PRIVATE FINANCING AND SHIPBUILDING IN THE KINGDOM OF ARAGON AS SEEN THROUGH ITS LAWS

The union of Catalonia with Aragón at the beginning of the 12th. century created a power able to expand commerce and dominion over the Mediterranean Sea.

The Kings of Aragón soon considered the advantage of converting the customs which since ancient times had regulated shipbuilding and maritime trade in Catalonia into laws which would be observed all over their dominions. It was Peter the Great who iniciated these proceedings in 1340. These laws, which are known as 'customs of the sea' (*costumes de la mar*), are the extension of the 'ordinances of the coast' (*ordinaciones de la ribera*) of Barcelona of 1258 and confirm ancient systems of financing private shipbuilding and regulating the relations of all who were in the maritime trade. The central person of all these laws was the shipowner, (*senyor de la nau*).

Here we are only interested in private financing and ship building. Therefore we shall not consider the relations of the shipowner with the mariners, the merchants who hired the ship, or the pilgrims who went in it. We have extracted from these laws the paragraphs referring to shipbuilding and the means of financing it through the partnership of several people, who put their trust in the one designed as the shipowner (*senyor de la nau*) who would manage the construction of the ship and conduct the freight business going in the ship. The translation of these paragraphs follows this paper as an appendix, the original style has been modernised to avoid the tiring repetitions of the ancient writing.

These laws went into great details on the rights and obligations of the partners who formed the company to build the ship to carry freight. The shipowner was the partner who promoted the business and always travelled in the ship as the representative of the society, something similar to the roll of manager or delegate of the partners. The Laws did not consider the case of a single proprietor of a ship, as there were no relations between to regulate.

The first sentence of these Laws said:

When the shipowner begins to build a ship and wishes to offer shares, he has to communicate to the partners how many shares he will offer and how big the ship will be.

We can see from it that it was the shipowner who promoted the business and sought partners whom he had to inform first of the number of shares he proposed and which we know from documents at the *Archiu de la Corona d'Aragón* (Barcelona) were usually 8 or 16, but with the possibility that two persons could buy one share. Further he had to tell them the size of the ship: We would say the value of each share.

The Law did not state who were the partners (*parçoners*) who, with the shipowner formed the company, but it seems that there were many persons interested in this business, which was therefore probably very profitable in spite of the dangers of the sea and the pirates.

Once the shipping company was establishted, the partners were obliged to fulfil what they had promised, and if someone did not want or could not pay what had been agreed, the shipowner could demand payment by legal action. But this obligation was so personal that it ceased if the partner died, and his heirs were not obliged to fulfil what had been agreed if the deceased had not ordered it in his will. In such a case the shipowner had to find another partner who would take this share and pay out the heirs. These Laws established, even in an indirect way of expression and by the example of the enlargement of the ship which was to be built, the rule of majority (l/2): If the shipowner wished to make the ship bigger than proposed at the beginning, he had to request the agreement of the partners, or, at least, of the majority, and the decision of the majority was an obligation on all of them.

All these conditions are the same, in meaning, as we have today with the joint stock companies. Even the juridical person is there, represented by the ship, which had to be sold, if necessary, to pay for damages or other demands, the

partners not being liable for any higher amount than the value of the ship. But in case the ship had to be sold, the wages of the mariners had to be paid first of all.

We see through these old laws opinions which we today consider very modern, but they existed in those times, even expressed in a different way. The difference of the nominal and the market value of a share was expressed in those old laws through the following example (I/2): If the shipowner enlarged the ship which was built without the agreement of the other partners, this did not oblige them to pay more for their shares. They continued to have 1/8 or 1/6 of the ship, but the value of the share was higher. The actual agreements which are usual in Catalonia limiting the free sale of shares to third persons, may be an old custom as the paragraph (III/5) which regulated the transmission of one share to a new partner, obliged the seller and buyer to inform the shipowner of their intention.

The shipowner could refuse the new partner until he returned from the present voyage. But in all cases, the seller had to give the shipowner an option to purchase. If he did not make use of this, the sale went through the shipowner, who bought from the seller and sold publicly to the buyer with the knowledge of the other partners.

