

The Litigation of Cases Involving Illegal Acts: Analysis Based on Baxian Archives

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Abstract

The charging documents of some cases in Baxian Archives could reflect the litigants' illegal acts of selling wives, gambling, as well as fighting and killing. Since the litigation could reveal their illegal acts, why the litigants actively initiate legal proceedings? Are not they afraid to be penalized for these illegal acts? By analyzing the litigation purposes, judgement results, as well as the accepting system of these cases, it could reach some conclusions: The protection for property rights is the dynamic to prompt the litigants to conduct prosecutions and accept the risk of being penalized. The authorities adopt the principle of setting disputes while ignoring illegal acts exposed by the documents to decide cases, the litigants accordingly do not have to worry about criminal penalty. In addition, there is exaggeration and falsity in the statements about gambling and injuring. The essence of this pattern statement of judicial documents is to respond to the cases accepting system of authority autonomy. It is a strategy to get admission ticket for accepting cases so as to safeguard the rights and interests.

Key words: Charging document; Illegal acts; Litigation purposes; Judgement results; The protection for property rights

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INTRODUCTION

Baxian Archives of Qing Dynasty is widely regarded as valuable literature collection for its long history, vast quantity, rich content and historical value. Its numerous cases provide key materials for researching judicial system of Qing Dynasty. There are some kinds of exceptional cases deserving attention.

The first kind involves selling wives. For example, Lai Rongfa conferred with his wife to sell her because of poverty in the 12th year of Daoguang Emperor. Then he invited Zhang Daxing and Tian Shitai as matchmakers and decided to marry his wife to Wu Fangji. He signed a contract with Zhang and Tian on June 2 of the same year. A couple of days later, on June 28, he concluded an agreement with Wu, providing contract guarantee of being responsible for breaking the agreement. This agreement could explain the reason of poverty for selling wife, indicate the couples' divorce consensus, embody the procedure of entering into contract and present the performing practice of the contract.¹

The second kind relates to gamble. For instance, Mu Sicong filed a judicial document to prefectural office on February 23, the 8th year of Qianlong Emperor, stating the facts of the case he sued on the ground of being lured to gamble at the state of intoxication the previous year. From this document, it could be seen that he had been lured by Xie Zhengrong to gamble with Xie Ziguang and Wang Huaixin at Lai Wu's home. He lost the gamble and owed debts to Xie Ziguang, Wang Huaixin and Lai Wu. There are four due bills for proof.²

The third kind is about an agreement of homicide

¹ The case cf. Archive of Sichuan & History Faculty of Sichuan University, The Selections of Baxian Archives in Dynasty of Qianlong, Jiaqing and Daoguang, Volume Two (1996, pp.486-487). Sichuan University Press.

² The case cf. Archive of Sichuan, The Collection of Baxian Archives in Dynasty of Qianlong. Archive Press, 1991, pp.158.

liability. On September 18, the 30th year of Qianlong Emperor, the prisoner Li Qiwei charged against Li Qiwen. The charge was caused by an agreement, which was signed in the 24th year of Qianlong Emperor. From this agreement, we know that Li Qiwei, Li Qiwen and Li Qiyan fought with Yang Wuhe and killed him, and then Qiwei and Qiwen arranged the responsibility assignment by signing agreement. According to the agreement, Qiwei should bear the criminal responsibility while Qiwen should pay some money to Qiwei for the price of being not responsible for fighting and killing liability. The reason why Qiwei charged against Qiwen is that Qiwen broke his promise of paying money. So he claimed to ask Qiwen for continuing to perform the agreement.³

Selling wives, gambling, as well as fighting and killing involved in these kinds of cases are all prohibited by the law. It also can be seen from the expressions in documents and the evasions of law such as describing the money of selling wives or gambling as borrowing in their contracts that the litigants could recognize the illegality of their behaviors. Still, why they brought suits to the authority? Didn't they do expose their own illegal acts to the state agency? Didn't they fear of being penalized? This paper aims to solve these questions from the perspective of litigation purposes, judgement results and the case accepting system.

