

Monika Strzelecka

**Real estate purchase and sale contracts  
by the Brzeziny District notaries before 1818**  
(Umowy kupna-sprzedaży nieruchomości  
w praktyce kancelarii notarialnych powiatu brzezińskiego do 1818 r.)  
SUMMARY

Ph.D. thesis written  
in the Department of Research  
on Development of State and Law  
under the supervision of  
prof. dr hab. Jacek Matuszewski

Łódź, 2022

The Land of Poland at the turn of the nineteenth century saw significant changes not only in the political sphere but also in the legal sphere. The old Polish law was based primarily on custom. When the partitions of RP took place, the regulations of the invaders were imposed. After the second partition in 1793, the area around Brzeziny and Stryków came under the Prussian rule, with the Polish private law reranked as subsidiary law. The Prussian legal system, based on established law, had a bearing on local socio-economic relations, among other things as a result of the establishment of colonies in the national estates and the arrival of German settlers based on conditions set by law. The Prussian rule in these areas ended as a result of the victory of the Napoleonic troops and the creation of the Duchy of Warsaw, but the colonies and legal relations holding for most of the settlers remained in force. Soon after the creation of the Duchy of Warsaw, the French legislation was introduced in the area, which radically changed the entire civil law. The Napoleonic Code, based on the achievements of the French Revolution, came into force on 1 May 1808. Thus, the implementation of new legal solutions began. This process involved various complications.

First, the Code imposed in line with Napoleon's thought regardless of the local socio-economic relations gave rise to resentment among many social groups. The nobility was opposed to the new solutions, fearing the loss of land and the enfranchisement of peasants. Also, the Catholic clergy, recognising a threat to their position, opposed - secularisation in the spheres of socio-legal relations.

Second, in certain contexts, there was a conflict between the norms of the Prussian law and the French law. Attempts were made to resolve them by means of transitional provisions.

Third, at the turn of the century, a sequence of arduous changes in the social mentality began, which was associated with the transition from the established custom law to the established law. Although another socio-political change came as early as in 1815, when the Kingdom of Poland was established after the defeat of Napoleon's troops, most of the solutions were adopted from the Duchy of Warsaw civil law system.

Additionally, the new institution of a notary arose, having no roots in Poland. Notaries were appointed to adopt *acts of good will*. Until then, for hundreds of years, in the nobility state, the transfer of ownership had required entries in court books.

Moreover, in the times of the Duchy of Warsaw, for the first time in Poland, the



French legislation introduced the principle of legal equality, which had far-reaching consequences; the law and the judiciary system ceased to have a state character.

The topic of contracts for the sale of real estate concluding in notarial deeds from the beginning of the nineteenth century (an important period of changes in the legal system in Poland) has not yet been not addressed. This PhD thesis is an attempt to fill this gap.

The notary deeds subject to analysis were drawn up between 1808, i.e. from the introduction of the Napoleonic Code and the appearance of the first notary of the Brzeziny District, and 1808, which marks the announcement and implementation of most of the 1808 Mortgage Act resolutions. This act introduced the requirement of a notarial deed for a contract of sale with regard to certain categories of real estate.

The source materials consist of purchase and sale agreements drawn up by the notaries of the Brzeziny District in the form of notarial deeds between 1808 and 1818, and stored in the collections of the State Archives of Piotrków Trybunalski in the Tomaszów Mazowiecki Branch. In the period under analysis, the activity was carried out by two notaries of the Brzeziny powiat, namely Antoni Bogdański and Grzegorz Trzeciński.

These source materials translate into the thesis's division into chapters based on the content of individual parts of the notarial deed and formal requirements.

The first chapter discusses the provisions of the Napoleonic Code concerning the form of a contract for the sale of real estate and the possible reasons why the parties decided to conclude this contract in front of a public notary. The chapter also presents the rules of real estate trade, taking into account the specific conditions determining the sale of real estate to subordinate owners (*dominus utilis*) in private and national goods. This chapter also describes the documents prepared before signing the notarial deed and attached to it, i.e. the certificates of economic offices, the consensus documents of superior owners (*dominus directus*) and documents drawn up by the parties, together with the analysis of the effects of signing or issuing these documents.

The second chapter is devoted to the statutory, both absolute and relative, requirements of a notarial deed and the answer to the question whether these requirements were applied when notaries of the Brzeziny District drew up contracts for real estate sales.

The third chapter contains an analysis of proprietary relations described in notarial deeds and the characteristics of the real estate on sale. Special attention is paid to the differences between the regulations of the French regulations and practice, that is the ways



of adapting the content of contracts to the socio-economic realities of the Duchy of Warsaw and the Kingdom of Poland, both in terms of the applicable property rights and the terminology used. The focus is also on the manifestations of divided ownership, which were included in the content of real estate sale agreements. The chapter also reports the method of referring to legal titles as regards real estate by sellers and the method of describing real estate, indicating the differences in terminology used in practice and formally provided in the Statute Book.