In case the partners did not reach an agreement, the solution was simple: If, for example, the partners did not agree with a proposal of the shipowner to enlarge the ship, they could force each other to sell the shares, so either the shipowner sold his share and the other partners kept the ship and selected another shipowner, or the shipowner found other partners who bought the majority of the shares and agreed with him.

From these Laws we deduce that the enlargement of ships in use was usual as we can see from paragraphs I/91 and III/4 which refer to a situation from enlargement during construction, which is regulated by I/1.

I/91 repeats nearly literally what I/1 said about enlargement during constuctions: that the shipowner had to ask the partners if these agreed, but III/44 refers to the case of the ship being in a place where there were no partners, nor at least a majority of them. In these conditions the shipowner could enlarge the ship, but only in two cases: If he was expecting an important freight or a long voyage, and also if he could forsee an important benefit for the society. Then the partners were obliged to take into account the expenses for this enlargement; but if they could prove that he had enlarged the ship out of vanity, to be the owner of a larger ship, the case was to be put before two trustworthy men and what they decided had to be accepted by all of them, shipowner and partners. We have here the arbitrators.

The Law referred to enlargements of one quarter, one third and one half, which are important changes in the ship.

To enable the shipowner to settle accounts with the partners, he needed book-keeping and trustworthy documents. For that purpose the Law provided the clerk (I/4), a very important administrator, whose function was unique in those times. He had more power and responsibility under the Aragonese Law as his equals in other Mediterranean ships as we can see through the Codex Amalfi. His documents were to be believed, as if from a notary, for all matters related to the voyage, even if they were written with the prow of the ship on the beach, or written by the clerk on land.

The shipowner could hire a clerk with the consent of the partners, if he was not a relative of him. He had to make him swear before the mariners, merchants and, if these were present, the partners, that he would be civil and faithful to any person on the ship and that he would only note in his documents the truth and what, in case of dispute, both parts expressed, doing right by every one. This old wording tells us, that he registered also the different positions expressed in case of dispute.

He had a big responsibility, as he was the guardian of the case in which the documents were kept under lock and key, and the keys of which should never leave him, and which he should never leave open in a way that another person could have access to them. In these cases, and if he wrote something which was not true, the penalty was to lose the right hand, be branded with hot iron on the forehead and to lose all he had.

I/5 obliged the clerk to be present during the time the ship was loaded. The mariners could not load nor unload, nor move the cargo without his knowledge, as he was responsible for all wares taken on board. If something taken on board on his presence got lost, he had to pay compensation for it, and if he could not pay, the responsibility was on the ship, which had to be sold if necessary, but the wages of the mariners were to be paid first.

I/6 laid down that the clerk could buy all that was necessary, but if he had to buy sails or ropes, this he had to report to the shipowner and he to the partners who made the voyage with him, as this was equipment of the ship. It was also the clerk who paid wages and expenses from the ships account, even to the shipowner (I/7) and kept the corresponding books, which he had to show on request to the shipowner and the partners on board, so that they knew what he had got for freight and what expenses there had been. The expenses and wages of the clerk were

also on the ship account and included shoes, ink, paper and parchment. The clerk could even take merchandise from a merchant as guaranty of payment of the freight.

These Laws specified the different elements of the mercantile society and the function of each. The shipowner acting in a similar way to an actual representative of the partners, whose rights and obligations were comparable with those of today. There was also the administration of the society through the clerk, who kept a register of all commercial dealings and whose responsibility and importance was greater than provided by our present laws, even through they are result of those of the middle Ages or even earlier ones.

As we have seen, I/7 states that the clerk, on request, had to show his book-keeping to the shipowner and partners who were on board. This can help us to know something more about the partners, or, at least, some of them. We know, from the part of the Law which regulates the relations of the shipowner with the merchants, that these travelled with the ship and the merchandise. This makes us suppose, that some of the partners, if not all, were merchants who were interested in having preferential position for their wares in the ship and their rights as partners. We can even suppose, that the possibility of buying half a share was to permit a merchant to give half part to a son or confidential clerk, to enable him to make the voyage as a partner.

