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Common Lands and Neighbouring Communities: a Trial from 13th Century Gascony

Roland Viader

Since the end of the 19th century, the origin, nature and use of common lands in the middle ages have been subject to significant controversy and vitriolic historical debate. Many historians have interpreted these practices and collective rights as a distant legacy of very ancient communities¹, while others have insisted on the primary role played by private property and lordship². The debate has thus often tended to focus more on the status of village communities and on the forms of their legal recognition than on the concrete history of their common lands³. During the latter half of the twentieth century, archaeologists realised that the concentration of settlement into nucleated villages was more recent than previously thought, dating mainly from the 9th to the 13th centuries⁴. Historians, on the other hand, have pointed out that the late institutionalisation of parishes and communities of inhabitants did not go back beyond the 11th to 13th centuries⁵. However—and despite the new interest in common goods, which owes so much to the work of Elinor Ostrom—it must be acknowledged that the status and management of common lands has still received little attention from medievalists⁶.

From this point of view, the ethnography of the commons proposed by Angelo Torre constitutes a real theoretical break, because it invites us to reconsider first and foremost the unity and diversity of practices, in order to better evaluate the evolution of the social and legal frameworks that organised them⁷. Indeed, it is no longer possible today to consider the issue as being limited to hunting, animal grazing and the collection of firewood by fundamentally similar and unchanging village communities. In recent years, environmental history studies have highlighted the vast range of raw materials and products deriving from exploitation of wastelands⁸. Medievalists have also emphasised the coexistence, superimposition, and sometimes extremely rapid transformation of very different forms of common land, which could depend on communities of neighbours, hamlets, villages, towns, jurisdictions, and sometimes entire valleys⁹. Legal historians, for their part, have largely questioned the opposition between custom and learned law that was used by their predecessors to unify communal forms of possession into a legal system that was thought to be Germanic or medieval, but in any case, radically different from Roman or modern forms of ownership¹⁰. To break this theoretical deadlock, the description of specific and highly contextualised cases is therefore more necessary than ever.

Very close to the border between Gascony and Languedoc, and just a few kilometres from the city of Toulouse, the case of Plaisance and the surrounding villages is elucidated by a series of trials from the very end of the 13th century,

quite classical in substance, but truly exceptional because of the scale of the debates they ultimately provoked¹¹. The use of common land in this region is very poorly documented, so the medievalists could only draw on distant and contradictory examples, mainly from Béarn and the Mediterranean Languedoc¹². By contrast, the Plaisance trials, the charters of customs granted to neighbouring villages, and several documents taken from seigniorial archives give a fairly accurate idea of the problems posed by access to common land. To understand what was at stake in these conflicts, I will first present the sequence of trials and the origin of the rights claimed by the community of Plaisance. I will then try to identify the objects and subjects of these rights, before considering the practical management of these common uses and the jurisdictions on which they could depend.

The trials of Plaisance and the origins of its common rights

The trials between the inhabitants of Plaisance and the Templars of Laramet in the years 1295-1297 cannot be understood without first considering the relatively complex history of these two neighbouring localities. Founded in 1285 on the lands of the Cistercian grange of Minhac, the royal *bastide* of Plaisance was ten years later a small market town in full demographic expansion¹³. Conversely, the Templar commandery established in Laramet in 1134 had first placed the village there under the protection of a *salvitas*, before changing its strategy and acquiring all the land in the area. In the second half of the 13th century, the village had thus disappeared and Laramet was no more than a seigneurial estate with a strong sylvo-pastoral vocation¹⁴. In this region of rather poor soil, livestock farming played a major role, and it is likely that competition between the herds of the Cistercians and the Templars soon became very fierce. In 1275, at least, the quarrel had reached such proportions that an arbitration had to be made between the two houses to clearly delimit their domains and reserve to each of them the use of their own land. This sentence, however, did not apply to neighbouring villagers, who had user rights on both estates. They continued to send their animals to graze on Laramet's land, and as soon as the bastide town of Plaisance was founded, its inhabitants did the same without encountering any notable opposition.

(insert the map here)

Everything changed in 1295, when the Templars of Laramet decided to bar the inhabitants of Plaisance from entering their lands to graze their animals and seized part of their herds to enforce their decision. The consuls of Plaisance brought the case to the court of the vicar of Toulouse, which ordered the Templars to return the livestock they had seized. The Templars, though, appealed the sentence to the court of the seneschal of Toulouse. The dispute then escalated and led to two years of trials and several bitter confrontations.

Without going into the particulars of the ensuing proceedings and the extremely complex arguments that were presented, the case can be summed up as follows. For the Templars, the issue at stake was to establish that the lordship and the property to which they held title gave them the right to deny access to their land, to seize the offenders' livestock and to try them for their offences. While not unfounded, their position ran contrary to well-established customs and the prerogatives of the royal justice administration. For the consuls of Plaisance, on the other hand, it was essential to specify the exact nature of the usage rights they claimed, but above all it was important to justify the origin of those rights. In a legal

system where such rights were normally proven by immemorial custom, however, a community founded less than ten years before was clearly in a very delicate position. How, indeed, could the rights of use of such a recent community be defended? And on what legal basis? To handle these difficult questions, given that they could not rely on firmly established local custom, the lawyers of the community of Plaisance and the witnesses called to support their defence produced as many different arguments as possible, not really caring about their consistency. The different reasons they gave to substantiate their claims thus reveals much of the diverse and sometimes contradictory logics underlying the customary practices. The subjects they chose not to address and the questions that were asked likewise reveal another facet of these logics.

First of all, it should be pointed out that, in the libels exchanged as well as in the testimonies gathered, neither party ever referred to circumstances before the creation of the bastide of Plaisance. Obviously, there was no way to link the rights of its inhabitants to those of the monastic grange of Minhac on which they had been settled, perhaps due to the arbitration of 1275. It seemed equally impossible to trace their rights back to those that the previous inhabitants of Minhac may have had, perhaps because there had only been a few dependents of the Cistercians. In any case, it seems that the founding of the bastide marked a sort of year zero for the community of Plaisance, beyond which there was no point in going back. And in fact, it was exactly the same for the Templars, who never tried to contest the rights of the inhabitants of Plaisance on the basis of previous practices, as though the foundation of the bastide had completely erased the memory of the place and its usages.