The fourth chapter concerns the characteristics of the parties and other persons involved in the preparation of the notarial deed. Some space is devoted to the issues of distinguishing between the parties involved in the contract and the parties in the notarial act, the use of civil rights and the right to complete contracts. In addition, the discussion concerns the categories of entities with the eligibility to complete contracts and those featuring in the contracts under investigation. These were adult men, virgins, widows and divorcees. Among the people who could not independently conclude contracts for the sale of real estate in notarial deeds, there were minors, married women and Jews. Besides the parties and notaries, as well as witnesses, other individuals took part in notarial deeds' preparation: proxies, husbands, assisted by wives, guardians, superior owners (*dominus directus*), and general tenant of heritage.

Finally, the fifth chapter focuses on the obligations of the parties and other conditions that appeared in the notarial deeds of real estate sale. Two groups of provisional conditions are listed here, namely the obligations of the parties that are materially important, formulated on the basis the Napoleonic Code and additional provisional conditions resulting from the parties' life needs or from the special legal situation of the real estate, or constituting a component of the contract schema adopted by notaries. The basic obligations of the seller are reported to have included handing over the item and providing a warranty, while the basic obligations of the buyer according to the provisions of the Code in the doctrine included: cost payment, a fraction of payment in certain situations, contract costs (unless the parties agreed otherwise) and taking away possessions.

It is worth noting that the nineteenth-century literature primarily dealt with the analysis of the provisions of the Code regardless of the practice of the Duchy of Warsaw and the Kingdom of Poland at the beginning of its existence.



The Napoleonic Code was in force in Poland for 140 years. Nowadays, it is a common consensus that this Code was bound with the local socio-economic conditions and became part of the Polish legal tradition. However, the route to this assimilation of the French law was very long, and – as the analysis of notarial deeds showed – in the initial period of implementation of the Napoleonic Code, the practice faced numerous difficulties.

In some situations, the transition from the Prussian to the French law proved troublesome. What was problematic, among other things, was the rules of real estate trading in the colonies created under Prussian rule as a result of granting land to colonists or on special conditions specified in the Act of 1 January 1803. In the Duchy of Warsaw, the principle of the continuation of the legal system underlying the creation of the settlement was adopted: every current owner of heritage real estate had to comply with all the rules determined for the colony at the time of its establishment. This concerned both the obligations to the superior owner, *dominus directus* (in this case, of the state treasury), and the rules for the sale of real estate.

Further difficulties, originating in the newly introduced Napoleonic Code, were related to the right of ownership. Napoleon's Code regulated full property, which did not apply to the actual ownership relations prevalent in the Duchy of Warsaw and the Kingdom of Poland. Notarial deeds drawn up by notaries of the Brzeziny District show that ownership relations in the area were dominated by divided property, with regard to both private and national goods. In the period at hand, subordinate property (*dominium utile*), which had existed in these areas previously, was transferred. Moreover, agreements establishing divided ownership in new areas were concluded.

The implementation of the newly created notary in the Duchy of Warsaw and in the Kingdom of Poland followed in a slightly different manner, compared to the implementation of the Napoleonic Code. It seems that notaries quickly gained the trust of the public and the institution of notaries was accepted in principle directly after the establishment of the first notarial offices. Although the Code did not require the form of a notarial deed, all social strata used the services of a notary in the sales of real estate. In order to give the contract an official form, both the nobility (rich and poorer) as well as the townspeople, colonists, and – in individual cases – also peasants stood at the notary's. Priests sometimes also acted as witnesses or proxies. When drawing up notarial deeds, notaries met most of the requirements of the act on the organization of notaries. Notaries



Trzeciński and Bogdański did not comply with only a few of the conditions, as a rule. The provisions of this act were clear and would not raise any interpretative doubts.

Since notaries complied with most of the requirements of the act on the organization of notaries, it seems that they knew them and consciously gave up on the implementation of the dispositions of certain norms. This mainly concerned the formalised method of making corrections in the notarial deed and attaching powers of attorney to notarial deeds of sale of real estate (based on the assumption that these powers of attorney were not lost). Oftentimes, illiterate witnesses who could not put their signatures were allowed. Some of these deviations may have originated in the social reality. Parties were unable to draw up written powers of attorney, and witnesses were unable to sign due to the illiteracy of the majority of the society. Presumably, it was not always possible to involve only those parties and witnesses who could write. The contemporary reader of notarial deeds will also notice the lack of precision in notaries' statements. The practice was crawling at that time; it was not perfect, which is manifest in several important elements of the notarial deed of sale. Notaries often did not specify the seller's rights to the property, the parties' data were not always given precisely in the cases when they were represented by guardians or attorneys.

Finally, the question remains as to why the parties decided to conclude a sales contract in the form of a notary act, since Article 1583 of the KN did not necessitate this. As the material collected shows, this decision may have been influenced by both specific legal regulations and old customs. In the old Polish law, the transfer of ownership took place by way of *traditio*. The *traditio* consisted of *investitura* and *resignatio*. *Resignatio* was carried out before the court of law. Notaries at the court of magistrates were likely to be the successors of former court officials who accepted deeds of sale of real estate, and notary deeds of sale of immovable property as *irrebuttable* and *perpetual*, just as contracts once entered the relevant court books.

On the basis of the agreements analysed, it can be concluded that in the first years of the Napoleonic Code, the established law could not completely replace the common law, with the influence of Prussian law palpable. The notarial deeds reflect a clear state division of the society and the importance of divided property.

25.03.2022 r.  
Sbrzelecka