

# Andreas Schrywer vs. Blasius Deydrych: A Case Study in Marriage Litigation in Pre-Reformation Transylvania (1521)

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**Abstract:** The present article analyses a 1521 marriage trial opposing two Saxon peasant families from the Transylvanian village of Scharosch. The aim of this case study is to illustrate the functioning of ecclesiastical courts and marriage litigation in pre-Reformation Transylvania. Andreas Schrywer, the village judge of Scharosch, presented to the chapter of Schenk a complaint against Blasius Deydrych, whom he accused of deflowering and impregnating his daughter, Rosa Schrywer. Drawing upon the testimonies recorded by the chapter, this article highlights the procedural course followed by the tribunal, the strategy of the petitioner, and the villagers' views on the relationship between marriage, love and sexuality.

**Keywords:** ecclesiastical tribunal, marriage trial, Transylvanian chapter, *sponsalia per verba de futuro*, wedding ring

**Rezumat:** Articolul analizează un proces matrimonial desfășurat în 1521 între două familii de țărani sași din satul transilvănean Șaroș. Scopul acestui studiu de caz este de a ilustra funcționarea curților ecleziastice de judecată și desfășurarea proceselor matrimoniale din Transilvania în perioada de dinainte de adoptarea Reformei. Andreas Schrywer, judele Șaroșului, a prezentat capitlului de Cincu o plângere împotriva lui Blasius Deydrych, pe care l-a acuzat că o dezonorase și o lăsase însărcinată pe fiica sa, Rosa Schrywer. Pe baza mărturiilor

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înregistrate de capitolu, articolul evidențiază procedura de judecată urmată de tribunal, strategia petentului și opiniile sătenilor privind relația dintre căsătorie, dragoste și sexualitate.

**Cuvinte-cheie:** tribunal ecleziastic, proces matrimonial, capitolu transilvănean, *sponsalia per verba de futuro*, inel de căsătorie

## Introduction

In January 1521, the chapter of Schenk (Cincu) examined a lawsuit between two Saxon peasant families from the Transylvanian village of Scharosch (Șaroș pe Târnavă). Two court letters, issued on January 24, 1521,<sup>1</sup> and February 26, 1521, respectively,<sup>2</sup> describe the development of the trial. Andreas Schrywer,<sup>3</sup> the village judge (*villicus*) of Scharosch, accused Blasius Deydrych of deflowering and impregnating his daughter, Rosa. The defendant had allegedly gifted a ring to her, presumably as a marriage suggestion. Upon discovering the pregnancy, the two families had initially agreed to marry the two, but Blasius refused the plan against his father's will. Because the chapter of Schenk could not reconcile the parties after three terms, the judges advanced the case to the chapter of Hermannstadt (Sibiu), the superior court.

The chapter of Schenk recorded in direct speech many of the testimonies given by the trial participants, revealing the complex and occasionally unexpected social interactions within the village. Although the oral depositions were translated into Latin, they retained part of their spoken expressivity. They depict various episodes of rural life and reflect the emotions manifested by the litigants during the trial. Some accounts drew attention to the relationship between Blasius and Rosa, recollecting details about their sexual entanglement, while others focused on their parents' reaction. More than just a private matter, the case saw the involvement of the local community, with villagers taking sides based on their sympathy or resentment towards one family or the other.

Marriage litigation in the Latin Church has received substantial scholarly attention, with regard to both Western<sup>4</sup> and Central European

<sup>1</sup> Romania, Serviciul Județean Sibiu al Arhivelor Naționale ale României, Fond Capitulul evanghelic C. A. Sibiu, Seria 1 - Acte cu instrumente contemporane de evidență, no. 62 (henceforth referenced as 'no. 62').

<sup>2</sup> *Ibid.*, no. 63 (henceforth referenced as 'no. 63').

<sup>3</sup> Spelled 'Schrywer' in the January 24 letter (no. 62) and 'Sterber' or 'Scerber' in the February 26 one (no. 63).

<sup>4</sup> General works include: Richard H. Helmholz, *Marriage Litigation in Medieval England* (New York: Cambridge University Press, 2007); Charles Donahue Jr., *Law, Marriage, and Society in the Later Middle Ages: Arguments About Marriage in Five Courts* (New York: Cambridge University Press, 2007); Cecilia Cristellon, *Marriage, the Church, and its Judges in Renaissance Venice, 1420-1545*, trans. Celeste McNamara (Cham: Palgrave Macmillan, 2017); Wolfgang P. Müller, *Marriage Litigation in the Western Church, 1215-1517* (Cambridge: Cambridge University Press, 2021).

ecclesiastical courts. In particular, a number of authors have examined trials involving litigants from medieval Hungary<sup>5</sup> and Poland.<sup>6</sup> The problem has been explored from a procedural, social, and cultural perspective, with implications for research areas such as clerical knowledge and application of the Romano-canonical procedure, social practices and views surrounding marriage, and medieval sexuality. Still, the situation for medieval Transylvania is not well understood. While several studies have analyzed Transylvanian marital lawsuits from the second half of the sixteenth century, their focus has been on adultery and divorce cases from within the Lutheran community.<sup>7</sup> Comparatively, literature on marriage trials preceding the Reformation remains limited because of the source scarcity.<sup>8</sup>

While past contributions on Transylvanian post-Reformation trials have explored the judges' and the litigants' views on love, marriage, and

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<sup>5</sup> Péter Erdő, 'A házasság érdekében folyó perek a középkori Magyarországon' [Marital Lawsuits in Medieval Hungary], in *Egyházak a változó világban* [Churches in a Dynamic World], ed. István Bárdos and Margit Beke (Esztergom: Tatabánya, 1992), pp. 191-194; Gabriella Erdélyi, 'A Sacra Poenitentaria Apostolica hivatala és magyar kérvényei a 15-16. században' [Hungarian Petitions to the Sacra Poenitentaria Apostolica in the Fifteenth and Sixteenth Centuries], *Levéltári Közlemények* 74, nos. 1-2 (2003): 33-57; Péter Erdő, *Kirchenrecht im mittelalterlichen Ungarn* (Leipzig: Frank & Timme, 2005), pp. 114-135; Gabriella Erdélyi, "'Szerettem egyszer egy nőt': Házasságkötés és házasságtörés 1500 körül' [I Once Loved a Woman: Marriage and Adultery Around 1500], *Történelmi Szemle* 49, no. 2 (2007): 165-178.

<sup>6</sup> Martha A. Brożyna, 'Not Just a Family Affair: Domestic Violence and the Ecclesiastical Courts in Late Medieval Poland', in *Love, Marriage and Family Ties in the Later Middle Ages*, ed. Isabel Davis, Miriam Müller and Sarah Rees Jones (Turnhout: Brepols, 2003), 299-309; Martha A. Brożyna, *Private Oaths, Broken Promises and Illicit Relations: Marriage Litigation in the Consistory Court of Fifteenth-Century Gniezno, Poland*. PhD Dissertation, Manuscript, University of Southern California. Los Angeles, 2005.