At all events, the first two articles of the eighteen-point defence presented in July 1295 by the lawyers of Plaisance sought to establish that the consuls and the inhabitants of the bastide were effectively in possession of the right to have their animals graze on Laramet's land¹⁵. More than the antiquity of these customs, which all the witnesses dated back to the founding of the bastide, it was the very reality and exact nature of those customs that was at issue here. At the request of the judges and undoubtedly the opposing party, the witnesses were thus invited to give as many precise examples as possible, specifying the days and places, the type of livestock, and the names of their keepers and owners¹⁶. The sheer number of testimonies provided shows that the inhabitants of Plaisance had used Laramet's land very widely and freely for ten years, and that they had ignored the prohibitions that the Templars had formulated on a few rare occasions.

The origin of these rights was clearly addressed from the seventh article of the defence, which stated that when the bastide was founded, the seneschal of Toulouse had expressly conceded free grazing rights on the neighbouring land to the inhabitants of Plaisance as long as they left their village in the morning and returned in the evening¹⁷. Although seemingly unambiguous, this statement by the seneschal was nevertheless fiercely challenged, and the witnesses were asked numerous questions about the exact terms of this concession and the names of those who had received it. They were also asked if the neighbours of the bastide had been present and consenting, whether the agreement had been purely verbal or confirmed in writing, whether the seneschal had the right to execute this sort of agreement on behalf of the king, and whether he had received an express authorization to do so¹⁸. The capacity of the royal administration to grant such rights was thus directly called into question, and one can imagine the disbelief of the witnesses summoned to say whether the seneschal had the right to make such a concession.

For the inhabitants of Plaisance and their lawyers, the seneschal's concession was all the less debatable as it was associated with the more general granting of customs bestowed twenty years earlier to the bastide of Gimont (as they recalled in the sixteenth article of their defence¹⁹). Many witnesses were indeed aware that the men of the bastide of Gimont had the right to send their cattle into the territory of the surrounding villages, even more so as some of them had lived there for many years. However, they only spoke of the customs they had seen practised and admitted to not knowing the written text of those customs. In fact, none of the texts that we have traced recognised this right for the inhabitants of Plaisance, but this discrepancy between written and oral custom was never pointed out by any of the parties.

It is true that the lawyers from Plaisance could put forward other arguments along the same lines. The eighth, ninth and tenth articles of their defence specifically argued that a judgment or general statute valid throughout the Toulouse region recognised the right of all neighbours to graze livestock on their neighbours' land, as well as on the land of a neighbouring village or a neighbouring *castrum*²⁰. No witness absolutely confirmed the existence of this entitlement, which a slippery formulation seemed to attribute to Louis IX. However, several of them acknowledged having heard of it, including judges and jurists close to the seneschal. Although the promulgation of a royal act on this subject thus remains largely uncertain, the reality of this custom was nonetheless proved by the numerous examples given by witnesses, and particularly by those who claimed that the seneschal willingly gave written confirmation to anyone who requested it.

The Templars' lawyers, however, made a clear attempt to challenge the mandatory nature of this general custom by asking if it had been applied in adversarial proceedings (*an predicta viderit in contradictorio iudicio obtineri*). At that stage, the debate had obviously become far too technical for the forty or so local witnesses, and it seems that none of them took a stance on this point. Instead, the royal judge of Albi, who was summoned to appear after these villagers, fully confirmed the defence's contentions, although he objected that this custom could not be invoked against lords who were in the habit of renting out the use of particular forests or wastelands²¹. His comments were decisive. After his testimony, in fact, the debate took on larger proportions, and the lawyers from Plaisance added four new articles to their defence and summoned witnesses from all over the Sénéchaussée of Toulouse, including a number of jurists and judges. Two points again concerned the general nature of the regulation or decree vaguely attributed to king Louis or the counts of Toulouse, and the general nature of the custom. None of the witnesses was able to specify the origin of this entitlement, but several of them claimed to have heard of it. Two witnesses added that the seneschal of Toulouse used to issue letters confirming the right to graze on the lands of neighbouring villages. Better yet, the royal judge of Rieux declared that he had seen the inhabitants of Falgarde prevail against the cathedral chapter of Saint-Etienne of Toulouse in an appeal brought before the royal Parliament of Toulouse in 1288²². Documented for barely ten years, disappeared and then recreated in the 15th century, this court was locally the highest legal authority in the kingdom after the king himself. In other words, it was difficult to obtain better confirmation than that²³.

It remained to be proven, however, whether the king's agents could grant these same rights to newly founded communities. Without making this right a general rule, the lawyers of Plaisance argued that it was a well-established custom

for the foundations of bastides in general, and in the Gascon part of the Sénéchaussée de Toulouse in particular. Indeed, several hundred towns had been founded as bastides in the south-west of France to form as many small commercial and administrative centres. Between 1273 and 1291, the seneschal Eustache de Beaumarchais alone had built no less than 23 of them on behalf of the king, including the town of Plaisance²⁴. The instauration of the bastides is very well known thanks to the agreements signed by the founding lords and the numerous charters of customs granted to the inhabitants of these new towns. None of these texts, to my knowledge, ever mentioned the right to graze on the land of neighbouring villages. But this right seemed to be perfectly clear to all the witnesses who were questioned, and one cannot believe that the few judges who were questioned pronounced themselves on the subject without measuring the weight of their words.

The trial of Plaisance thus reveals many of the ambiguities of the custom. Although totally unknown to local historians, the right to graze on the land of neighbouring villages was accepted as an indisputable fact by the inhabitants of the region, who could give dozens of examples of its practice. There is no proof that a general statute was actually promulgated on this point by the counts of Toulouse or the kings of France, but the testimonies gathered during the trial show that a large part of the population and the magistrates in charge believed in the existence of such a decision. The custom was sufficiently well established to be imposed at all levels of the courts, but no charter of custom ever mentioned it, especially not the charter of Gimont, despite what the inhabitants of Plaisance believed. Moreover, the founders of bastide towns did not even question their ability to grant this right to new communities. Interrogated on this point by a lord of Colomiers when Plaisance was founded, Eustache de Beaumarchais simply replied that he was not granting a particular right to the inhabitants of the new bastide, but simply recognising a reciprocal right. In the end, it even seems that local lawyers only became aware of the problem when the right to impose this use in favour of newly founded communities was challenged by the lawyers of the Templars of Laramet. By asserting that the founding of all bastides included the right to graze on the land of neighbouring villages, the lawyers were undoubtedly invoking an implicit truth. But at the same time, they were formulating a completely new rule.