1. THE LITIGATION PURPOSES

1.1 The Impetus for Initiating Legal Proceedings in the Case of Selling Wives

Selling wives refers to marry one's wife to some other person for this paper. It happens under the condition of selling and buying harems without divorce procedures. According to the criminal law of Qing Dynasty, if selling wives and buying others' wives as own without performing divorce formality, the seller, the buyer and the wife being sold should be hit 100 times with stick, the marriage relationship should be judged invalidity and the money should be handed over to the government (Tian & Zheng, 1999, p.524). Despite being forbidden by law, the behaviors of selling wives for money are common in judicial practice. There are 24 documents in the part of "social life —women—" of the book *The Selections of Baxian Archives in Dynasty of Qianlong, Jiaqing and Daoguang, Volume Two*, telling about 17 cases⁴ involving selling wives. Among these 17 cases, 9 of them meet the

³ The case cf. Archive of Sichuan, The Collection of Baxian Archives in Dynasty of Qianlong (1991, p.119). Archive Press.

⁴ There are situations that a couple of documents belong to several files of one case. In the book of The Collection of Baxian Archives in Dynasty of Qianlong, these documents are compiled together as one case. While in the book of The Selections of Baxian Archives in Dynasty of Qianlong, Jiaqing and Daoguang, the documents are not noted that they belong to the volumes of one same case.

regulated criterion of the above article⁵. The reasons they were to be raised could be concluded as:⁶

Table 1
Women Be Sold for Money

Arguing for money	Drowning (Zhang Zhimu vs. Qiu Zonghua)
	Money payment dispute of selling wife (Yuan Zhengshun)
	Claiming money of selling wife again(Tang Dengrang)
	Asking for selling contract (He Zhengdi)
Hiding to women's families	Selling other person's wife (Guan Wendou vs. Wan Wenke)
	Suicide because of being sold (Deng Wenheng's wife)
	Du Hesheng sued Yang Huaxian for selling wife
	Hu Zaiying sued for his niece being sold
	Wen Jian sued for his daughter being sold by Feng Wushi

There are 5 concerning money disputes of 9 cases. There are also 72.5% cases concerning money dispute in Nanbu Archives.⁷ It could be concluded that claiming money is the primary reason, as well as the lawsuit focus in the litigation causes of the cases of selling wives.

1.2 The Driving Force to Conduct Gamble Prosecutions

As for the reason for bringing a lawsuit concerning gambling, the reporting document of Mu Sicong is able to give us a clue. In the file which had been submitted on February 23, the 28th year of Qianlong Emperor, Mu Sicong asserted that he had been lured to gamble, as mentioned above, and then he was afraid of being punished so that he did not dare to appeal to local authority. Then why he changed his idea and conducted prosecution? He explained that in the document as well, that is the creditors of the gamble debt compelled him constantly to pay back what he owed. The reporting document is a judicial file for stating facts and proceedings, rather than a petition for appeal. Mu Sicong had already sued in the 27th year of Qianlong Emperor in fact. Practically we can see the reason he sued from the reporting document is that it was hard for him to bear oppression from creditors of gamble debt. Actually his real intention lies in refusing to fulfill obligation. In other words, he wanted to seek for the property interest.

1.3 The Charging Cause of the Case of Li Qiwei Vs Li Qiwen

The case facts of Li Qiwei vs. Li Qiwen had been

⁵ Although there are 24 documents telling about 17 cases. Actually some documents are contracts that do not involve disputes. They are not litigation files. Since this paper conducts the research of lawsuit, I just count the 9 cases when conclude the litigation reasons.

⁶ These cases in the blank below come from Baxian Archives. Cf. *The Selections of Baxian Archives in Dynasty of Qianlong, Jiaqing and Daoguang, Volume Two* (1996, pp.481-492). Printed in Sichuan University Press.