<sup>7</sup> Julia Derzsi, 'Un proces de adulter din 1585, la Reghinul Săsesc' [A 1585 Adultery Trial at Reghinul Săsesc], *Historia Urbana* 23 (2015): 141-161; Mária Pakucs-Willcocks, *Sibiul veacului al XVI-lea. Rânduirea unui oraș transilvănean* [Sixteenth-Century Sibiu: The Order of a Transylvanian City] (Bucharest: Humanitas, 2018), 193-199; Julia Derzsi, 'Unzucht und Ehebruch vor Gericht. Sexualdelikte bei den Siebenbürger Sachsen in der zweiten Hälfte des 16. Jahrhunderts', in *Common Man, Society and Religion in the 16th Century/Gemeiner Mann, Gesellschaft und Religion im 16. Jahrhundert*, ed. Ulrich A. Wien (Göttingen: Vandenhoeck & Ruprecht, 2021), 275-296; Mária Pakucs-Willcocks, 'The Idea of Good Marriage at the End of the Sixteenth Century Transylvania: Mathias Raw vs. Catharina Birthalmer', in *Common Man, Society and Religion in the 16th Century/Gemeiner Mann, Gesellschaft und Religion im 16. Jahrhundert*, ed. Ulrich A. Wien (Göttingen: Vandenhoeck & Ruprecht, 2021), 309-320; Julia Derzsi, *Delict și pedeapsă. Justiția penală în orașele săsești din Transilvania în secolul al XVI-lea* [Crime and Punishment: The Operation of Criminal Justice in Transylvanian Saxon Cities During the Sixteenth Century] (Cluj-Napoca: Egyetemi Műhely, 2022), 271-286.

<sup>8</sup> References to a few Transylvanian cases, in Erdő, *Kirchenrecht*, pp. 115, 119. Some Transylvanian cases transmitted to the Apostolic Penitentiary are highlighted in Erdélyi, 'Szerettem egyszer egy nőt', 168, 173-174. A short discussion on the court of the bishop of Transylvania, in Adinel Ciprian Dincă, *Instituția episcopală latină în Transilvania medievală (sec. XI/XII-XIV)* [The Latin Episcopal Institution in Medieval Transylvania (Eleventh-Twelfth to Fourteenth Centuries)] (Cluj-Napoca: Argonaut-Mega, 2017), 145-149.

sexual intercourse, their conclusions cannot be entirely extended to the pre-Reformation period, due to dogmatic, procedural, and cultural changes. Since the Catholic Church viewed marriage as indissoluble, most pre-Reformation marital trials were initiated in order to enforce a marriage rather than to terminate one.<sup>9</sup> Compared to the post-Reformation period, conjugal dissolution was complicated to obtain, although ecclesiastical courts could grant separation without formal termination of the union in some cases.<sup>10</sup>

From a procedural standpoint, clerical jurisdiction over marital suits narrowed down significantly following the adoption of the Reformation in Transylvania. Post-Reformation disputes related to pregnancy, broken marital vows, and adultery were typically judged by lay tribunals, and court proceedings were oriented towards civic and moral disciplining.<sup>11</sup> By contrast, prior to the Reformation, most cases related to marriage and sexuality were under clerical jurisdiction.<sup>12</sup> On a cultural level, the model of the 'holy household' spread among Saxon circles in the second half of the sixteenth century, reshaping the vision of the ideal relationship between spouses, in accordance with Lutheran teachings.<sup>13</sup>

Given its substantial documentation, the Schrywer-Deydrych lawsuit provides an excellent case study in pre-Reformation Transylvanian marriage litigation. The focus of this article is twofold: on the one hand, to highlight the procedural aspects of the litigation process and the operation of a small Transylvanian clerical tribunal; on the other hand, to explore the participants' ideas on marriage, love, and sexual relations.

## The Documentary Evidence

Like other ecclesiastical courts in medieval Hungary, the chapter of Schenk has no surviving systematic records of its proceedings.<sup>14</sup> Only cases that could not be resolved locally and thus had to be advanced to higher courts are typically known. For this reason, the documentation on marital trials is mainly comprised of transmissional letters (*litterae transmissionales*)

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<sup>9</sup> Helmholz, *Marriage Litigation*, 25.

<sup>10</sup> Donahue Jr., *Law, Marriage, and Society*, 33; Helmholz, *Marriage Litigation*, 74; Müller, *Marriage Litigation*, pp. 2, 218; Erdő, *Kirchenrecht*, 125.

<sup>11</sup> Derzsi, 'Unzucht und Ehebruch', 296.

<sup>12</sup> On the competence of pre-Reformation clerical tribunals in Hungary during the fifteenth and sixteenth centuries, see György Bónis, 'Die Entwicklung der geistlichen Gerichtsbarkeit in Ungarn vor 1526', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* 49, no. 1 (1963): 224-227. See also Elemér Balogh, 'Ecclesiastical Jurisdiction in Medieval East Central Europe', in *Lectures on East Central European Legal History*, ed. Pál Sárý (Miskolc: Central European Academic Publishing, 2022), 94-95.

<sup>13</sup> Pakucs-Willcocks, 'The Idea of Good Marriage', 319-320.

<sup>14</sup> Erdő, *Kirchenrecht*, 115.

and mandates. While mandates are letters concerned with particular issues related to court organization and provide little information about the actual deliberations, transmissional letters usually describe the full course of action followed by the lower court. The officials of the superior tribunal would also sometimes record brief notes about their own proceedings on the back of the original letter.

The documentation of the Schrywer-Deydrych trial consists of one transmissional letter and one mandate. The former provides the majority of the information about the case and was issued on January 24, 1521, by Georgius, the substitute judge (*surrogatus*)<sup>15</sup> of the chapter of Schenk. He was transferring the cause to the dean of Hermannstadt, Petrus Thonhewszer. The second act, dated February 26, 1521, is a mandate issued by Mathias Colommani, the substitute judge of the chapter of Hermannstadt. He was asking several priests of the chapter of Schenk to hear a new group of witnesses gathered by Blasius Deydrych.

On its own, the narrative of the first letter can be difficult to follow, due to frequent changes between timeframes. Therefore, this article presents a chronological reconstruction of the lawsuit, even though it does not always coincide with the sequence in which the chapter recorded the events. It could also be noted that the original testimonies were modified in translation. The villagers' words were filtered through the understanding of the priests who recorded them, and many conversations ended sounding like literary dialogues, rather than an accurate representation of someone's speech. For this reason, the initial messages can only be partially reconstructed.

### The Litigant Parties and Their Supporters

According to the January 24 letter, the lawsuit opposed Andreas Schrywer and his daughter, Rosa, as plaintiffs, against Lucas Deydrych and his son, Blasius, as defendants.<sup>16</sup> However, the February 26 letter presents the litigant parties as Andreas Schrywer versus Blasius Deydrych, which suggests that Blasius was supposed to represent himself in court.<sup>17</sup> A group of relatives and friends supported each side before the tribunal.

Andreas Schrywer held the position of village judge in Scharosch. He was accompanied by his friend and former village judge Gallus Klosch,

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<sup>15</sup> On this function, see Balogh, 'Ecclesiastical Jurisdiction', 83-84.

<sup>16</sup> 'Providus Andreas Schrywer de Scharwsch unacum filia sua, Rosa, ut actrix, ab una, necnon Lucas Deydrych de eadem unacum filio suo, Blasio, ut reus, ab altera partibus, coram nobis comparuere' (no. 62).