The commons, objects and subjects of law

The trial of the Consuls of Plaisance against the Templars of Laramet sheds light on just one particular aspect of what the common uses of the surrounding resources were. To appreciate their full scope, we must therefore try to clarify the nature of these rights and place them in the context of the entire customary system that organised their concrete functioning, and that is what we attempt here, limiting our examples to Plaisance and the immediately neighbouring villages.

To begin with, it is necessary to recall the three types of common land or common rights identified by jurists and historians. Firstly, there were the communal areas, strictly speaking. Comprised of forests, woods, swamps, moors and part of the grasslands, these areas of the village territory were essentially subject to collective appropriation. Generally placed under the authority of the local lords, they could be opened to the inhabitants in exchange for payment of a few taxes, as was the case in Quint and Laramet at the beginning of the 13th century, or free of

charge, as was the custom in Fonsorbes as early as 1279²⁵. The local lords could reserve part of this land for themselves (as the Cistercians of Plaisance did in 1275), grant it to or rent it out to foreign herdsmen (as the Hospitallers of Fonsorbes did, for example, in 1428 and 1444²⁶). The strengthening of community institutions seems, however, to have favoured the exclusion of foreign herds, as the customs of Frouzins in 1472 and Fontenilles at the beginning of the 16th century made very clear²⁷.

A second type of common land consisted of fields, meadows and unenclosed vineyards intended for private use as long as they were under cultivation, but used as communal grazing areas by the villagers after they were harvested and mowed. It thus covered all the practices that French jurists referred to as *vaine pâture* and corresponded to the same realities as the common fields of the English countryside, the *derrota de mieses* in Spain or the *usi civici* of Italian villages²⁸. The charters of customs granted to several hundred villages in southwestern France are virtually silent on this issue²⁹. Mention of *messegerii* was nonetheless quite frequent, and their role can only be understood in relation to the general right of grazing recognised on all village lands. These community-appointed guards were responsible for protecting crops from damage caused by grazing animals, but obviously only during the growing season. In 1279, the custom of Fonsorbes made it very clear that fines were only due from the time of the year when the ban on grazing had been banned and proclaimed³⁰. And at the beginning of the 16th century, the customs of Fontenilles specified that this ban began in March and could be extended beyond August for vines³¹.

A third sort of common land, as seen in the Plaisance trials, was defined by the rights of use that the villagers could exercise on the territory of neighbouring communities. Although very rarely reported by historians and very rarely mentioned in medieval documentation, these rights were very widespread, and perfectly identifiable in modern times under the names of rights of *droits de parcours* in the north of France, of *compascuité* in the south, *droit de tierce biele* in Béarn and *alera foral* in Spain³². In its earliest formulations, it seems that this right was only limited by the distance that a herd could travel in one day, leaving its owner's home in the morning and returning in the evening. In later customary texts, however, it was often limited to the territories of neighbouring villages or to the nearest half of surrounding territories. In any case, it should be emphasised that this area of common rights could not derive either from a former seigneurial property or from a former community possession, and that its extension was not determined by any seigneurial jurisdiction, nor was it limited by the territory of the village communities.

Even if the tripartite classification of common land just been presented undoubtedly structured the mental space of jurists and the representations of the local population to a lesser extent, it must be understood that it was a construct that was in reality largely contradicted by the collective practices and logics of their organisation. In concrete terms, it should first be pointed out that these areas of common rights overlapped to a large extent. The *droit de parcours* of the inhabitants of Plaisance, for example, extended beyond the bastide into the territory of all the surrounding villages. But this meant, conversely, that the woods, moors, and fields of *vaine pâture* of Plaisance were also subject to the *droit de parcours* open to the ten to twelve neighbouring villages. In other words, the population of potential users far exceeded the number of inhabitants of Plaisance.

It can also prove very difficult to distinguish between the different types of common land. Forests, woods, and moors of the first category, for example, were very regularly cultivated using slash-and-burn or convertible husbandry methods. The protection of these temporary fields was exactly the same as that of permanent fields subject to *vaine pâture*, and the definitive clearing of these lands was not only allowed, but encouraged by customs, as in Fonsorbes in 1279 or Plaisance in 1285³³. For the owners of herds, in the same way, there was in fact no difference between the use of fields in *vaine pâture*, the use of woods and communal moors, and the use of these same types of land on the territories of neighbouring communes. The same respect for cultivated and defended land was imposed everywhere, and the same rights of use were extended everywhere. Basically, the object of common rights was thus essentially defined by the form of use rather than by the space to which the rights referred. Consequently, the contours of the three types of common property were in fact as fluid as they were indistinguishable for users, especially since the subjects of these rights were themselves very poorly defined.

The conformation of communities was indeed still highly malleable in the 13th century. The territory around Plaisance, for example, was created in the 13th century by bringing together four separate places, each of which had its own history and identity; its boundaries were likely redrawn again when the bastide was founded in 1285³⁴. The lands of Condomol, on the other hand, were divided up during the 13th century between the villages of Seysses, Fonsorbes and Plaisance³⁵. The parish of L'Escalette was also dismantled and its territory probably divided up between the communities of Léguevin, Plaisance, and Colomiers at an unknown date³⁶. And finally, the village of Quint and its parish church were absorbed by the community of Tournefeuille in the mid-13th century, while the village of Saint-Flour was incorporated into Fontenilles in 1352³⁷. Considering that these were only the villages immediately surrounding Plaisance, it must be admitted that the territorial boundaries were still in flux in the 13th century and that the allocation of lands was probably just as unstable.

At the end of the 13th century, it is true, institutionalised communities, the *universitates*, increasingly presented themselves as the sole legitimate holders of these common rights. But the reality of common land use was often much less straightforward. The first article of the defence for Plaisance, for example, affirmed that the right to graze on the lands of Laramet was a possession or quasi-right of the consuls of the bastide and of all the inhabitants, together and individually³⁸. Article seven stated that the seneschal had granted this right to all of the inhabitants of the bastide without assigning any particular role to the community, and article eight described it as more generally a right of each neighbour over his neighbour's land, of one *villa* over the land of another, of of a *castrum* over the territory of another³⁹. In particular, the witnesses were asked whether this implied that a *bovaria*, i.e., a large, isolated farm or even a small estate, could have access to the land of a neighbouring village and vice versa⁴⁰. None of the witnesses was able to answer this specific point, but the vague statements most often made by the lawyers and witnesses make it clear that the *droit de parcours* was essentially recognised for neighbours over all kinds of neighbouring land, neighbouring places, and circumscribed or contiguous woods, grasslands, or territories. The witnesses called on to describe specific cases, moreover, frequently referred to these woods, pastures, or territories by the name of their owner or lord, without any concern for the communities to which they may or may not have belonged.