Before we comment on the relations of the shipowner with those who were to build the ship, we shall refer to some dispositions related to those times, but which could have some parallels to our present. (I/81) If the shipowner wished to contract for a freight to the countries of the Saracenes, or a dangerous place, he had to request in advance the agreement of the partners, or, at least, the majority of them, if he was in a place where the majority was present, but he could decide on his own if not enough partners were present.

(I/82) He was not obliged to consult them in advance if the voyage was to Christian countries, but if some partner asked for a guaranty, he had to give one, following the usage of the sea. Also the partners could not sell the ship if there was a freight contracted, and had to wait until it came back. The first sentence of this paragraph is not quite so clear as we read it today unless we reflect that in those times there was no quick way to communicate with the ship on voyage and therefore the voyage had to be planned before sailing.A partner could demand a guaranty that the voyage was not extended or changed, because perhaps this partner was waiting for the return of the ship to use his right to sell.

(I/90) This paragraph obliges the shipowner to settle accounts with the partners at the end of each voyage. If he does not do so, he has to give all the profit made to the partners.

This allows us to suppose constant changes in the composition of the society. Perhaps this changed for each voyage, if some merchants going to the same place were interested in buying the shares necessary to have the majority of the society, so to be able to decide anything during the voyage.

For the construction of the ship there were two possibilities provided by the Law: that the shipowner hired shipwrights and caulkers, or that he ordered the ship from a wharf.

In the first case (I/3) the shipowner was obliged to pay daily the expenses and wages, if there was no agreement to pay every week. It was not necessary to fix a wage, as if this was not fixed, he had to pay the wages customary at the locality.

The Law provided that, if the artisans made a mistake and the ship was bigger than ordered, they had to pay half of the resulting expenses, and lost also the wages for the added time of the work. Nothing is said if the ship was smaller, as this could be enlarged easily.

The artisans building the ship had to inform all the partners about the size contracted with the shipowner and whether the ship should be strong or light. In this way the law provided information for the partners which, at present, does not exist any more, as the suppliers are not obliged to inform all the partners about the extent and the quality of the materials. If the shipowner decided to build himself with shipwrights and caulkers he had to consider labour regulations which we find very modern in tone, even if expressed in ancient terms.

Supposing there was a fault during the construction of the ship (III/3). It made a difference whether or not the artisans were capable and of good repute. If they were capable the shipowner could not dismiss them and had to come to an agreement with them. Neither could he dismiss them, if others offered to do the work for a lower price. If the shipowner dismissed them, no other shipwright or caulker should work on the ship before he had come to an agreement with the former employees.

The problem was different if the artisans were not able to built the ship. In that case they could be dismissed and the new crew was not obliged to consult them. If he ordered the ship from a dockyard, prudence obliged him to inform the

artisans who worked there, that the ship was produced on order (III/4). If the shipowner did so, the artisans could not embargue the ship if the proprietor of the dockyard did not pay them.

In both of two possibilities, penalties could be fixed, if the ship was not delivered in time. If the penalty was fixed, the shipwrights had to pay as provided, but if there was no penalty agreed, they had to compensate the shipowner for losses. On the other hand, the shipowner also had to reemburse the artisans for damages or losses, if he delayed payments to them. The Law insisted that in that cases equity had to prevail.

These old laws of the Catalan coast, referring to the activity of shipping companies reveal ideas which we consider very modern, but which confirm the antique roots of all our laws. Most of the details of the regulations of relations of the shipowner with his partners, or with the artisans who build the ship would be accepted to-day.

Summarizing, we could say that the financing and shipbuilding in the Kingdom of Aragon was done through companies following ancient customs, resulting from the necessity of gathering the necessary capital in all those little towns or villages in the many coves of Catalonia which traded at sea. That these customs were unified first by the most important of the towns of Catalonia - Barcelona - and later confirmed as Laws of the Kingdom was logical. Further, the spirit of these laws lives today, not only in the regulations for joint stock companies, but also in those for labour relations.