<sup>17</sup> 'Ventilatur quedam causa coram nobis, homini sedis Schenk de magno Scharos, racione et pretextu cuiusdam Blasii Deydrich, accusatum per providum Andream Scerber quod filiam suam, Rosam, impregnaverit' (no. 63).

although he could not qualify as witness given their cordial relationship. Andreas Schrywer also had the support of the parish priest of Scharosch, Ambrosius, who testified in his favour. On the other hand, the Deydrych family was supported by six oath-helpers (compurgators), four of whom are identified in the chapter's record. They were various men and women from Scharosch, both old and young. Apart from them, the court also noted the presence of a certain villager named Petrus Conradt, who always spoke in Blasius' defence, despite not being formally appointed as his lawyer (*procurator*).<sup>18</sup> The nature of their relationship is unclear, but it seems to have been a close one, since Petrus Conradt's son was among Blasius' six compurgators. Another supporter present in court was Ruffus Iohannes *scolaris*, identified as Lucas Deydrych's friend.

For some villagers, such as Gallus Klosch and Petrus Conradt, the trial was an opportunity to express their solidarity towards one family or the other. For others, participation was a chance of acting upon old grudges. The chapter invalidated two of Blasius' compurgators for the reason that they swore 'out of hatred and envy' (*ratione odii et invidie*) against Andreas Schrywer. One of them was a young woman (*puella*), daughter of a villager named Andreas Berthleff. In the past, her family had a conflict with Andreas Schrywer over some grapes she and her siblings had stolen from other villagers' vineyards. Andreas Schrywer recalled that when he confronted the girl's family and demanded compensation in the form of a fine, she and one of her brothers spoke disrespectfully to him. He could even remember and repeat before the court the girl's words, which hinted at his supposed lack of compassion and hostility towards the poor (*Vos, Andrea Schrywer, vultis plus devorare pauperes quam alter quispiam in communitate! Deportate, solo modo penitebis nos!*).<sup>19</sup>

Another woman had a similar conflict with Andreas Schrywer, motivating her to side with the Deydrych family. One year, she and her husband were unable to pay their wine-tax (*ducillatio*), and they could not

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<sup>18</sup> 'Quodammodum procurator videretur et in omnibus ipse Petrus Conradt pro Blasio, filio Luce Deydrych, responderet' (no. 62).

<sup>19</sup> 'Contigit ut pueri Andree Berthleff mandatum talem non curarent, sed, ea temeritate qua antea consueverunt, vineas intraverunt et in eis fuisse notati sic, quare per cives monitus et ex officio compulsus sum ab Andrea Bertleff pignus recipere et, recepto pignore, videlicet scuto vel clipeo, eo me deferente, venit puella, presens testis, N., filia Andree Bertleff. Commota ait, "Vos, Andrea Schrywer, vultis plus devorare pauperes quam alter quispiam in communitate! Deportate, solo modo penitebis nos!" in brevi et plura alia verba iniuriosa post me clamando et post tergum meum repetendo, que verba narrare non sufficio, dixit. Quidam eciam unus ex fratribus iam dicte puelle verba inhonestissima super me et cives meos protulisse perhiberet, audientibus certis honestis hominibus, que non est phas dicere. Hec et alia, digni domini, maximam et gravem suspicionem generant in me contra et adversus puellam sepe dictam, quod propterea ex odio et invidia ad iurandum et testificandum se offeret' (no. 62).

provide any monetary compensation for it either.<sup>20</sup> Andreas Schrywer, who was in charge of collecting the tax, suggested they sell some of their dairy goods to earn more money, but his idea angered the couple. During their argument, the woman suggested that Andreas Schrywer was acting entitled, as if his position as village judge was hereditary (*Tu, Andrea Schrywer, non semper eres villicus, teneas mente!*)

These recollections suggest that animosities tended to be long-lasting within the village, and they often stemmed from pecuniary matters. As village judge, Andreas Schrywer was prone to conflicts with other villagers, since his function implied collecting various fines and contributions from them. Villagers remembered past arguments in detail, and resentment could resurface even in a situation as delicate as a marital trial. Moreover, the testimonies point to the smoldering tension between the better-off villagers, such as Andreas Schrywer, and the destitute ones (*pauperes*), who could barely afford to pay their contributions. The latter seemed to perceive the village judge as an extortioner, rather than as a leader of their community. From this perspective, it becomes less surprising that the Deydrych family seemed to attract more supporters in court compared to Andreas Schrywer.

When judging the social standing of the parties, litigation costs can also be taken into account. The distance between Scharosch and the places where the court assembled was rather long by medieval standards. The chapter of Schenk held the second litigation term in Gürtheln (Gherdeal) and the third one in Schenk. In a straight line, the distance between Scharosch and each of these locations is approximately 40 km, but the medieval path connecting them was probably longer. This would amount to 80-90 km for the two-way trip, a distance too long to travel in a single day, especially since a few hours had to be spent litigating.<sup>21</sup> In addition, the trial happened during the winter, likely reducing travel speed. Thus, the participants might have had to spend the night away from home, either in the litigation village or at another place. Food and accommodation had to be provided for the witnesses and oath-helpers, adding to the expenses of the two families.

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<sup>20</sup> On this tax (*ducillatio, educillatio*) in Transylvanian context, see David Prodan, *Iobăgia în Transilvania în secolul al XVI-lea* [Serfdom in Transylvania in the Sixteenth Century] (3 vols., Bucharest: Editura Academiei Republicii Socialiste România, 1967-1968), vol. 1, 341-353 (*crâșmăritul*).

<sup>21</sup> Estimates for medieval travel speeds are 25-40 km per day on foot, a maximum of 60 km per day on horseback and 45 km per day by wagon: Norbert Ohler, *Reisen im Mittelalter* (Munich: Artemis, 1986), 141.

### The Events Leading to the Trial

The dispute began with an *ex officio* investigation initiated by the chapter of Schenk, under whose ecclesiastical jurisdiction Scharosch was.<sup>22</sup> The inquiry was opened in response to local rumours that Rosa Schrywer was pregnant, probably at the suggestion of the parish priest of Scharosch, Ambrosius. A commission comprising Ambrosius and two other clerics from neighbouring parishes was assigned to verify the rumours, with the assistance of three ‘honest women’.<sup>23</sup> In this regard, the priests followed canonical recommendations, which called for three midwives of good reputation for virginity testing.<sup>24</sup> The women were gathered in Ambrosius’ house to be sent to Andreas Schrywer and perform the physical exam on his daughter.

In court, the parish priest recalled that Andreas Schrywer acted in shock and disbelief when approached with the investigation proposal. He said he would have his own wife look into the matter.<sup>25</sup> He then went home and spoke to Rosa, who admitted to being pregnant. When asked more about it, she pointed to Blasius Deydrych.<sup>26</sup> Shortly after, Andreas Schrywer happened to see Lucas Deydrych through the window, so he invited him inside.<sup>27</sup> According to Andreas Schrywer’s statements (which were later denied in court by Lucas Deydrych), they discussed the problem and agreed to a marriage arrangement. Andreas Schrywer also recalled Lucas Deydrych saying that he thought Blasius and Rosa loved each other, so he had been thinking about marrying the two.<sup>28</sup>

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<sup>22</sup> On the parishes under the jurisdiction of Schenk, see Georg Müller, *Die deutschen Landkapitel in Siebenbürgen und ihre Dechanten, 1192-1848* (Sibiu: Kraft & Drotleff, 1934), 58-59.

<sup>23</sup> ‘Michi et domino Simoni, plebano de Rurbach, necnon domino Benedicto, presbitero capellano in Maiori Schenk, a venerabili magistro Martino, tunc surrogato, commissum erat ut honestas feminas, mulieres, per mandatum convocaremus et ad domum Andree Schrywer mitteramus, ad experiendum si filia sua, ut famabatur, impregnata foret’ (no. 62).