These uses mainly concerned the grazing of animals, but could also include water, leaves, firewood and timber for building material. The witnesses at the trial of Plaisance used the terms *adempmentum* or *explectamentum* to designate these rights in general terms, which were also exercised on all of the surrounding lands. However, it should be noted that in the charters of the 12th to 13th centuries, these rights usually appeared among the dependencies of private properties, be they simple farms, estates or even castles⁴¹. They thus seemed to fall under a very general principle, a public use recognised for all men who owned land or even for all inhabitants within a certain proximity. From this perspective, the characterisation of these general rights according to their objects (collective possession of the commons, private property subject to vain grazing and property of a neighbouring jurisdiction subject to grazing rights) and their collective subjects (inhabitants and *universitates*) necessarily appears as a secondary movement, a stage in the definition of common goods that could only be reached when the boundaries of community territories became less fluid and the identity of the communities had taken shape.

The Plaisance trial thus testifies not only to the global logic of a very general right of *explectamentum* on neighbouring land, but also to the transformation of the legal frameworks in which it operated. The growing weight of institutionalised communities and the importance gradually given to land ownership can be explained by general developments in the history of legal ideas and techniques or in the evolution of European rural societies. This does not mean, however, that we should once again imagine the existence of two fundamentally irreducible legal models. To understand the transition from one historical situation to the other, it is more important, in fact, to grasp the internal contradictions that inevitably arose in each place and at each time. In this regard, the Plaisance trials also provide valuable food for thought.

The commons: management and jurisdiction

In barely two years, the lawsuit between the bastide of Plaisance and the Templars of Laramet led to a large number of procedural acts and at least nine trials, either at first instance or on appeal. Not all of the resulting documentation has been well preserved and most of the records that have come down to us do not have the quality and volume of the theses and testimonies presented by the Plaisance lawyers in July-August 1295. It is very difficult, in such conditions, to determine the exact nature and true significance of the arguments that were exchanged. For the representatives of Plaisance and for the royal administration, obviously, it was imperative that the right to graze on the land of a neighbouring community be established as a general custom. A ruling to the contrary would not only have contradicted the general practice but would also have threatened the policy of founding royal bastides that had been in place for over thirty years. However, there is no indication that the Templars initially challenged this principle. In the *libelli* they submitted on appeal, they merely asserted their right to deny access to their lands and to seize the animals of offenders⁴². And on this more specific ground, their arguments were certainly more difficult to challenge.

Indeed, the general opening up of land to an almost universal right of *explectamentum* could not work in practice without local arrangements, restrictions on use and other forms of customary prohibitions. First of all, it could not be

exercised on meadows and sown land. The testimonies and statements of the lawyers repeated absolutely systematically that grazing rights were understood to be *sine tala*, i.e., without trampling on crops. The rule was probably fairly easy to apply to regularly sown cereal fields but could lead to many disputes when it came to meadows that were difficult to distinguish from common grassland or when the problem arose about temporary cultivation in heathland and woodland. Somehow there had to be agreement on the legitimacy of the practices, on how to mark the land and how to settle disputes. In institutionalised communities, as we have seen, this responsibility generally fell to the consuls and *messiers*. In older times, these practical decisions were probably the outcome of power relations, tacit agreements and oral conventions involving the various local lords and more or less informal neighbourhood communities. But on this point, of course, the written texts remain stubbornly silent.

Designated more generally under the terms of *defensa* and *devesia*, the lands subtracted from *explectamentum* thus came under a set of local practices and decisions that the more general rules of law could neither take into account nor consolidate. The ownership, location and nature of the land, the timing of agrarian practices, the type of livestock and the nature of uses could result in many distinctions. The Plaisance trials, for example, began with a conflict over the grazing of herds of cattle and donkeys. During the appeal proceedings, however, the Templars brought a second trial and a second appeal on the grazing of sheep, because they clearly feared that the distinction between the two forms of use might weaken their right to prohibit them⁴³. The consuls of Plaisance, however, defended these grazing rights as a single set of rights. On the other hand, in a separate article, they claimed they had the right to send pigs to graze in the forests of the Templars of Laramet, as if the two issues were unrelated⁴⁴. All the testimonies added that the pigs could feed on the acorns and other fruits found on the ground, but one witness pointed out that he had been forbidden to drop the acorns to pick them up – a prohibition which also appeared in the custom of Fontenilles in 1472⁴⁵. The inhabitants of Plaisance also claimed the right to take large trees and branches to decorate the streets and square of the village on feast days, especially for Christmas, Easter, and Saint John the Baptist. None of them, however, mentioned the right to take firewood or timber for building material, although many witnesses stated that it was a general custom in all the bastides of the region.

Beyond the *defensa* and *devesia* thus appears a whole world of specific social balances, differentiated practices and particular agreements that determined the concrete procedures of the *explectamentum*. In particular, the question of just whose and how many livestock were allowed to graze on common land was subject to much debate, of which the texts unfortunately provide only rare and late examples. At the end of the 15th century, the customs of Fontenilles recognised the right of the lord and the inhabitants to graze all the animals they owned on the communal territory, but they forbade the lord from bringing in foreign livestock, just as the customs of Frouzins apparently did. The inhabitants, on the other hand, could send to the communal pastures the animals of foreign owners that they had kept under *gazailhe* contracts. The number of these foreign animals was subject to stints, the existence of which was attested in Saint-Flour as early as 1352, and beyond these limits, the inhabitants had to pay a forestry fee to the lord. The trials in Plaisance show in the same way that animals kept in *gazailhe* grazed in the Templar forest of Laramet. On different dates, they attest above all to the presence on these lands of herds of 43 different owners from Plaisance, to which must be added the three

communal herds of cattle, sheep and pigs that were watched over by guards appointed by the consuls⁴⁶. In the middle of the 15th century, moreover, the consuls of Plaisance used to rent the right to graze on their own territory to Toulouse butchers⁴⁷. The management of these numerous herds, it must be repeated, was inevitably complex and subject to very contradictory logics.

