venetiis, an apparently rich Venetian involved in many a transaction in the period<sup>81</sup>. Phylippus Berrocus de Venetiis appears as the assignor in a document from August of 1281 transferring a claim valued at ca. 235 *solidi*<sup>82</sup> and Marcus Basilius de Cataro as the assignee in a *cessio* valued at ca. 39 *solidi* from December of the same year<sup>83</sup>. Thomasinus de Saverre himself appears as the assignee in a draft of a *cessio* from June of 1281<sup>84</sup>.

Local aristocracy, establishing and consolidating its power in the period<sup>85</sup>, also participated in *cessionones*. For example, in the *cessio* from March of 1281 already mentioned earlier<sup>86</sup>, both the assignee and the debtor are local noblemen, two brothers from the Bodacia family (Prodanus and Calenda). These brothers in identical roles appear again in another previously mentioned *cessio*<sup>87</sup>. Another two brothers from the Crossio family (Jacobus and Teodorus, *fili Pascalis de Crossio*) appear as the assignor and the assignee in a *cessio* from March of 1283, transferring a debt of ca. 15 *solidi*<sup>88</sup>. All three members of the *cessio*, namely the assignor, the assignee and the debtor are members of the aristocracy (the assignee is additionally the daughter of the assignor) in a *cessio*

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<sup>80</sup> More on the commercial commerce with the foreigners in Lučić, 1971, Lučić, 1970 and Lučić, 1967. Venetians in Dubrovnik as the owners of immovable property in the period are analysed in Krekić, 1990 (with an English translation published in Krekić, 1997 and Krekić, 2007 pp. 47 ff.).

<sup>81</sup> He appears as the assignor again in MHR I, 148/491, 160/524. He appears many more times as a creditor, buyer, seller etc. (Lučić, 1970, pp. 578, 581 ff., with references to the sources).

<sup>82</sup> MHR I, 195/623.

<sup>83</sup> MHR I, 220/708.

<sup>84</sup> MHR I, 160/524. The part indicating value was not inserted.

<sup>85</sup> More about this in Vekarić, 2019 (the seminal work on nobility in Dubrovnik), pp. 269 ff.; Janeković-Römer, 2018.

<sup>86</sup> MHR I, 142/481.

<sup>87</sup> MHR I, 195/623. Filial relationship between the assignee and the debtor on two occasions may indicate charitable reasons for the acquisition of the debt (of course, not necessarily).

<sup>88</sup> MRH II, 239/990.

from May of 1281 valued at 230 *solidi*<sup>89</sup>, another from June of the same year, where claim to 50 *solidi* was transferred from the assignor to his son-in-law as the assignee<sup>90</sup>, and finally one from December of 1283 valued at 47.5 *solidi*<sup>91</sup>. Members of aristocracy appear as assignors and assignees in a *cessio* valued at 30 *solidi* from July of 1281 (the assignor is in fact a noblewoman)<sup>92</sup>, in a *cessio* of 2 *solidi* from November of 1281<sup>93</sup>, one from July 1283 valued at 100<sup>94</sup> and the one from October of the same year valued at 20 *solidi*<sup>95</sup>. Nobleman is the assignor in a document from November of 1281 valued at ca. 5 *ypperperi*<sup>96</sup> and one from December of the same year valued at ca. 39 *solidi*<sup>97</sup>, and the assignee in a *cessio* from January of 1282 valued at 84 *solidi*<sup>98</sup>. The members of aristocracy also occur as debtors. In a *cessio* from March of 1282 valued at ca. 7 *solidi* Laurentia, *uxor Cranci* is a co-debtor<sup>99</sup>, in a document from May of 1282 the debtor is Vita, *filius Domagne de Babalio* (208 *solidi*)<sup>100</sup>, in a document from the same month the co-debtors are Piçinegus de Berrisina and Nichola de Certello for a debt of ca. 30 *solidi*, in a *cessio* from August of 1282 valued at ca. 19 *solidi* the debtor is Anna, *uxor quondam Damiani de Certello*<sup>101</sup> and finally in a *cessio* of a claim valued at 12 *ypperperi* from November of 1283 the debtor is Priba, *filia Sergi de Barbara*<sup>102</sup>.