<sup>24</sup> Cristellon, *Marriage, the Church, and its Judges*, 89.

<sup>25</sup> “Bone vicine, de vestra filia Rosa sic famatur, quod sit impregnata.” Ipse vero stupefactus respondebat, “Hoc malum esset!” Ego autem eidem respondi, “Videatis ad rem, nam certe sic fertur et secus non esse, et ego habeo mulieres apud me, ex commissione domini decani congregatas, que eam revidere debent.” Ipse autem Andreas Schrywer, tristis et conturbatus, iterum respondebat, “Bone domine plebane, vos dicitis michi grave factum et mirabile. Ego vadam ad domum et cum coniuge mea factum hoc experiar et iterum revertor ad dominationem vestram.” Et sic, tristis et turbatus, rediit in domum suam’ (no. 62).

<sup>26</sup> ‘Cum eam impregnatam agnovissem, interrogabam eam, “Quis istius facinoris perpetrator esset?” Ipsa respondit, “Nemo alter nisi filius Luce Deydrych”’ (no. 62).

<sup>27</sup> ‘Sic itaque eam examinans, casu prospexi per fenestram. Vidi comparem meum Lucam Deydrych in platea ambulans et, viso eo, mox et statim exivi et, clamando post eum ut staret, dixi, “Compar Luca, state modicum!” Qui mox stetit et, stante eo, accessi eum propius et petum eum ut in edes meas declinaret’ (no. 62).

<sup>28</sup> ‘Vidi et consideravi quod mutuo se amaverunt. Volumus eos matrimonio tradere’.



Andreas Schrywer and Lucas Deydrych then went back to the parish priest and expressed their wish to contract the marriage between their children. The priest did not want to delay the wedding any further, so he asked for the future spouses to be brought before him right away.<sup>29</sup> When Blasius arrived at the priest's house that day, Lucas Deydrych explained to him that he wanted him to marry Rosa because he understood she was pregnant by him. However, Blasius replied that he would never marry her, which made both parents angry. They left the priest's house soon after the incident, and the wedding never took place.<sup>30</sup> The entire scene was described in court by the parish priest, but he did not mention Blasius formulating any defence against the accusation of impregnating Rosa. The priest might have excluded that part out of sympathy for the girl's family. Unfortunately, there is no further information on what happened in the time span between the failed marriage negotiation and the beginning of the trial.

### An Overview of the Trial

Literature on medieval ecclesiastical courts usually distinguishes between two types of lawsuits: *instance suits* and *office suits*.<sup>31</sup> Instance suits were initiated by one litigant party against another, through a complaint presented to an ecclesiastical court. By contrast, office suits were opened ex officio by clerical tribunals whenever evidence surfaced of deviant behaviour under their jurisdiction. Still, cases which started as ex officio prosecutions would often turn into instance litigations,<sup>32</sup> a tendency also illustrated by the Schrywer-Deydrych lawsuit. Following the chapter's inquiry into Rosa's pregnancy and the unsuccessful attempt to resolve the situation with the Deydrych family, Andreas Schrywer took the matter to the ecclesiastical tribunal of Schenk.

Although the court records do not use this term, the lawsuit could be classified as a case of *sponsalia per verba de futuro carnali copula secuta*.<sup>33</sup> Before

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<sup>29</sup> 'Hiis auditis, dixi ad ambos, "Vocemus igitur famulum et ancillam!"' (no. 62).

<sup>30</sup> 'Adveniente autem famulo Blasio, filio Luce Deydrych, et patre eius eidem voluntatem suam declarante, quod scilicet eum nuptiis tradere velit et Rosam filiam comparis sui Andree Schrywer in coniugem sibi copulare, quia intelligeret ab eo ipsam fore impregnatam, ipse autem Blasius, filius Luce Deydrych, patri respondit hoc se numquam esse facturum et voluntati patris et verborum eius renunciando, resistebat. Et sic uterque parens conturbati de domu mea recedebant' (no. 62).

<sup>31</sup> For a helpful explanation of the distinction between instance and office suits, see Henry A. Jefferies, 'Women, Marriage and Sex in Early Tudor England: Evidence from an Irish Act Book', *Journal of Ecclesiastical History* 74, no. 2 (2023): 263-264. On the procedural aspects related to these cases, see also: Helmholz, *Marriage Litigation*, pp. 112-140, especially 123-140; Donahue Jr., *Law, Marriage, and Society*, 33-41; Cristellon, *Marriage, the Church, and its Judges*, 33-93.

<sup>32</sup> Helmholz, *Marriage Litigation*, 72.

<sup>33</sup> On this type of cases, see Donahue Jr., *Law, Marriage, and Society*, 345-362.

the tribunal, Andreas Schrywer accused Blasius Deydrych of deflowering and impregnating his daughter (*filiam meam deflorasset, dehonestasset ac impregnasset*). He also claimed that she had received a ring from him (*eidem anulum unum tradidisset*).<sup>34</sup> Since the ring was a gift typically offered to a future spouse or wife, canon law viewed it as a symbol of marriage and a 'sign of love' (*signum amoris*).<sup>35</sup> Judging by Andreas Schrywer's narrative, he seems to have learnt about this gift only in the time span between the confirmation of the pregnancy and the start of the trial. Admittedly, it is not completely clear whether Blasius had given her the ring with the intention to contract a clandestine marriage, or just as a token of affection with the promise of a future marriage. The second scenario seems more plausible, since the plaintiff did not explicitly invoke any secret exchange of vows. In any case, in view of the events preceding the trial, the ring should be understood as a private gift between the lovers, rather than a part of a betrothal ceremony organized by the two families.

Blasius' defence consisted in an all-negating stance on Andreas Schrywer's accusations.<sup>36</sup> This strategy is understandable, taking into account the canonical arguments the chapter could have used to force him into the wedding if the claims against him proved to be substantiated. According to the canon law, there were two equally valid means of contracting a marriage: 'by words of present' (*per verba de praesenti*) and 'by words of future' (*per verba de futuro*), followed by a sexual act.<sup>37</sup> The first was the customary exchange of marital vows between a man and a woman of marriageable age, regardless of whether it was performed publicly or in secret. In cases of marriages contracted by words of present, sexual knowledge of each other was not necessary for the partners to be considered married. By contrast, the second way implied a betrothal or any other marriage promise followed by carnal consummation of the relationship.

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<sup>34</sup> 'Andreas Schrywer contram dictum filium iam dicti Luce Deydrych proposuit hoc modo: "Venerabiles domini! Accedit quedam causa inter filiam meam Rosam et Blasium filium Luce Deydrych, propter quam et coram venerabili magistro Martino, eo tunc plebano Senthagatensi et huius capituli sedis Schenk similiter surrogato, comparemus et eandem eidem exposimus, quia ipse Blasius, filius Luce Deydrych, filiam meam deflorasset, dehonestasset ac impregnasset necnon eidem anulum unum tradidisset'" (no. 62).

<sup>35</sup> Cristellon, *Marriage, the Church, and its Judges*, 54-55.

<sup>36</sup> 'Respondit se filiam ipsius Andree Schrywer non defloruisse, nec dehonestasse, nec impregnasse, neque unquam carnaliter cognovisse, sed neque anulum, quem ab ipso recepisse dicit, ab eo sibi collatum fore, neque suum fuisse, sed nec unquam vidisse' (no. 62).

