

Notaries, courts and the documentation of credit

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The Reformed ethics of credit was applied in practice through the institutions of the civic legal order: the notaries who drew up contracts, the registers in which rents and pledges were recorded, and the courts that decided disputes. In Basel, the conclusion of a rent contract secured on real property required a written instrument, drawn up by a notary or a municipal scribe, sealed and entered in the registers of the city. The instrument recorded the parties, the capital, the rate, the security and the conditions of redemption. It was the basis for the enforcement of the creditor's rights.¹

The courts of Basel enforced the rules on interest. A debtor who claimed that his creditor had charged more than the lawful rate could bring a complaint. The court could then reduce the rate or annul the excess. A creditor who had lent at an unlawful rate could be fined. The court records show that such cases occurred, although they were not frequent, and that the courts applied the rules with a certain flexibility, taking into account the circumstances of the case.

This system of documentation, registration and judicial control created a credit market in which the rights of creditors and debtors were defined and protected. It gave creditors security and debtors protection against exploitation. It is the historical foundation of the Swiss land register, established by the Civil Code of 1907, which records the ownership of land and the charges on it with a precision and reliability that make Swiss real estate one of the most secure forms of collateral in the world.² The Swiss mortgage market, which finances a large part of the Swiss economy and is one of the most important businesses of the cantonal banks, rests on this foundation.

1 Notes

1. On the documentation of rent contracts (Zinsbriefe, Gültbriefe) in Basel by notaries and municipal scribes and their registration, see the Historisches Grundbuch of the Staatsarchiv Basel-Stadt. To be verified. ↩
2. On the Swiss land register (Grundbuch), Art. 942 ff. Swiss Civil Code (SR 210), and its public faith (Art. 973 Civil Code). To be verified. ↩

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Online version: helveticaregister.com/basel-notaries-courts-and-the-documentation-of-credit