Sometimes occupation of participants is explicitly stated. In a document from November of 1281 regarding a *cessio* of 2 *solidi* the co-debtors in the original debt and the assignee and the debtor in the *cessio* (Paçomillus and Draginna) are

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<sup>89</sup> MHR I, 155/509. The assignor is Dobrosclausus de Sorgo, the assignee is his daughter Bona, and the debtor is Vita Junii de Baraba. This is possibly a dowry.

<sup>90</sup> MHR I, 166/542. The assignor is Marinus de Ceria, the assignee is Marinus de Mauressia and the debtor is Lampredius Grubessie de Baysclaua.

<sup>91</sup> MHR II, 314/1250. The assignor is Petrus, *filius Prodanelli* acting as a *procurator* of Georgius de Gleda, the assignee is Pasqua de Zereua and the debtor is Mathe de Bisca.

<sup>92</sup> MHR I, 176/570. The assignor is Lena, *uxor quondam Macinelli*, and the assignees are Dimitrius de Mençe, Michael de Ragnana and Franciscus, *filius Michaelis Binçole*.

<sup>93</sup> MHR I, 211/675. The assignor is Petrus de Stilo and the assignee is Ursacius Nichifori de Bodacia.

<sup>94</sup> MHR II, 275/1117. The assignor is Vita de Capsiça and the assignee is Nicholaus, *filius quondam Marini de Ceria*.

<sup>95</sup> MHR II, 298/1203. The assignor is Lucarus Muti and the assignee is Johannes de Crossio.

<sup>96</sup> MHR I, 206/659 (Micha de Zepre).

<sup>97</sup> MHR I, 220/708 (Andrea de Catena).

<sup>98</sup> MHR I, 236/746 (Petrus de Stilo).

<sup>99</sup> MHR I, 257/837.

<sup>100</sup> MHR I, 288/961.

<sup>101</sup> MHR II, 185/808.

<sup>102</sup> MHR II, 303/1218.

not only in-laws, they are both coat makers (*zupparii*)<sup>103</sup>. Petrus de Stilo, already mentioned as a nobleman, was also a priest, and appeared as the assignor of a debt valued at ca. 5 *ypperperi* from November of 1281<sup>104</sup> and as the assignee in a *cessio* valued at 84 *solidi* from January of 1282<sup>105</sup>. In the same document the debtor is a furrier (*piliarius*)<sup>106</sup>, Sergio de Belçio. Another furrier, Obratus, *filius Bolie* appears as the assignor in two instances in November of 1283, transferring one debt of 14 and another of 10 *solidi* to Radonega, *uxor Radocii de Pobrato*<sup>107</sup>. In the document from June of 1282, the assignors are sons of a coat maker (Zugnus and Franciscus, *fili quondam Laurentii zupparii*) who transfer the debt of their cousin Dragossius de Costa valued at 155 *solidi* to their sister, married to another coat maker (Perua, *uxor Vite zupparii*)<sup>108</sup>.

Women in documents are not a rarity at all, as they appear in different roles in 10 *cessionones*, almost a half of the total number. In addition to the previously mentioned female participants, in the document from November of 1283 valued at 12 *ypperperi* not only was the debtor a woman, but the assignor (Crasna, *uxor Cernoglai*) and the assignee (Milosta, *nepta Dese Vysclau*) as well<sup>109</sup>. In a *cessio* of ca. 16 *solidi* from April of 1281 a mother acquired the debt of her son<sup>110</sup>. In the document from November of 1283 valued at 14 *solidi* where a woman is already the assignee, the debtor is Gradosti, *mater Gerdomani*<sup>111</sup>, and in a *cessio* from October of 1283 valued at 20 *solidi* the debtor is Stanisclaua, *uxor quondam Rastenni de Nichola*<sup>112</sup>.