<sup>37</sup> The two ways of contracting a canonically valid marriage are explained in: Donahue Jr., 'The Canon Law on the Formation of Marriage and Social Practice in the Later Middle Ages', *Journal of Family History* 8, no. 2 (1983): 144-145; Sara McDougall, 'Marriage: Law and Practice', in *The Cambridge History of Medieval Canon Law*, ed. Anders Winroth and John C. Wei (Cambridge: Cambridge University Press, 2022), 461-462. See also Melodie H. Eichbauer - James A. Brundage, *Medieval Canon Law*, 2<sup>nd</sup> ed. (Abingdon, New York: Routledge, 2023), 136-137.

In other words, if a couple ever expressed their intention to marry in the future, any subsequent sexual relation between them served as a confirmation of the union and offered the Church grounds to consider them canonically married.

In light of these canonical constraints, it is explicable why Blasius rejected all accusations before the chapter. If he hoped to avoid marrying Rosa, denial of ever owning the ring was essential. Had he ever admitted to gifting the ring to her, the ecclesiastical tribunal could have forced him into the marriage, due to her pregnancy and the fact that another villager, as shown below, had spotted them together at night. On the other hand, an affair between unmarried partners, although punishable as fornication, would not have been enough to enforce a marriage in the absence of a wedding proposal.<sup>38</sup>

The first judge to review the case was Martinus, the substitute judge of the chapter of Schenk and the cleric who had first commissioned the inquiry into Rosa's pregnancy. He requested two witnesses in support of Andreas Schrywer's claims, which was the standard number required for full proof of a fact.<sup>39</sup> The two witnesses had to testify that Rosa's ring had previously belonged to Blasius, thus proving the supposed marriage promise.<sup>40</sup>

The second term was scheduled for January 10, 1521 in Gürtheln. The plaintiff could not present the two requested witnesses<sup>41</sup>, so the chapter demanded a collective oath from the adverse side. This practice, known as *compurgatio*, served to clear the name of the accused and restore his or her good reputation following defamatory accusations or suspicions of ecclesiastical delicts.<sup>42</sup> Six oath-helpers were to swear in unison with Blasius that he was not guilty of the charges against him.<sup>43</sup>

The third litigation term took place in Schenk on January 24, 1521, exactly two weeks after the previous one. It was chaired by Georgius, the

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<sup>38</sup> As an ecclesiastical crime, fornication was understood as sexual intercourse outside of marriage or without a marital promise (Donahue Jr., *Law, Marriage, and Society*, 361).

<sup>39</sup> *Ibid.*, 40; Cristellon, *Marriage, the Church, and its Judges*, 49.

<sup>40</sup> 'Idem tamen magister Martinus, interim meliori a Deo provisus beneficio, causam ipsam coram sese terminare nequivit, sed eandem ad futuram confraternitatem in Gyrttheln celebrandam prorogavit istomodo: ut ibidem Andreas Schrywer terciusmet comprobaret anulum apud filiam suam existentem Blasii, filii Luce Deydrych, fuisse' (no. 62).

<sup>41</sup> 'Die igitur illa, termino scilicet, per dictum magistrum Martinum prefixo instante, idem Andreas Schrywer hoc, scilicet quod anulus ille Blasii, filii Luce Deydrych, fuisset, comprobare non potuit' (no. 62).

<sup>42</sup> Wolfgang P. Müller, 'Procedures and Courts', in *The Cambridge History of Medieval Canon Law*, ed. Anders Winroth and John C. Wei (Cambridge: Cambridge University Press, 2022), 331.

<sup>43</sup> 'Fidem suam non dedisset, nec eam impregnasset, neque eam unquam carnaliter cognovisset, neque eciam alicue muneris ad hoc dedisset' (no. 62).

parish priest of Schenk, who had become the substitute judge of the chapter in the meantime. The litigants and their supporters gathered in Georgius' house to hear Blasius' purgatory oath. Although the Deydrych family managed to bring the six compurgators requested, Andreas Schrywer invalidated half of them. The tribunal rejected a villager named Thomas Roth based on his dubious character, as he was known to have stolen a wagon of wood in the past. The other disqualified witnesses were the two women who had personal conflicts with Andreas Schrywer over the stolen grapes and the wine-tax. This evaluation process was also standard practice, since canon law procedure required oath-helpers to be people of honest reputation, and they were not allowed to swear for personal reasons.<sup>44</sup> The numerical deficit deemed Blasius' oath invalid, so the judges could not release him from suspicion.

Although procedure recommended witnesses to be interviewed in private,<sup>45</sup> the tribunal heard the depositions openly. This presented an opportunity for Gallus Klosch, Andreas Schrywer's friend and former village judge of Scharosch, to intervene. He admitted that litigants' friends were removed from testimony (*scio quod amico meo, Andrea Schrywer, quia amicus meus est, testimonium dare non possum*), but was still allowed to speak in court.<sup>46</sup> Gallus Klosch provided a short description of a sixteenth-century romantic meeting. He told the judges that one early morning he happened to spot Blasius and Rosa together in a hemp field near the village. Blasius was apparently resting over her (*super eam iacentem*), and when he saw the villager approaching, he quickly covered Rosa's lower body, as to not raise suspicions.<sup>47</sup> This account likely played a central role in the chapter's sentence.

Ambrosius, the first cleric to inquire into the matter, also presented his take on the events that led to the trial. Although not a judge in this lawsuit, he was still a member of the chapter, so his opinion weighed heavily. He emphasized the marriage agreement between Andreas Schrywer

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<sup>44</sup> Donahue Jr., *Law, Marriage, and Society*, 39-40; Müller, 'Procedures and Courts', 336.

<sup>45</sup> Helmholz, *Marriage Litigation*, 128.

<sup>46</sup> 'Hiis sic stantibus et peractis, quidam aderat de rure Scharwsch vir providus, honestus, fidedignus, aliquando in eodem villicus et civis existendo, nomine Gallus Klosch, et ille veniam petens a nobis, ut aliqua verba et ipse proferret. Cum admissum erat ut loqueretur, ipse vero Gallus Klosch inquires sic ait, "Ego, digni domini, scio quod amico meo, Andrea Schrywer, quia amicus meus est, testimonium dare non possum, sed ea que dicturus sum, dico ad conscienciam meam"' (no. 62).

<sup>47</sup> 'Conversus ad Blasium, filium Luce Deydrych, dixit ad eum, "Scis quod te reperi in ortu canapi, super eam (salva dignitate vestrarum reverentiarum et honore!) iacentem et, cum me considerares, illico surgebas et, ne de te suspicarer, fasciole quod ipsa puella Rosa gebat sub cingulo extrahebas. Et adhuc possum tibi demonstrare vestigia capitis, pedum (salvo honore!) et ani!"' (no. 62).

and Lucas Deydrych, which had happened in his own house. This particular detail served to further incriminate the Deydrych family, since they had initially denied any involvement with Andreas Schrywer and giving their consent to the wedding. Ambrosius also recalled the moment when Blasius disconsidered his father's wish and refused to marry Rosa.

Upon hearing Ambrosius' testimony, the chapter announced their sentence, which enforced the marriage between Blasius and Rosa.<sup>48</sup> The legal reasoning behind it seems to have been mostly based on 'artificial proof' (*probatio ficta*) rather than 'real proof' (*probatio vera*). While elements of real proof (confessions, testimonies, and oaths) directly established facts and had decisive value in court, artificial proof was composed of circumstantial evidence, indirect clues and presumptions.<sup>49</sup> The testimony of Gallus Klosch suggested the carnal consummation of the relationship, but could not definitively prove it, since he did not formally qualify as a witness. The possession of the ring also gave Rosa the presumption of a marriage proposal, despite her father's inability to fully demonstrate it by two witnesses. On the other hand, Ambrosius' deposition describing the marriage negotiation between the two fathers qualified as real proof. The three elements pointed towards a case of *sponsalia per verba de futuro* followed by sexual intercourse.