⁷ The ratio is a combination of "asking money again after selling wives" and "not getting selling money", counted by Wu Peilin. Cf. Wu, P. L. (2010). *Selling Wives of Folk Society of Qing Dynasty* in Nanbu Archives. *The History Research of Qing Dynasty*, 8 (3), 27.

mentioned above. After they fought and killed somebody together, Qiwei and Qiwen reached an agreement of responsibility bearing. Qiwei should be subject to criminal penalty and Qiwen did not need. But Qiwen had to pay a sum of compensatory money to Qiwei. The agreement between Qiwei and Qiwen was signed by themselves privately, instead of being admitted by government agency. Surprisingly, the agreement appeared in the file volumes of Baxian Archives. The case volumes consist of 3 files, the reporting documents from Li Qiwei, the agreement and the mediating report from agreement witnesses. The charging reason can be seen from the reporting document. As Qiwei said, Qiwen should pay him 20 thousands Wen⁸ according to the agreement. Qiwei paid in the 25th, 26th, 27th, and 28th year of Qianlong Emperor, and the sum of payment is 9 thousands and 8 hundreds Wen. However, Qiwen would not repay the remaining part, namely 10 thousands and 2 hundreds. That is to say, in order to ask Qiwen to pay for the rest of money ascertained in their agreement, Qiwei charged to the prefectural office.

1.4 Brief Sum-Up

In a word, the most direct urge that the cases involving illegal acts like selling wives, gambling, as well as fighting and killing be raised to the authority is the appeal for the property. This shows it is not true that people in the Qing Dynasty were unwilling to resolve disputes by lawsuit way and not eager for interest like we think. The reality demonstrated by judicial archives is arguing for property even small like a blade of grass is common⁹; the real litigation process is not giving up if not getting resolved. In these cases disclosing illegal acts, the reason that litigants initiate legal proceedings and brave the risk of being penalized because of the illegal behaviors is that they want to protect their property interests.

2. THE JUDGEMENT RESULTS

2.1 The Judgement Results of Cases of Selling Wives

The judgement results of 9 foregoing cases of selling wives as Table 2.

The case of “Drowning of Qiu Zonghua” narrates that after married his wife to Qiu Zonghua, Zhang Zhimu asked for money from Qiu again and be refused, consequently he threatened to charge to the authority, Qiu then committed suicide by drowning because of being scared of bearing legal liability. The prefectural office of Baxian decided to sentence Zhang Zhimu, his wife and the matchmaker according to the law of Qing Dynasty. We are not able to know the judgement results of the cases of

“Money payment dispute of selling wife (Yuan Zhengshun)” and “Asking for selling contract (He Zhengdi)” because there is only single judicial document without official instructions in their respective file volumes. “Selling other person’s wife (Guan Wendou vs. Wan Wenke)” is a case of selling other people’s wife with deceptive means. The authority sentenced the seller to return the money and the woman who was sold should go back to original home. That is to say, the authority kept the opinion of denying the selling validity because the deal was made secretly by abductor. The four cases of “Hiding to women’s families”, some had been decided to be invalid and some cannot be learned their judgements results from the available materials. The most noteworthy case is “Claiming money for selling wife again (Tang Dengrang)”, the validity of selling wife of which had been recognized.

Table 2
The Judgement Results of Cases of Selling Wives

Nature	Cases	Judgement	Punishment
Suicide	Drowning of Qiu Zonghua	According to law	Hitting with stick
Single document	Money payment dispute of selling wife (Yuan Zhengshun)	Unknown	Unknown
	Asking for selling contract (He Zhengdi)	Unknown	Unknown
Selling other person’s wife	Selling other person’s wife (Guan Wendou vs. Wan Wenke)	Invalid selling	Penalizing and cuffing
	Suicide because of being sold (Deng Wenheng’s wife)	Lawsuit ended	40 hitting
Hiding to women’s families	Du Hesheng sued Yang Huaxian for selling wife	Money confiscating	Penalizing matchmaker
	Hu Zaiying sued for his niece being sold	Invalid selling	penalizing
	Wen Jian sued for his daughter being sold by Feng Wushi	Invalid selling	Slapping
Asking for money again	Claiming money of selling wife again(Tang Dengrang)	Valid selling	Penalizing

Based on Baxian Archives and Nanbu Archives, it could be found that in the cases of selling wives, the government agency tends to deny the selling validity for cases of “hiding to women’s families” and recognize the selling validity for cases of “asking for money again”, meanwhile punish the person who sells his wife and asks for money twice. As for the statutory punishment, there is only one case of Baxian Archives being executed. Generally, the penalty for the behaviors of selling and buying wives in judicial practice is milder than that regulated by the law of Qing Dynasty.