Federico Foerster Laures †

CONSOLAT DE MAR

AS COLLECTED AND REVISED BY FERRAN VALLS Y TABERNER AND EDITED BY "EDITORIAL BARCINO" 1930 BARCELONA EXTRACT AND COMMENT OF VOLUME 1 "COSTUMES DE LA MAR"

Referring to
"The building of a *nao* or *lleny*"
(*Nao* and *Lleny* were Catalan merchantmen)

I

Extract of the Law, volume 1, "customs of the sea"
The financing and building of a ship

I/1 When a shipowner wants to build a ship with partners, he has to agree with them of how many shares are to be and how it shall be build; how large, how wide and of what draught, and the extent and depth of the hold.

If his partners are convinced by him and promise to participate, what they have promised, they must fulfil. If a partner is unable or unwilling to do what he has agreed, the shipowner can force him to do it, or can be credited with the sum his partner was obliged to provide.

I/2 If the shipowner who begins to build the ship on a certain scale and then gives her more depth in draught, and in the hold, and greater extend of surface in the hold, and makes the ship larger by one third, one quarter or one half before giving information to his partners, then no partner is obliged to increase his contribution but only to give for what the information has been given at the beginning. If he enlarges the ship in any way, the partner's share will be as if he had contributed to the enlargement which has been made. But if the shipowner wishes to enlarge the ship, he must go to each partner and ask who wants it to be done and who is opposed, and even if two or three or four or five partners are in opposition, so long as they are in a minority, the objection to the enlargement shall not be valid, and all the partners must accede to the request.

I/3 The shipowner is obliged to give each shipwright who works on the construction three *diners* (Catalan coin. 12 Catalan diners are 1 *sou,* 20 *sous* are one *lliura*, the Catalan pound) every day for bread and drink, and also the wages he has agreed with them, if the shipwrights do not wish to give him grace to wait for their wages from one Saturday to another. But if the shipwrights work with the shipowner at will and no wage is fixed, the shipowner is obliged to give them the same as other shipwrights have on other constructions, according to the times and the region of the country.

I/4 The shipowner may hire a clerk for the ship with the consent of the partners, if he is not his relation. He has to make him swear before the mariners, merchants and the partners, if there are any in the place, that he will be civil and faithful as much to the merchants, as to the shipowner, mariners, pilgrims and to any person who goes in the ship, and that he will keep the documents case and write nothing in it but only what is true, and what he hears from each of the parts in a discussion, and that he will do right to every one.

And if the documents have been held by someone other than the clerk, nothing written there shall be believed.

And if the clerk writes what he should not, he shall lose his right fist and be branded with hot iron on the forehead, and shall lose all he has, whether he or an other has written it.

Further, the shipowner has to make the clerk swear that he will not sleep on land without the keys of the case in which are the documents, and that he will never leave the case open under penalty mentioned above.

I/5 The clerk has such authority, that the shipowner may not load anything into the ship, except in the presence of the clerk, and no mariner shall take goods on board, nor unload them on land, nor move them without the knowledge of the clerk. And if anything is lost in the ship, may it be bale or bundle, other goods or merchandises, which the clerk has noted or was present when it was loaded, the clerk has to pay for it, and if the clerk has nothing to pay with, the ship must pay for it, even if it has to be sold, saving the wages of the mariners.

I/6 The clerk may buy and sell all things, that is to say, tools, food or nets without informing the shipowner, but for rigging he has to inform the shipowner and the shipowner the partners who go with him.

I/7 All expenses, such as food and drink are to be paid from the ship account to the shipowner and the clerk and also the clerk has to be paid for shoes, ink and parchment.

I/8 The shipowner has the same wages as any of the other pilots who go in the ship ... And the clerk has to pay this to him and to note it down as well as payments to any of the others who are mariners ...

I/10 The documents in the case are to be believed and regarded more than any other documents, even if the ship has the prow on land, or the clerk was on land when writing in them.