Devastated by the sentence, Blasius told the priests he preferred death to marrying Rosa.<sup>50</sup> In response, the judges threatened to detain and send him to Hermannstadt for disobedience.<sup>51</sup> Although their reaction is hard to interpret, the Deydrych family also seemed to turn against Blasius once they realized they had lost the case. They shouted at the judges to execute Blasius, as they did not care for his fate anymore (*Decapitate, in palum figite, excoriate, suspendite... Nos non curemus!*).<sup>52</sup> This backlash might have been the family's attempt to preserve some of their credibility after

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<sup>48</sup> 'Unde nos, fassione domini Ambrosii plebani de dicta Scharwsch Maiori exaudita et admissa, sententiam talem profferre curamus, ut ipse Blasius, filius Luce Deydrych, Rosam, filiam Andree Schrywer, in matrimonium reciperet' (no. 62).

<sup>49</sup> On *probatio vera* and *probatio ficta* in the context of marriage litigation, see Cristellon, *Marriage, the Church, and its Judges*, 49-58.

<sup>50</sup> 'Capitu se pocius privari magis velit quam quod ipsam Rosam, filiam Andree Schrywer, in coniungem recepiat' (no. 62).

<sup>51</sup> 'Nos vero eidem sic respondebamus: quod si eam sponte nollet accipere, fortassis eo invito eam accipere oporteret vel ipsum concatenatum vinctumque observare vellemus, vestre dominacioni transmittendum' (no. 62).

<sup>52</sup> 'Cum pater eius et consanguinei, tunc coram nobis existentes, audivissent, insolenter clamabant, dicentes, "Ecce hic, presens est, ducatis eum quocumque vultis et facte cum eo quecumque placuit vobis! Ecce hic, habetis eum in potestate vestra! Decapitate, in palum figite, excoriate, suspendite... Nos non curemus!"' (no. 62).

supporting Blasius' lies in court. The priests attempted to calm the spirits<sup>53</sup> and offered the alternative of picking a surety (*fideiussor*) for Blasius until the next litigation term. None of his angry relatives volunteered, but after some insistence, the priests managed to convince Lucas Deydrych.

The chapter then transmitted the cause to the chapter of Hermannstadt, and the development of the lawsuit is uncertain thereafter. The February 26 letter mentions a new hearing scheduled for March 2 in Agnetheln (Agnita), where Blasius hoped to gather a new group of witnesses in his support. Although the hearing was commissioned by the chapter of Hermannstadt, it was held by three members of the chapter of Schenk: the parish priests of Agnetheln, Braller (Bruiu), and Zied (Veseud). According to the chapter's mandate, this delegation of authority served to lower litigation costs, since travelling to Hermannstadt would have been expensive for the families.<sup>54</sup> The priests had to report their findings to the higher court in Hermannstadt after three days. Handwritten notes on the back of the two acts suggest that other court sessions might have taken place on March 18 and May 1, but the final outcome of the trial is unknown.

### A Sixteenth-Century Love Affair

The Schrywer and Deydrych families presented two mutually exclusive stories in court. The accuser depicted a carnal relationship based on an unfaithful marriage promise, while the defendant denied any sexual involvement or wedding arrangements. Therefore, what was the relationship between Blasius and Rosa?

One difficulty posed by this question stems from the fact that the tribunal hardly ever recorded their voices directly. Rosa was entirely represented by her father, and the judges never asked her to speak in court. Similarly, understanding Blasius' feelings is complicated by the lack of distinction between his personal declarations and what his older relatives spoke in his name. Although many other depositions were recorded in first person, the chapter accounted for Blasius' few statements in reported

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<sup>53</sup> 'Hiis auditis, respondebamus, "Boni fratres, estimabamus vos prudenciores esse et sapienter respondere, nam nobis non licet quemquam interficere et occidere. Bene intelligimus vos illa verba nobis in oprobrium et contumeliam dicere et proferre"' (no. 62).

<sup>54</sup> 'Quare ut causa plus examinata et merarius discussa resciat et expensis maioribus parratur, mandamus vobis, venerabilibus dominis predictis, in virtute sanctae obedienciae, quatenus presentibus requisiti annotate nostra, citetis omnes personas quascumque predictus Blasius vobis duxerit nominandas, ad examinanda testes et fassiones. Super eo articulo, dominus surrogatus rennuit mihi dare appellationis diem. Statuimus vestris dominationibus proximum sabbathum, locum Walleagnetis, ut dominationes vestrae citatarum iuratarum fassiones personarum per tactum sacrosancti Evangelii audiant diligenter, quas diligenter presentes nostras vestris inclusas, nobis vero sigillo privato munitas, remittatis inscriptis ad feriam terciam venturam, in sede nostra presentando' (no. 63).

speech. Moreover, the January 24 letter mentions that Petrus Conradt was answering the judges' questions in his name.

For this reason, reconstructing the relationship can only be attempted through the accounts of the trial participants. There certainly was a romantic or sexual relationship between them. Blasius himself admitted to it in response to Gallus Klosch's testimony, although for obvious reasons he denied the sexual aspect of it (*verum est, vos ibi me reperistis, sed cum honore*). By his statement, the relationship had been completely innocent in nature, but since the time and place of the amorous meeting were morally questionable, the judges were not convinced. In fairness, Gallus Klosch did formulate his testimony in a deliberately provocative manner. He spoke directly to Blasius, as if to shame him (*scis quod te reperi*), and asked for the priests' forgiveness when referencing sexually implicit details, such as the marks left in the hemp field by the lovers' bodies (*adhuc possum tibi demonstrare vestigia capitis, pedum – salvo honore! – et ani*).

Another significant episode is the discussion Andreas Schrywer and Lucas Deydrych had upon discovering Rosa's pregnancy. It provides an unexpected validation of love as a legitimate reason to contract a marriage. The chapter recorded their dialogue in two slightly different versions: one as remembered by Andreas Schrywer in court<sup>55</sup> and the other as narrated by Ambrosius, the parish priest of Scharosch, who heard it from the two villagers when they approached him with the wedding plan.<sup>56</sup> Both variants concurred on the main arguments brought by the two fathers in favour of contracting a marriage between their children. They highlighted the romantic and sexual aspect of the relationship, the conception of a child, and the rumours surrounding the couple. In particular, Lucas Deydrych allegedly said he had been aware of the love affair for a while (*revera ego eciam sepius vidi et consideravi quod se mutuo amaverunt*). From his perspective, contracting a marriage between Blasius and Rosa would have at least kept the malicious rumors about them to a bearable amount, despite not being able to suppress

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<sup>55</sup> "Bone compar Luca, bene scitis quod dum filiam meam impregnata esse perceperam, ex tunc vos in domum meam vocaveram, ubi vos sic aloquebar, "Quondam factum, cuius Deus misereatur, inter proles nostros contigit, nam filia mea impregnata est et a nullo alio nisi a filio vestro Blasio se impregnata fatetur". Vos ita michi respondebatis, "Bone compare Andrea, certe dolendum est, sed exim sic actum est, ne aperiamus hominum ora et tantomodo de prolibus nostris fabuletur. Vidi et consideravi quod mutuo se amaverunt. Volumus eos matrimonio tradere" (no. 62).