In this context of strong competition, the legitimacy and exact nature of the *defensa* and *devesia* were necessarily subject to varied interpretations and contradictory claims. In his testimony at the trial in Plaisance, the royal judge of Albi admitted the general principle of the *explectamentum*, but excluded the forests, woods, and moors that the lords used to rent. In Plaisance, in fact, the Cistercians had reserved part of the woods for themselves in 1285⁴⁸. In Fonsorbes, in the 15th century, the Hospitallers rented the use of the forests, although they had granted free use of them to the inhabitants at the end of the 13th century⁴⁹. The lords therefore had some reason to believe that they could deny access to the pastures, and witnesses at the trial in Plaisance point to such bans having been issued against several of the region's bastides. On each occasion, however, the witnesses stated that the inhabitants had disregarded these prohibitions, and some even added that the royal judges did not recognise their validity⁵⁰. Of course, this does not mean that the *defensa* were of no value, and it should be pointed out that the inhabitants of Plaisance had themselves tried to keep their neighbours from Colomiers off their territory⁵¹. Indeed, a distinction must be made between prohibitions that were accepted by the populations or that had been practised for a long time and those that were considered new and abusive. Because the possession of the former could undoubtedly obtain legal protection, while the latter were inevitably rejected.

The procedures used to enforce these *defensa* and to condemn infringements provide a better understanding of the issues at stake in these conflicts. The subject, in fact, is only documented in the case of herds having caused damage to cultivated land. However, the Plaisance trials show once again the complexity of the practices and the difficulty of interpreting them in law.

In the *libelli* they brought before the Court of Appeal, the Templars of Laramet made a broad claim to their right to deny access to their land and to seize the animals of offenders. The lawyers and witnesses from Plaisance, on the contrary, introduced many exceptions and distinctions and revealed some rather unexpected practices. Instead of the usual *messiers* who were mentioned in the foundation contract of Plaisance, the consuls appointed their own judges to rule on damages caused by herds⁵². Moreover, although the custom of Gimont clearly specified the exact amount of the fines to be paid by offenders, the inhabitants of Plaisance stated unequivocally that they paid no fines, apart from reparations to the owners for damage done in the fields and meadows⁵³. Better yet, they also declared that when there were conflicts between the men of Plaisance and the Templars, the amount of these reparations was fixed by the consuls of Plaisance for the lands of the bastide as well as for those of Laramet, adding that a verbal agreement had been reached between the consuls and the Templars stipulating that no fine would be paid in such cases⁵⁴.

These testimonies make it plain that the Templars had accepted the rules of a reciprocal *explectamentum* for years and even took advantage of it to send their flocks on the lands belonging to Plaisance. Their *libelli* did not challenge the damage assessment procedures but sought to establish their right to decide which lands they could put under *defensum* status. On their part, the people of Plaisance did not deny the legitimacy of the *defensa* when it came to sown land or meadows,

but they probably contested the Templars' right to extend the *defensa* over woods, waste, and fallow lands. These contradictory views were almost inexpressible in law because they were essentially based on social representations and local power relations. But transported into the legal arena through lawsuits, they took the form of technical arguments that presented the facts in a different light in order to establish new power relations.

The right to seize animals trampling on defended land, for example, was certainly considered by the Templars as indisputable and as a means of putting pressure on the inhabitants of Plaisance so they could impose their own definition of the *defensa*. In fact, the lawyers of the bastide could not contest the right of seizure that almost all the owners could claim. But they fiercely debated how it should be applied. For the inhabitants of Plaisance, the animals seized had to be returned to their owner as soon as he agreed to pay a deposit or provided a guarantor to ensure his appearance before the authority responsible for assessing the damage. This was undoubtedly the general custom, and the Templars had proceeded in this fashion when they seized the herds of seven different owners in April 1295⁵⁵. However, because the assessment of the damage was entrusted locally to the judges appointed by the consuls of Plaisance, it was also a way for the inhabitants of the bastide to decide on the validity of the *defensa* formulated by the Templars. This is why, of course, the Templars then refused to return the animals seized, and why the inhabitants of Plaisance brought the case before the court of the royal vicar of Toulouse. The vicar, of course, ordered the Templars to return the seized animals, and the Templars challenged his authority in the matter by appealing against his decision to the court of the seneschal.

These repeated conflicts, however, ended up changing the behaviour of the actors as much as they undoubtedly influenced their perception of the issues at stake. In April 1295, for example, the Templars took the precaution of having a notary draw up the protocol of the seven seizures they made on herds belonging to the inhabitants of Plaisance. Likewise, the men of the bastide regularly started contesting these seizures before the vicar, who then issued sealed letters ordering that the animals be returned. One witness even reported that one day the Templars of Laramet, to whom these letters were presented, demanded that they be translated, and finally replied that they did not have the authority to decide alone on the return of the livestock⁵⁶. In order to force them to return the cattle, the inhabitants of Plaisance in turn seized animals belonging to the Templars⁵⁷. Another day, they violently chased away the Templars who had tried to deny them access to the pastures of Laramet and even shot a few arrows⁵⁸. The inhabitants of Plaisance were of course condemned for their reckless behaviour, but the Templars' right to keep the seized animals was still being contested in 1297, and the case was again appealed. Although the sentence handed down at this last trial is unknown, it must be admitted that the suit had formally become a conflict of jurisdiction rather than a simple dispute over grazing management.

Conclusion

By bringing to light the notion and principle of the *explectamentum*, the Plaisance trials reveal the extent of common land use at the end of the 13th century throughout this region and probably far beyond and how difficult it is to subsume this use under the single category of common land. Attached to private property in

the charters of the 12th century and probably recognised by all the neighbours, the *explectamentum* indeed seemed to outline a sphere of public rather than communal use. Ignoring the contours of property and jurisdiction, this right of the neighbours was essentially limited by proximity and determined by the very changing nature of the land and its exploitation. In turn fields, fallow or waste, heathland, coppice or woodland, meadows, grassland, or grazed woodland, temporary or permanent crops, these lands provided as many areas of temporary use as there were practical uses, whether for grazing herds of cattle, sheep, or goats, for firewood or any other use. Common land was thus everywhere and nowhere, and all the more so as it was not reserved for the exclusive use of one community, but subject to the overlapping uses of all the neighbours and all the surrounding villages.