I/66 If a shipowner rents rigging for a voyage and the rigging is lost through no fault of his, he is not obliged to compensate the person who rented it to him, but to pay only the rent which both had fixed. But if the rigging is lost by the fault of the shipowner, he is obliged to pay compensation for as much as the rigging was worth at the moment he took or rented it, or to return as much rigging as he took.

I/81 A shipowner who contracts his ship to go to the countries of the Saracens, or to dangerous places, if he is in a place where there are his partners, must ask their consent before he confirms the contract for the voyage.

And if he consults them and the partners agree, he may make the contract, and no partner can continue to oppose him. And if he makes the contract without consulting them, the partners can oppose it and can make him buy their shares, since he had not asked them. If he had asked them, the partners can not make him buy their shares, nor put them on sale under any circumstances, before he is back from the voyage.

And if the partners buy out the shipowner who has contracted to carry cargo without their knowledge, and he disposes of the ship by sale or other means, and the partners keep the ship, it has to continue the voyage for the merchant who had made the cargo contract, for the price or freight for which the merchant had agreed with the shipowner with whom he had made the contract. But if the shipowner is in a place where there are no partners, he can make a contract for cargo and go to any place he wishes, and if the ship suffers any damage nobody can demand compensation for this action. But if he took any risk or chance, or the ship was lost by any act for which he was responsible, the partners can demand redress from him.

I/82 A shipowner who contracts for cargo to go to Christian countries is not obliged to ask the agreement of any partner, if he does not wish to do so. No partner can sell out after he has contracted for the cargo until the ship is back from the voyage. But the shipowner has to give guaranty to his partners if any ask for it, that he will not change the voyage until he has returned the ship into the possession of the partners. The guaranty he gives need not be official, but only in the usual form following the customs of the sea.

I/100 Every shipwright or caulker who promises to work for any shipowner is obliged to do the work, whether or not the wage has been agreed, since he has promised to do it. And if he will not do it, he is obliged to answer for any loss or damage which the shipowner for whom he had promised to work, can show that he has suffered, and also expects to suffer, except if the said artisan had been prevented by Act of God or by the Authority.

And every shipowner who promises to give work to one or several of the said artisans and does not do so, is obliged to pay them the wages he had fixed with them. And if per chance no wage was fixed, the shipowner who failed them, is obliged to give all the equivalent of what other artisans get in the construction on which they work, considering the worth and reputation of the said artisans.

III

III/1 If any person promises to join in the construction of a ship and he dies before the ship in whose construction he has promised to participate is constructed and completed, the heirs of those who hold the goods of the man who has died, are not obliged to do anything for the shipowner to whom he who had died had promised partnership if he had lived, if this matter had not been ordered or instructed to be introduced in his will. And if the one who died had given some money as part of the share in the partnership which he had promised to bring, and if this money is so much as to amount to the whole share he had promised to contribute, this share has to be sold before the ship sails out of the place where it has been built. And if per chance the money he gave was not enough to complete his share, the shipowner must look for some one else to provide the amount which the one who died had promised to contribute.

III/2 If any shipwright makes the ship larger than had been agreed with the shipowner, he has to pay half of all the cost of the enlargement and lose the wages of as many days as he had worked on it. Further the shipwright is obliged to inform each one of the partners of the dimensions he has agreed with the shipowner, and also is obliged to state the type of construction, strong or light.

III/3 If any shipwrights or caulkers work with any shipowner, they are obliged to do good solid work at which they are masters, and are able to carry out the construction, or even one better and greater, and the shipowner had given them the management of the construction, they had accepted and following his wishes had begun it, and while working there happens some misadventure to the said artisans, the said masters doing well and diligently all that the construction demands, and the shipowner wishes to dismiss them because of this misfortune, from which he will suffer through them, or if per chance he finds others who will do it for a better price, the shipowner can not dismiss them; neither can they leave it, since they have begun the work, until they have finished it, so far as these masters are good and able to carry out this construction and even one better and greater. And if the shipowner dismisses them, even though they are good and competent workers and doing well and diligently all that is necessary for the construction, no other shipwright or caulker shall participate in the construction, so long as the shipowner does not or had not come to an agreement with the artisans who had begun the work, and they shall not be discharged, on the word of the shipowner, but the newcomers shall be brotherly towards the artisans who had begun the work. But if the shipwrights and caulkers who begun the work had not sufficent knowledge how to do it, the shipowner can dismiss them and give the work to other shipwrights who know how to do the work. And those shipwrights who know how to do the work are not obliged to ask for information from the artisans who had begun the construction if these did not know how to do or finish it.