<sup>56</sup> "Bone compar, filia mea Rosa impregnata est et non nisi a vestro filio Blasio se impregnata fatetur. Quid consulitis?" Ipse vero michi respondit, "Bone compar Andrea, revera ego eciam sepius vidi et consideravi quod se mutuo amaverunt. Volumus eos matrimonio coniungere, ne plus de nostris prolibus quam de aliorum caviletur." Sic itaque compare meo Luca Deydrych respondente, dixi ad eum, "Eamus, si placuit, ad dominum plebanum nostrum!" Qui ait, "Placuit!" (no. 62).

them entirely (*volumus eos matrimonio coniungere, ne plus de nostris prolibus quam de aliorum caviletur*).

Although Andreas Schrywer tried to seem appalled before the priests, it is unlikely he had been completely oblivious of his daughter's affair prior to the trial. Even if he would have failed to notice her absence from home, his friend Gallus Klosch must have informed him of what he saw that early morning. In reality, perhaps Andreas Schrywer viewed the Deydrych family as a potentially advantageous match and assumed he would soon be approached with a marriage offer, so he turned a blind eye to the sexual aspect of the relationship. That would also account for the fact that he did not take any legal action until the chapter of Schenk initiated the ecclesiastical inquiry and the ensuing negotiation with Lucas Deydrych led to nothing due to Blasius' opposition.

The ring mentioned in the beginning of the trial was likely a private gift Blasius had given Rosa sometime before their break-up point. It is unlikely that they had been betrothed to each other by their families, since neither Andreas Schrywer nor the parish priest mentioned it in court. That would have been an important detail in Andreas Schrywer's favour, and he had no reason to withhold that information from the judges. Instead, the gifting of the ring appears as a personal exchange of promises based on the mutual attraction of the couple. It did not involve their parents or relatives, which suggests that marriage initiative sometimes belonged to the future spouses, even if their families later became involved in the wedding arrangements.

The reason for the relationship's failure is unknown, and the court letters do not provide any more clues about it. Given its extent, the January 24 record is suspiciously silent on the reason Blasius refused to marry Rosa. He probably offered an explanation for it, be it substantiated or not, but the chapter chose not to record it. Either his reasons did not ultimately matter in the eyes of the priests, or the chapter only recorded the evidence supporting their marriage sentence. In any case, the break-up probably happened shortly before the chapter of Schenk carried out the inquiry into the pregnancy rumours. This would explain why Lucas Deydrych was still under the impression that his son loved Rosa and that he would be happy to marry her. It would also account for the strong feelings of rejection Blasius expressed before the parish priest and the chapter. If they had an argument in the weeks before, the negative emotions would still be boiling inside him.



## The Court of Schenk

As the Schrywer-Deydrych case shows, the court of Schenk was an ad hoc tribunal that assembled in various villages across its jurisdiction. It could initiate prosecutions based on local rumours and reports, which points to the close scrutiny of the parish priests over their communities. Deliberations usually took place in the house of the local parish priest and were presided over by the dean or by a substitute judge (*surrogatus*), who led court sessions in the dean's absence. The judges acted rather quickly, with spans of two weeks between hearings. Some court sessions were scheduled to coincide with the reunion of the chapter's confraternity (*fraternitas*).<sup>57</sup> In particular, it was the case of the second term in the Schrywer-Deydrych trial.<sup>58</sup> However, not all court sessions required the presence of every member of the chapter. Only three or four priests were typically summoned for terms outside the confraternity's meetings. Although the chapter of Hermannstadt had its own public notary, there is no similar evidence for the court of Schenk.<sup>59</sup>

Most likely, the priests' source on procedural law related to marriage cases was the thirteenth-century *Summa de matrimonio* by Raymond of Penyafort, also known as the Tancredian-Raymondian *Summa*.<sup>60</sup> This influential treatise, written by Tancred of Bologna around the year 1215, was revised by Raymond of Penyafort two decades later.<sup>61</sup> The *Summa* had been known in Transylvanian Saxon circles for a long time, as suggested by one copy mentioned in the book inventory of the parish church of Hermannstadt in

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<sup>57</sup> The activity of the confraternity of the chapter of Schenk is poorly documented. See Lidia Gross, *Confreriile medievale în Transilvania (secolele XIV-XVI)* [Medieval Confraternities in Transylvania (Fourteenth to Sixteenth Centuries)], 2<sup>nd</sup> ed. (Cluj-Napoca: Argonaut, 2009), 168, note 83.

<sup>58</sup> 'Decimo die mensis Ianuarii ad possessionem Gyrtthln, pro celebranda fraternitate, sacerdotes capituli sedis Schenk congregati essent. [...] Dum simul consedissemus, providus Andreas Schrywer de Scharwsch unacum filia sua Rosa, ut actrix, ab una, necnon Lucas Deydrych de eadem unacum filio suo Blasio ut reus, ab altera partibus coram nobis comparuere' (no. 62).

<sup>59</sup> The notary of the chapter of Hermannstadt was Simon Schönman. He signed the February 26 mandate of the Schrywer-Deydrych trial (*Simon Schoenman, notarius de mandato*). On public notaries in medieval Transylvania, see Adinel Ciprian Dincă, 'Notarii publici în Transilvania Evului Mediu târziu: premise ale receptării unei instituții juridice' [Public Notaries in Transylvania in the Later Middle Ages: Prerequisites for the Reception of a Legal Institution], in *Exercițiul scrierii în Transilvania medievală și premodernă/Literacy Experiences Concerning Medieval and Early Modern Transylvania*, ed. Susana Andea and Adinel Ciprian Dincă (Cluj-Napoca, Gatineau: Argonaut, Symphologic Publishing, 2016), 35-51.

<sup>60</sup> Raymond of Penyafort, *Summa on Marriage*, trans. Pierre J. Payer (Toronto: Pontifical Institute of Mediaeval Studies, 2005).

<sup>61</sup> Donahue Jr., *Law, Marriage, and Society*, p. 15; Eichbauer – Brundage, *Medieval Canon Law*, pp. 136-139, 179-180, 182.

1442.<sup>62</sup> The same collection also included a manuscript of Iohannes Andreae's *Summa de sponsalibus et matrimonio*, an early fourteenth-century commentary on Book IV of the *Decretales* of Gregory IX.<sup>63</sup>

Overall, the judges had a pragmatic approach to the scandal, although their position implied a bias in favour of the girl's family. From a procedural standpoint, their sentence was based mostly on circumstantial rather than direct evidence. Although he could not present full proof of the alleged wedding suggestion nor of the consummation of the relationship, the accuser was still granted a favourable verdict. Gallus Klosch's testimony likely influenced the chapter's decision, despite being procedurally inadmissible due to his close relationship to the plaintiff. Establishing innocence or guilt through cleansing oaths (compurgation) also played a key role in court proceedings. In this respect, the chapter of Schenk functioned similarly to other ecclesiastical courts of the Northern half of Europe, such as the English and Franco-Germanic tribunals.<sup>64</sup> While the judges offered the defendants a chance to present their stance, they tried to balance between imparting legal justice and adopting a sentence that would reinstate moral order and promote their view of social harmony.