⁸ Currency unit of Ancient China.

⁹ Wang Youhuai. *The strategy to handle cases*, Zhang Tingxiang, *Five Kinds of Instructions to Be Officials*, printed in Wenhai Press, p.483.

2.2 The Results of Sentence in the Cases of Gambling

Gambling is also prohibited by the law of Qing Dynasty. According to the criminal law, people who gamble have to be hit 80 times with stick and all the belongings found in the gambling scene should be handed over to official. It is government's duty to investigate gamble and arrest gamblers. The official document between the governments of Fuzhou and Baxian recorded in Baxian Archives¹⁰ corroborates the enforcement of the law of gambling prohibition. So after Mu Sicong went in court on account of gambling debt fulfillment, was he condemned to the punishment of hitting 80 according to corresponding law by court? In accordance with the judicial document, the gambling happened on March 26, the 27th year of Qianlong Emperor, while the lawsuit was brought by Mu Sicong on November 23 the same year for the first time and was restated on February 23, the 28th year of Qianlong Emperor. In the latter document, the governor made an official instruction of "ascertaining the truth and then making decision". However, a few days later, he added a comment in the file. It says: if you actually were lured to gamble on March 26 and owed money for losing game, why didn't you bring the lawsuit at that time? You did not litigate until November. Obviously, you did take actions first to gain the initiative and did fabricate the gambling facts for the sake of swindle. If you litigate again, you'll be penalized.

There were not any evidences could indicate that the government had conducted an investigation into the gambling affair and came to the conclusion of fabricating facts. The governor declared the falsity of case facts with imprecise logical inference, just because the plaintiff did not take legal action as soon as the gambling happened. Since the existence of gambling fact was denied by the governor basically, not to mention the punishment might be awarded to Mu Sicong.

2.3 The Official Judgement of the Case of Qiwei Vs Qiwen

In chronological order, the case facts of Qiwei vs. Qiwen are: The 24th year of Qianlong Emperor, Qiwei and Qiwen et al fought with Yang Wuhe and killed him, then they signed an agreement, deciding that Qiwei should make a confession himself and should not get Qiwen involved, meanwhile, Qiwen should pay all of 20 thousands Wen money that confirmed by agreement to Qiwei. We could not know how the criminal case, which touched off their civil contract to be heard and decided from the archives materials. It only can be known that Qiwei was sentenced to jail because his prisoner identity was written in the

litigation file. According to Qiwei's statement, Qiwen had paid to Qiwei 9 thousands 8 hundreds Wen altogether since the 25th year of Qianlong Emperor and still needed to pay 10 thousands 2 hundreds. As a result, Qiwei sued Qiwen for continuing to perform the contract. Perhaps the authority did believe that Yang Wuhe was killed by Qiwei along because it can be learned from archives that Qiwen was not imprisoned. But things have changed. Qiwei complained to the authority and filed the agreement. Their behaviors of deciding each liability without authorization had been exposed to the authority. So would they be condemned to criminal penalty?

There were no special written court verdicts in Qing Dynasty. The judgement was called instructions, written with a few words in litigants' suit documents. It did not always exist the instructions in the judicial archives. As luck would have it, there are instructions in the suit document of this case, it says: this kind of debt was generated by Qiwen's voluntary help, it was different from general debt that generated by borrowing and lending. As Qiwen was ready to pay 5 thousands 2 hundreds Wen money, Qiwen should hand the money to Qiwei and the case should be ended.

It can be seen from the instructions: The authority explained the debt validity of their contract restrictively by comparing with general debt and recognized it because of the actual performance of the obligor. However, the criminal who escaped legal sanction was not sentenced to criminal penalty according to the circumstances of crime revealed by the agreement. The authority intended to settle the dispute between litigants merely, ignored other illegal acts completely.

2.4 Brief Sum-Up

For above kinds of cases, litigations make the illegal acts exposed to the authority. However, the offenders were not held responsible for corresponding crimes by the authority. Despite the authority perhaps needs to consider folk customs, specific circumstances of cases and the educational aim of judgements besides written law (Zhang, 2014), it is still surprising the pursuit of settling disputes comes at the price of disregarding of crimes. It is clear maybe in the judicial practice, litigants perhaps do not need to worry about being subject to legal sanctions because of the crimes exposed by litigation.