In practice, these multiple uses necessarily involved forms of social regulation and forms of consensus and arbitration, on which the oldest sources are unfortunately silent. Neighbourhood communities at the least needed to impose *defensa* on sown land and to settle disputes over trampling damage; and local lords probably had some claim to make in this regard as well. In the 13th century, customary charters usually granted this right to consuls and *messiers*, as in Fonsorbes in 1279 or Plaisance in 1285. The management of common lands and the right to arbitrate the resulting conflicts was thus gradually reserved for *universitates* whose legal personality was recognised, probably leading to a new hierarchisation of villages and an ever-clearer reorganisation and definition of their territories, as shown by the numerous territorial conflicts recorded in the acts at the end of the 13th century. Although general, the process was by no means inevitable. In fact, it should be remembered that, throughout Europe, many common goods remained managed outside, beyond or below the framework of village *universitates*, and many conflicts were settled outside of the judicial courts. In Burgundy at the beginning of the 20th century, the crop damage caused by the passage of herds simply gave rise to amicable agreements between individuals⁵⁹. It is likely that many conflicts were settled in the same way in Plaisance in the 13th century, and it is even known that an agreement had been reached with the Templars of Laramet stipulating that such damage should not lead to the payment of legal fines.

Indeed, custom and law did not always come up with the same solutions. The trials in Plaisance, on this point, indicate that the usages of Gimont claimed by the inhabitants of Plaisance did not really correspond to the provisions set out in writing in its customary charter, especially on the role of the *messiers* and the pricing of fines. They also reveal that the general right of *explectamentum* was not exactly the same as the rights granted under the same name to the royal bastides, and that the conditions of its application varied according to local customs. Finally, they prove, as the royal judge of Albi pointed out, that this right could be challenged by all those who could oppose it some legitimate *defensa*. And it seems that this is how the communities of inhabitants and their lords ended up justifying the closure of their territories.

To understand the meaning of these major transformations, a true ethnography of common lands would require a thorough knowledge of their forms and the evolution of their use. Unfortunately, Medieval documentation provides very little information on these issues. However, two points deserve special attention. Firstly, it seems quite clear that population growth in the villages was not a problem. Even at the end of the 13th century, it was still encouraged by measures that promoted the settlement of new inhabitants and facilitated temporary or permanent clearings of land. However, the introduction of foreign herds of

livestock had clearly become a major issue. The royal judge of Albi specifically emphasised that *explectamentum* could be prohibited on land that was under lease, and it is known that in the 15th century the inhabitants of Plaisance rented their pastures to butchers from Toulouse. At the same time, the lords of Fonsorbes leased the village forests to those same butchers, while many inhabitants of neighbouring villages kept foreign livestock under *gasailhe* contracts. Everything thus seems to suggest that the closure of the communal areas was, in this region at least, the result of a profound economic change. The development of livestock farming and transhumance, and the growth of Toulouse, gave these common lands a value that they did not have in the 11th or 12th centuries. In any case, despite the unequivocal statements of the seneschal of Toulouse, despite the judges of the region and the witnesses from Plaisance, the right to graze on the lands of neighbouring communities was quickly and completely wiped out. So much so that without the fortuitous discovery of the rolls of the Plaisance trial, it must be admitted that we would probably know nothing about it.

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² F. SEEBOHM, *The English Village Community*, Oxford, 1883 ; N. D. FUSTEL de COULANGES, *Histoire des institutions politiques de l'ancienne France L'alleu et le domaine rural*, Paris, 1889 ; H. SÉE, *Les classes rurales et le régime domanial en France au Moyen-âge*, Paris, 1901 ; R. CAGGESE, *Classi e comuni rurali nel medio evo italiano*, Florence, 1907-1908 ; O. BRUNNER, *Land und Herrschaft: Grundfragen der territorialen Verfassungsgeschichte Südostdeutschlands im Mittelalter*. Baden bei Wien, 1939.

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⁵ R. FOSSIER, *Enfance de l'Europe, X^e-XII^e siècle*, Paris, 1982 ; M. BOURIN, R. DURAND, *Vivre au village au Moyen âge: les solidarités paysannes du XI^e au XIII^e siècle*, Paris, 1984 ; É. ZADORARIO, *Le village des historiens et le village des archéologues*, in *Études Robert Fossier*, 1995, p. 145-53 ; P. GALETTI (dir.), *Paesaggi, comunità, villaggi medievali*, Spoleto, 2012 ; J. MORSEL (dir.), *Les communautés d'habitants au Moyen Âge (XI^e-XV^e siècles)*, Paris, 2018.

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¹³ R. VIADER, *La fondation de la bastide de Plaisance*, in « *Revue de Comminges* », 2020, 2, p. 203-242.

¹⁴ R. VIADER, *La sauveté de Laramet : du village à la seigneurie*, in « *Cahiers de civilisation Médiévale* », 2021, 2, p. 115-142.

¹⁵ «... quod consules bastide de Plazencia, et omnes et singuli habitatores dicte bastide sunt in possessione vel quasi jure inmitendi animalia sua in honoribus, terris et pascuis de Arrameto, libere sine tala... » (HMT 134ter, n° 99-5).

¹⁶ « Interrogentur testes super contentis in primo articulo si asserant ea se scire interrogentur qui sunt illi consules et de nominibus eorum. Et idem de singulis habitatoribus, et qualiter sciunt [...] et de modo et forma possidendi, et cum quibus animalibus, et quibus horis, temporibus et diebus fuerunt in dicta possessione... » (HMT 134bis, n° 99-2).

¹⁷ « ... quod tempore quo dicta bastida de Plazencia fuit constructa et edificata, audivit quod dominus Eustachius condam, tunc senescallus tholosanus nomine domini nostri regis, dedit et concessit omnibus hominibus qui habitarent in dicta bastida quod possent pastencare cum eorum animalibus per omnes terras et honores vicinorum dicte bastide, tantum quantum in die possent yre cum eorum animalibus et dicta die redire ad dictam bastidam cum dictis eorum animalibus » (HMT 134ter, n° 99-5).