Although the chapter ultimately failed to settle the dispute, conciliatory efforts also took place out of court. At the bottom of the January 24 letter, the chapter recorded a private conversation between the judges and Ruffus Iohannes *scholaris*, a friend of the Deydrych family. After the litigants left on January 24, the priests asked Ruffus to persuade Lucas Deydrych into accepting the wedding, arguing that continuation of the trial would be expensive for the family.<sup>65</sup> In response, Ruffus spoke about the disagreements within the Deydrych family. Allegedly, the parents had

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<sup>62</sup> Robert Szentiványi, *Catalogus concinnus librorum manuscriptorum Bibliothecae Batthyanyanae*, 4<sup>th</sup> ed. (Szeged: Bibliotheca Universitatis Szegediensis, 1958), no. 294, 168.

<sup>63</sup> On this jurist, see Peter D. Clarke, 'Giovanni d'Andrea (1270-1348)', in *Law and the Christian Tradition in Italy: The Legacy of the Great Jurists*, ed. Orazio Condorelli and Rafael Domingo (Abingdon and New York: Routledge, 2021), 145-159; Eichbauer – Brundage, *Medieval Canon Law*, 178-179.

<sup>64</sup> On the distinction between 'Northern' and 'Southern' courts, see Müller, *Marriage Litigation*, 3-9.

<sup>65</sup> 'Postquam hec omnia sic coram nobis agerentur et recedentibus singulis nobisque in stuba sic remanentibus, reversus post paululum Ruffus Iohannes scholaris et quando littere presentes conficerentur interrogavit. Nos eidem terminum et diem prefigentes, sic eum alloquebantur, "Bone frater Iohannes, vos ex quo litteratus estis, sapitis plus ceteris, avisetis ergo amicum vestrum Lucam Deydrych et consulite ei ut copulentur. Et nos suademus vobis, quia fortassis non statim terminabitur lis et plures resas et fatigas necnon expensas habebitis"' (no. 62).

always supported the marriage plan, but the other relatives and friends were opposed to it.<sup>66</sup>

If Ruffus' account is to be believed, it not only suggests the judges' limited understanding of the scandal, but also points to the power dynamics within the Deydrych family. The priests assumed that Lucas Deydrych had the final word in the marriage arrangements. However, according to Ruffus, the father's consent was not enough to impose a decision, and the other relatives' opinions ultimately weighed more. From this perspective, it becomes understandable that Lucas Deydrych initially agreed to the wedding, only to take his word back when met with resistance from Blasius and his other relatives. This detail is also consistent with the chapter's observation that Blasius was unofficially represented in court by a villager named Petrus Conradt, rather than by his own father. Unfortunately, Ruffus did not elaborate on the reasons behind the relatives' opposition to the wedding, or perhaps the chapter did not record the rest of the discussion.

### The Strategy of the Plaintiff

Although Andreas Schrywer was unable to gather the number of witnesses required to prove his claims, the chapter of Schenk still granted him a favourable sentence. His litigating strategy involved a believable account of the events regarding his daughter and a realistic depiction of himself as a trustworthy man. The support received from a former village judge, Gallus Klosch, and from the parish priest of Scharosch, Ambrosius, further improved his credibility in court.

Andreas Schrywer had likely received legal advice beforehand, presumably from the parish priest. He displayed excellent knowledge of the grounds on which oath-helpers could be invalidated, and knew to construct his narrative around the argument of *sponsalia per verba de futuro carnali copula secuta*. Since a marriage promise followed by sexual intercourse formed a canonically valid marriage, he essentially argued that the couple should already be considered married, and the chapter only had to enforce the wedding between them. Thus, he suggested that his daughter's loss of virginity did not happen as a result of fornication but by means of deceit on Blasius' part.

The central point in Andreas Schrywer's self-constructed image of respectability was his position as the village judge of Scharosch. In court, he presented himself as dependable, honest, and humble in relationship to other

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<sup>66</sup> 'Ille vero e vestigio respondit, "Venerabiles domini, sciatis pro certo quod diu et ab initio parentes et ego semper voluntarii fuimus quod copularentur, sed ceteri consanguinei et amici resteterunt et adhuc resistunt"' (no. 62).

villagers. For example, when explaining that Andreas Bertleff's daughter was ineligible to swear in Blasius' favour, he depicted the background of their conflict in great detail, as it was a good opportunity to demonstrate his merits as the village's judge. He described the villagers' complaints about the children who frequently trespassed into their vineyards and stole their grapes. Determined to take action, he gathered the entire community, and they settled on a fine to be paid by the parents whose children would be caught stealing from the vineyards in the future.<sup>67</sup>

By contrast, the Deydrych family made several mistakes which diminished their chances of winning the lawsuit. They damaged their standing by presenting dubious oath-helpers in court, such as two villagers guilty of theft. Another mistake was Blasius' admission that Gallus Klosch spotted him together with Rosa at sunrise, which confirmed the suspicion that their relationship had been sexual in nature. The Deydrych family's inappropriate reaction in receipt of the marriage sentence, which the priests carefully recorded in their transmissional letter (*insolenter clamabant*), most likely did not make a positive impression to the higher court either. These were all weak points in the Deydrych family's defence, which played to Andreas Schrywer's advantage. Ultimately, when neither part could produce direct proof of their claims, convincing the judge of one's honesty was essential. Marriage litigation was not just a numerical battle of witnesses or oath-helpers, but also a competition to gain the sympathy of the judges.

## Conclusion

Although the chapter of Schenk recorded an unexpected unfolding of events, the Schrywer-Deydrych lawsuit is not an unusual case, if understood in a broader European context. Since marriage proposals were often followed by undelayed sexual initiation, ecclesiastical tribunals were asked to intervene whenever one partner reneged on the promise. The chapter of Schenk operated in a similar way to other clerical tribunals across the Northern half of Europe. Judges displayed fair knowledge of canon law related to

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<sup>67</sup> 'Secundus testis iurando, puella filia Andree Bertleff, contra quam talem suspicionis causam vestris dignitatibus antepono: Ego, cum essem villicus immeritus, cum meis civibus considerans magna dampna a pueris communitatis in vineis fieri et continuus esse, a quibusdam ingressis, qui vineas in territorio meo non haberent, nil minus tamen continuarent ingressum, inito consilio volentium huiusmodi dampnis ne fuerent contravenire et consulere, convocamus totam comunitatem, proponendo ipsis quomodo multa incomoda et dampna fuerent in vineis a pueris ipsorum. Si placeret omnibus, velint facere et constituere pactum seu mandatum cum pena inflictam, quod de cetero nullus ex pueris ipsorum vineas, sicut antea fecissent, ingredi auderet. Facto itaque mandato, ego ex officio coram tota communitate demandavi quod nemo de cetero pueros suos ad vineas intrare permitteret, quia si quis in eis repertus aut notatus foret, ipsi cives velint recipere penam' (no. 62).

marital cases, even though its rigorous application was sometimes abandoned in favour of more pragmatic goals, such as restoring social peace and moral order by marriage enforcement. The records of this case also suggest the interest of the future spouses in choosing their own partners, although their families eventually became closely involved in the wedding negotiations. Still, the idea that love and mutual attraction were legitimate reasons for contracting a marriage seemed to be present among both the younger and older generation in Scharosch. If some villagers displayed a rather lenient attitude towards premarital sexual relations, it was only with the assumption that they would be quickly followed by marriage. A systematic investigation of pre-Reformation Transylvanian church tribunals remains unachievable due to a lack of serial records, but further case studies can still illuminate other aspects related to the operation of ecclesiastical justice and marriage litigation in this area.