III/4 If any shipwright or caulker agrees to carry out any construction on contract, he is obliged to pay all the other masters who work with him in the construction he has promised to carry out on contract which he has agreed. And if the artisans who work with him do not know that he is doing the work on contract, the shipowner must state it and tell them, because the shipwright may be a swindler or insolvent, and not have the wherewithal to pay the artisans who work for him, so that they will not be decieved, not knowing that he is doing the work on contract.

And if the shipowner does not tell them when they begin work on the construction and the shipwright who is doing the work on contract does not want to pay them or does not have the funds, the artisans who have worked on the construction may act and take over the construction they have made, and the construction has to be sequestered until the artisans are recompensed for all their injuries, damage and discomforts, and all expenses for food and drink which they have suffered.

But if the shipowner had stated and told them that the shipwright was working for him on contract and the shipwright might or might not pay them, they may not and shall not sequester the construction they have made, since the shipowner had told them at the beginning of the work, that he had given it on contract.

And if the shipwrights or caulkers who are building on contract agree with the shipowner for whom the construction is undertaken that they will deliver it finished on a fixed day or in a known time, and between them has been fixed and set down a set penalty, if the said artisans have not finished the construction as they had promised, the shipowner can demand the penalty from them, which was set between him and the artisans, and the said artisans are obliged to pay it without excuse. But if between them no penalty has been set or deposed, the said artisans are obliged to compensate the shipowner for any prejudice or damage he has suffered and all expenses for food and drink which he has had or will have, for the amount of which he is to be believed under his oath. But if the shipowner does not honour the payments he has agreed with the artisans and they have expenses for food and drink or suffer other losses, the shipowner is under the same obligations and compulsions to the artisans as they are to him, so that there is justice and equality between them.

III/5 If any partner wishes to sell the share he has undertaken to pay for the construction of the ship, he has to inform the shipowner, and similarily has the buyer to inform the shipowner; but if the shipowner does not want a new partner, the buyer can not participate until the ship has made the voyage. And when the ship has completed the voyage, the partner can sell his share to the shipowner and this by shipowner to the buyer.

But the selling partner must give the shipowner the opportunity to surrender it or to acquire it, and the shipowner has the right to surrender his share or to buy from the partner, if there is no public sale.

III/4 If the shipowner is in a place where there are all of the majority of the partners, the shipowner has to ask them to agree to the enlargement of the said ship he wishes to make, and if the said partners, all or the majority of them do not wish it, the shipowner cannot force them to agree or carry it out. But the said shipowner can compel the said partners and these partners the shipowner to sell their respective interests. And if the shipowner should be in a place where there are none nor will be any of the said partners - none nor the majority of them and the shipowner wishes to enlarge the ship he can do it. But it is to be understood that the shipowner may enlarge it for only two reasons: In case he finds a great cargo or a long voyage, or he sees or expects there could be a great profit for himself and also for all the partners.

And if the shipowner enlarges the ship for either of these two reasons the partners are oblidged to take into account all expenses for food and drink and other things which the shipowner had to pay for the enlargement, as long as the partners cannot show any reason for the contrary.

But if the partners can show a contrary reason to the shipowner, that the shipowner has not made the enlargement for the said reasons, but has done it by his authority or out of vanity, so that people will say he is owner of a great ship, then these expenses which have been incurred for the reasons given above, the partners are not oblidged to take into account, unless they wish to, but those expenses which have been incurred as before are put before two good men of knowledge, perspicacy and prestige and what these decide to say should be accepted, the partners are oblidged to take into account with the shipowner.