#### 4. Conclusion

*Cessio* in the documents of Thomasinus de Savere functioned as many other legal transactions from the period. Namely, it was carried out via a written notarial document. Contents of such documents were comprehensively listed in the notaries' formularies of the time. However, contrary to general trends *cessio*

<sup>103</sup> MHR I, 206/659. More on *zupparii* in Lučić 1979, pp. 75 ff.

<sup>104</sup> MHR I, 211/675.

<sup>105</sup> MHR I, 236/746.

<sup>106</sup> More on *piliarii* in Lučić, 1979, pp. 87 ff.

<sup>107</sup> Both *cessionones* appear in MHR II, 306/1230.

<sup>108</sup> MHR I, 310/1048.

<sup>109</sup> MHR II, 303/1218.

<sup>110</sup> MHR I, 148/491 (*Mafina, mater Nicholai, filii Mathie de Doncio*).

<sup>111</sup> MHR II, 306/1230.

<sup>112</sup> MHR II, 298/1203.

in the analysed documents does not structurally closely follow any one of them. Instead, the technique of *inserti* is used, in which a relevant part of the original document constituting the debt being transferred is reproduced, alongside explicit transmission of the document and the associated authorisations. However, certain substantive parallels can still be found between the formularies and the documents, and one of the formularies - the one of Rolandinus - also contains a reference to the transfer of the original document, which is otherwise a salient feature of *cessio* in the documents of Thomasinus de Savere.

Doctrinally, *cessio* was in the analysed time period theoretically conceived along the same lines as in the classical Roman law, in the sense that the same terminology was retained alongside pertinent conceptual setbacks, most importantly, the principal rejection of the possibility of an actual transfer of the obligation. However, since in practice *cessionones* were effectively allowed and sometimes required, the main question on the practical level became how to carry out such an operation. The fact that in the period written instruments composed by notaries began to crucially influence legal development (both theoretically and practically) had to leave its mark on the *cessio* as well. In that sense, an *instrumentum cessionis* may be said to have become the main means by which a *cessio* was carried out. If on a functional level *cessio* in Roman law could be said to have been a kind of a transfer of authorisations contained in *actiones*, in the medieval setting associated with notarial practice, especially regarding the documents at hand, *cessio* was a transfer of a document and its inherent legal validity. In addition, *cessio* in the documents was abstract, in the sense that the transaction itself was conceptually dissociated from its immediate cause (for example, sale, fulfilment of a debt or a giving of dowry). For that reason, *cessio* in the documents structurally corresponds to the abstract *cessio* of Roman law, in contrast to the analysed templates from the notaries' formularies, which contain reference to a counter-performance to *cessio* and thus conceive it basically as a sale.

Analysed data indicates a general diversity of situations in which parties of different social standing availed themselves of *cessio* in their business and appeared as any one of the three sides to a *cessio* transaction. Higher amounts, such as those above 100 *solidi*, do appear mostly regarding aristocracy, but they also occur when craftsmen are involved. On the other hand, smaller and mid-range amounts occur throughout all the social categories. That supports the conclusion that *cessio* in the documents of Thomasinus de Savere was a relatively regular instrument, used both for everyday transactions and for more serious business ventures. This conclusion categorises Dubrovnik in the late 13<sup>th</sup>

century as one of the places where Roman legal concepts were further applied and developed, and shaped both by medieval academic legal doctrine and commerce coming from northern Italy as well as by local peculiarities of notarial practice.

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#### 7- Curriculum vitae

Born in Dubrovnik, Croatia, on the 18<sup>th</sup> of August 1986. Graduated law at the Faculty of Law, University of Zagreb in 2010 (*magister iuris, magna cum laude*). The same year employed as a teaching assistant at the Chair of Roman law on the same faculty. In 2015 graduated with a PhD thesis titled "Origins and development of the *condictio* models of protection in Roman legal tradition". From 2016 onwards holding the position of assistant professor.

Attended the seminar in *Centro di studi e ricerche sui Diritti Antichi (CEDANT)*, *Almo Collegio Borromeo*, Università degli Studi di Pavia in 2016 (*Le Istituzioni di Gaio: avventure di un bestseller*).

Published a number of articles and actively participated in numerous international scientific conferences.

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