¹⁸ « Super septimo articulo interrogentur de tempore constructionis, et de verbis donationis et concessionis que in dicto articulo continentur, et de nominibus illorum qui donationem receptaverunt, quomodo scit quod senescallus daret hoc nomine domini nostri regis, et an dictus senescallus haberet de hoc mandamentum a rege, et an dicta donatio fuerit facta in scriptis vel sine scriptis, et an vicini dicte bastide essent presentes seu consentientes, et de tempore, de personis » (HMT 134bis, n° 99-2).

¹⁹ « ... quod dominus senescallus Tholosanus et vicarius Tholose dederunt et concesserunt nomine domini Regis dictis habitatoribus dicte bastide usus et consuetudines qui et que fuerunt concesse et concessi bastide de Gimonte », (HMT 134bis, n° 99-2) ; A. THOMAS, *Charte de coutumes de Gimont*, in « *Annales du Midi* », 1896, p. 5-14.

²⁰ « ... quod sit statutum generale et arrestum quod unus vicinus in honore alterius, et una villa in honore alterius, et unum castrum in honore alterius, possit depascere animalia libere sine tala, et quod dictum statutum et arrestum servetur et servari consueverit per totum Tholosanum... » (HMT 134bis, n° 99-2).

²¹ « ... Magister Bertrandus de Camminerus, judex albigensis pro domino nostro rege, testis et interrogatus tamen super octavo, nono, X^o articulis, dixit contenta in eis esse vera, nisi sit devesum et nisi fuerit quid tale quod dominus consueverit vendere vel locare seu arrendare ut puta forestas, nemora seu bartas. Interrogatus quare credit, dixit quod audivit quod ita observatur et consuevit observari in Tholosano. Et dixit quod hoc audivit dici ab illo tempore citra quo ipse testis frequentavit curiam domini regis... » (HMT 134ter, n° 99-5).

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- ²² « ... ipse vidit dictu usum seu dictam consuetudinem obtineri in contradictorio iudicio. Interrogatus in quo iudicio et coram quo seu quibus iudicibus, dixit quod coram magistris domini regis tunc tenentibus parlamentum Tholose in aula nova ad septem annis citra. » (HMT 134ter, n° 99-5).
- ²³ H. GILLES, *La création du parlement de Toulouse*, in J. POUMARÈDE, J. THOMAS (éd.), *Les Parlements de Province*, Toulouse, 1996, p. 29-39.
- ²⁴ C. HIGOUNET, *Eustache de Beaumarchais et les bastides de Gascogne*, in « Principe de Viana », 1986, p. 325-333.
- ²⁵ R. VIADER, *La sauveté de Laramet...* ; P. OURLIAC, *Les sauvetés du Comminges : étude et documents sur les villages fondés par les hospitaliers dans la région des coteaux commingeois*, in « Recueil de l'Académie de Législation », 1947, p. 23-147 (p. 124-136, art. 33).
- ²⁶ P. WOLFF, *Les bouchers de Toulouse du XII^e au XIV^e siècle*, in « Annales du Midi », 1953, p. 375-393 (p. 380-381).
- ²⁷ J. LESTRADE, *Fragment de la coutume de Frouzins et prise de possession de cette seigneurie en 1472*, in « Revue de Comminges », 1899, p. 271-279 ; J. DECAP, *La coutume de Fontenilles en Comminges (châtellenie de Muret)*, in « Nouvelle Revue historique de droit français et étranger », 1896, p. 388-406 (art. 46).
- ²⁸ H. SÉE, *La question de la vaine pâture en France à la fin de l'Ancien Régime*, in « Revue d'histoire économique et sociale », 1914, p. 3-25 ; W. AULT, *Open-field husbandry and the village community: a study of agrarian by-laws in medieval England*, Philadelphia, 1965 ; E. Kerridge, *The Common Fields of England*, Manchester, 1992 ; F. SANCHEZ SALAZAR, *Derrota de Mieses y cercados y acotamientos de Tierras*, in « Revista Espanola de Estudios Agrosociales y Pesqueros », 2002, p. 1-40 ; P. ALVAZZI DEL FRATE, G. FERRI, *Le proprietà collettive e gli usi civici. Considerazioni storico-giuridiche tra Francia e Italia (secoli XIX e XX)*, in L. Vacca (a cura di), *Le proprietà. Dodicesime giornate di studio Roma Tre-Poitiers*, Napoli, 2015, p. 31-57.
- ²⁹ J. M. CARBASSE, *Bibliographie des coutumes méridionales (catalogue des textes édités)*, in « Recueil des Mémoires et travaux de la Société d'Histoire du Droit », 10, 1979, p. 7-89.
- ³⁰ P. OURLIAC, *Les sauvetés...*, p. 124-136, art. 22.
- ³¹ J. DECAP, *La coutume de Fontenilles...*, art. 25.
- ³² M. BLOCH, *La lutte pour l'individualisme agraire dans la France du XVIII^e siècle*, in « Annales, E. S. C. », 1930, p. 329-383, 511-556 ; V. FAIRÉN GUILLÉN, *La Alera Foral*, Zaragoza, 1951 ; P. OURLIAC, M. GILLES, *Les Fors anciens de Béarn*, Paris, 1990.
- ³³ P. OURLIAC, *Les sauvetés...*, p. 124-136, art. 50 ; R. VIADER, *La bastide de Plaisance...*, art 1-2.
- ³⁴ R. VIADER, *La bastide de Plaisance...*
- ³⁵ AD31, H Malte Renneville, 23-24.
- ³⁶ J.-M. ARAGON, *Un village de Gascogne toulousaine au XVIII^e siècle : Léguevin*, in « Annales du Midi », 1972, p. 439-458.
- ³⁷ R. VIADER, *La sauveté de Laramet...* ; C. LACROIX, *La défense collective en Toulousain à la fin du Moyen âge (vers 1350 - vers 1550)*, Thèse, Université de Toulouse, 2016, p. 455-457.
- ³⁸ Cf. *supra*, n. 14.
- ³⁹ Cf. *supra*, n. 17 and 19.
- ⁴⁰ « Super octavo articulo interrogentur quis fecit statutum [...] et in quibus villis seu castris vidit hoc servari, et an idem servetur in boeriis seu in castris, et an de castro seu villa in boeriam, et an predicta viderit in contradictorio iudicio obtineri... » (HMT 134bis, n° 99-2).
- ⁴¹ A. CLERGEAC, *Cartulaire de l'abbaye de Gimont*. Paris, 1905 ; J.-M. CAZAURAN, *Cartulaire de Berdoues*, La Haye, 1905, etc.
- ⁴² HMT 134ter, n° 99-4.
- ⁴³ HMT 134ter, n° 99-7.
- ⁴⁴ HMT 134bis, n° 99-2 (art. 15).
- ⁴⁵ J. DECAP, *La coutume de Fontenilles...*, art. 45.
- ⁴⁶ R. VIADER, *La bastide de Plaisance...*
- ⁴⁷ P. WOLFF, *Les bouchers de Toulouse...*, p. 380-381.
- ⁴⁸ R. VIADER, *La bastide de Plaisance...* (paréage, art. 2).
- ⁴⁹ P. OURLIAC, *Les sauvetés...*, p. 124-136, art. 33.
- ⁵⁰ Petrus de Prato, for example, « ... dixit quod bene vidit aliquociens quod vicini aliquarum bastidarum de predictis conquerebantur ; dixit tamen quod non audiebantur per curiam » (HMT 134ter, n° 99-5).
- ⁵¹ Domincus Causes de Plazencia « ... vidit aliquociens homines de Plazencia, videlicet ipse qui loquitur et plures alii a dicto tempore citra multociens defenderunt et contradixerunt hominibus de Colomer[iis] ne depascerent animalia sua in pascuis hominum de Plazencia » (HMT 134bis, n° 99-1).