3. THE CASE ACCEPTING SYSTEM

The paper explores the litigation purposes and judgement results of cases involving selling wives, gambling and killing. In the case of gambling, Mu Sicong's statements about gambling facts were judged fictitious. Although this verdict was made without investigating, it is not impossible to have the situation of fabricating in the judicial documents. If someone does not do illegal things such as gambling, why he fabricates them and sues to

¹⁰ Cf. The Official Document Fuzhou Transfers to Baxian on December 27 of the 23th Year of Qianlong Emperor, Archive of Sichuan, The Collection of Baxian Archives in Dynasty of Qianlong (1991, p.155). Archive Press.

the authority? What if he is penalized for the fabricated illegal acts? It seems hard to understand these behaviors. Actually, it is connected with the case accepting system of Qing Dynasty. I will introduce the system of case for accepting and analyze the connection between it and the falsity of judicial documents.

3.1 The Case Accepting System

The case accepting system refers to an institution which makes the authority decide to accept it or not when a lawsuit is brought. April 1, 2015, the rule of Opinion on The Reform of Case Registration System of The Courts was introduced; it means that the case accepting system of contemporary China was transformed from censorship to registration. It makes lawsuits easier to be accepted by the court. In comparison, lawsuits are much more difficult to be accepted by the authority in Qing Dynasty. In that time, “all things start from prefectural office”, prefectural office is the foundation of justice system. It takes total responsibility for civil cases and is responsible for investigation and the first trial of criminal cases (Zheng 1988). According to the law of Qing Dynasty, the investigation and resolution of criminal cases are prefectural office’s obligations they have to take. As for civil cases concerning marriage and family, farmland, debt, fighting and gambling,¹¹ prefectural office has almost complete discretion to decide whether they will be access to judicial procedure. Different from the contemporary system, which empowers officials little discretion, the case accepting system makes officials become the critical factor in the result of the case accepting or not in Qing Dynasty.

Were there legal provisions to regulate the discretionary power of prefectural officials to decide to accept cases or not? The answer is yes. There are 15 volumes of criminal law in the Law of Qing Dynasty, the section of litigation in the thirtieth volume of Law of Qing Dynasty has the rough provisions of bringing lawsuits, accepting cases and hearing cases etc. But these provisions are designed to restrict the litigation and they are incomplete at the aspect of providing criterions for officials to decide to accept cases or not. In the judicial practice of Qing Dynasty, some rules called Petition Form Regulations, printed in the pattern files, provides requirements of capacity as a subject, document format and evidence presentation. The purpose of them was also to restrict public access to the proceedings.

¹¹ There were no conception of department of law, as well as criminal proceedings and civil suits in Qing Dynasty. The classification of lawsuit is different from Anglo-American legal system that contemporary China transplanted from. The classification of written law and lawsuit is one of important issues that the subject of legal history of China aims to explore. But it is not the object of study in this paper. In order to narrate conveniently and clearly, I employ the classification of criminal and civil lawsuit partly and temporarily to interpret lawsuit system of Qing Dynasty.

Actually, as a good side, Law of Qing Dynasty provides penalty for officials when they break the law to dismiss cases. However, it was inevitable for officials to dismiss cases in a mudding manner and it was rare for them to be penalized just because they did not hear cases in time. The truth is that the cases’ probability of being rejected was high in judicial practice. The proportion of civil cases without acceptance reached 1/3 in the Fanshan Documents (Mao, 2008, p.28). Huangyan Litigation Archives also reveals that cases were dismissed for various reasons, although they could meet the requirements of Petition Form Regulations (Deng, 2010, p.8). The gambling case of Mu Sicong mentioned above, which was dismissed just because the time brought the lawsuit was far from that gambling happened also could prove the universality of dismissing cases by officials.

In a word, the case accepting system of Qing Dynasty holds the principle of restricting cases access to judicial procedure and its realization depends on great discretion empowered by law.