⁵² R. VIADER, *La bastide de Plaisance...* (paréage, art. 8).

⁵³ A. THOMAS, *Charte de coutumes de Gimont...*, art. 6-7.

⁵⁴ « ... quod actum, positum et conventum et in pactum deductum fuit inter fratres dicte domus de Arrameto et consules dicte bastide quod si animalia hominum dicte bastide facerent talam in honore de Arrameto in bladis et pratis vel aliis honoribus defensis de Arrameto, quod dicti homines dicte bastide non tenerentur ad aliquam justiciam exsolvendam dictis fratribus, sed quod talam tantum dicti homines solvere et emendare tenerentur ; et versa vice ... » HMT 134bis, n° 99-2 (art. 14).

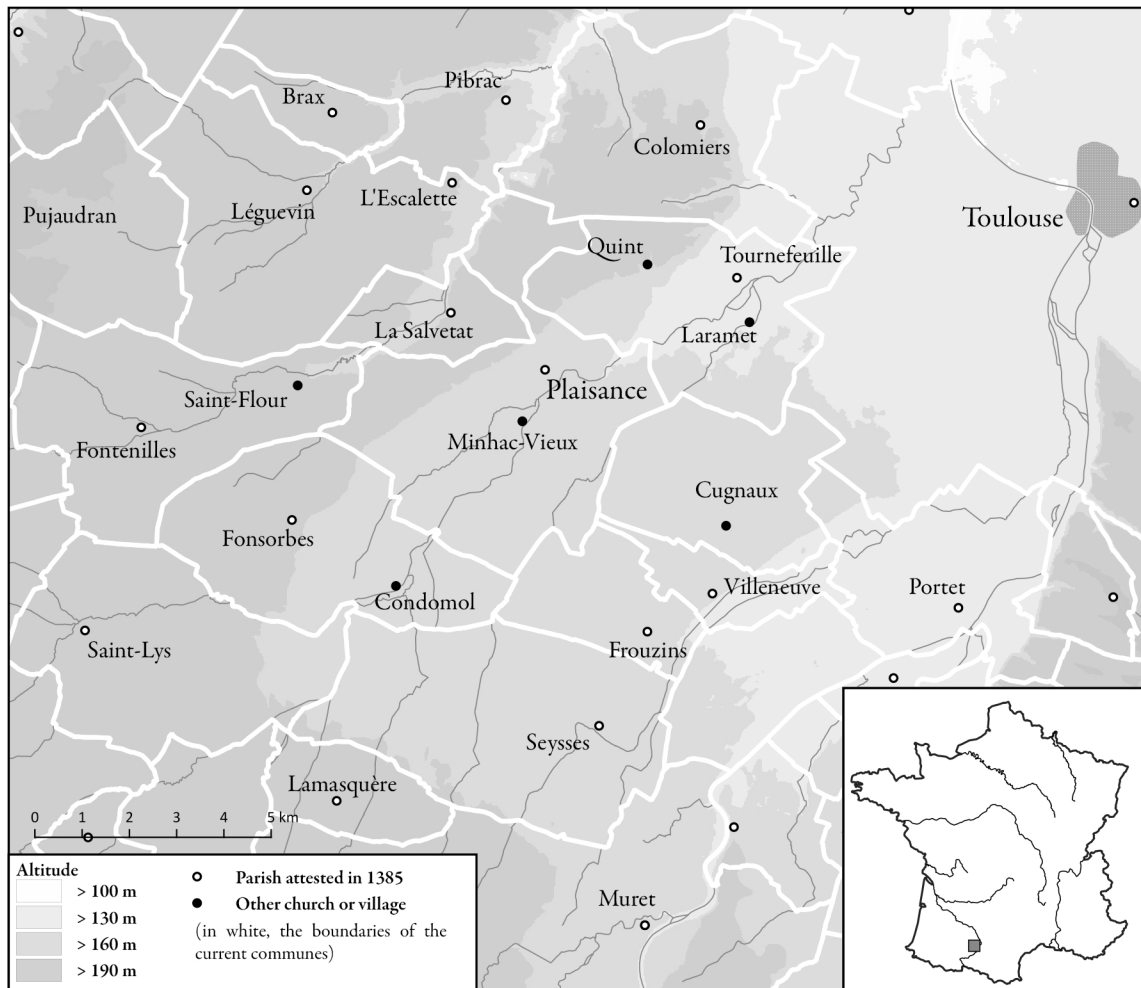
⁵⁵ HMT 133, n° 61.

⁵⁶ HMT 134ter, n° 4.

⁵⁷ HMT 133, n° 65.

⁵⁸ HMT 133, n° 64.

⁵⁹ T. JOLAS, F. ZONABEND, *Gens du finage, gens du bois*, « Annales. Économies, Sociétés, Civilisations », 1978, 1, p. 285-305 (p. 289).



The bastide of Plaisance and the neighbouring villages towards the end of the 13th century