3.2 The Response of Judicial Practice to the Case Accepting System

At the beginning of telling about the case accepting system, I have argued that the falsity of judicial documents is connected with the case accepting system. As I say, prefectural office has almost complete discretion to decide whether cases would be access to judicial procedure in Qing Dynasty. Accordingly, the severity of the case facts had to be exaggerated in order to improve the probability of case accepting by the authority. Since the power of deciding to accept cases or not was mastered by the authority, the citizens who chose to take legal actions had to depict an extremely serious case to make the authority have no choice but to accept and hear it. In the case of Mu Sicong, if the gambling facts were fabricated by Mu Sicong, that was because he had to raise some severe case facts—for example, gambling—than general ones so as to make sure the authority would consider to accept and settle his case.

As a matter of fact, it was not happened only in the gambling cases to exaggerate the severity of case facts. In many civil cases concerning marriage and family, farmland and debt, litigants would exaggerate the case facts themselves even add some stories to the case facts to heighten the degree of case severity. Personal injury is the method most commonly used to make up stories for the case facts. Litigants often claimed they had been wounded, pushed and made to bleed by the other side. Sometimes the injury was real of course, but in that case it was often overstated.

For the kind of cases handled autonomously by the prefectural office, relevant statutes just provide restrictive provisions for accepting cases. There are no legal norms providing positive qualification requirements for accepting cases. It makes the prefectural officials possess great discretionary power, they even could completely decide

for themselves to accept cases or not. They could dismiss cases just because the case facts are unreasonable in their eyes. Therefore, the essential reason of the exaggeration and falsity of judicial documents is to get admission ticket for accepting cases. There are some expressions like “beg to arrest and sentence him by law”, “ask to investigate it”, “implore to accept the case” in Baxian Archives could improve the litigants’ intention of getting approval to accept cases. For this purpose, the litigants not only exaggerate and fabricate illegal acts of the other party, but also defend themselves skillfully by explaining, even lie to show own innocence in the judicial documents. In the cases of selling wives, the husband often discredits his wife for making excuse to sell her. In the case of “Xiao Hongyi sells wife”, Xiao Hongyi said that his wife was sold to other person as wife by Deng Depu. It seems that he wanted to improve the selling was conducted secretly behind him. But he said that he got money of 17 thousands Wen later in the same document. This indicates his former statement is a lie. In the case of gambling, the litigants often use the statement of being lured to try to get rid of own illegality, and meanwhile exaggerate the illegality of the other party.

CONCLUSION

The cases of selling wives, gambling and killing in Baxian Archives make us wonder that were not they afraid to be penalized when the litigants exposed their illegal acts to the authority voluntarily. On the one hand, from the perspective of litigation purposes, the pursuit of safeguarding property makes the litigants take a risk of being penalized to bring lawsuit to settle disputes. From the perspective of judgement results, the authority tends to settle disputes while ignore the illegal acts exposed by lawsuits. On the other hand, it is highly necessary to distinguish the truth and falsity of the charge contents. The litigants usually exaggerate or fabricate the case facts, especially by means of gambling and injury. The essence of this pattern statement of judicial documents is to respond to the cases accepting system of authority autonomy. It is a strategy to get admission ticket for accepting cases so as to safeguard the rights and interests.

In Qing Dynasty, the prefectural offices have the preliminary jurisdiction of cases. Legal conception and system designed make the social order under the regulation of local governments. The cases of “marriage and family”, “farmland”, “debt”, “fighting” and “gambling” should be judged and executed, and the cases of “killing”, “raping”, and “stealing” should be investigated, firstly tried and reported. The indigenous litigation classification, which do not completely correspond to the criminal and civil lawsuit, along with the mode of court decision, which is made not completely according to law and not completely disregarding the written law, reflect the legal philosophy of concentrating on settling disputes, as well as pursuing harmonious and stable social order. From the perspective of social function of law, the legal system of Qing Dynasty could settle disputes immediately and relieve social tensions effectively. Certainly, the case accepting system of Qing Dynasty that completely depends on the discretionary power of the authority, along with the relevant law that lacks of exercisable specific rules for deciding case acceptance and its existing provisions designed to eliminate cases to judicial proceedings cause the vicious circle of filling with false contents in the documents and increasing of false accusation. It makes social conflicting accumulate and resolution cost increase in turn.

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