

# Taubenschlag, Rafał

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"Die actio de pastu, de pauperie und de arborius caesis im Rechte der Papyri",  
R. Taubenschlag, "Archiv Orientální",  
vol. XX, no 3-4 : [recenzja]

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The Journal of Juristic Papyrology 7-8, 387-388

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1953-1954

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Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

zantine ἐπερωτηθεὶς ὁμολόγησα and the later which first appeared in the 8th century and in which is used the conjunctive mood: "When we shall be asked, we shall to acknowledge to that". In this form the classical meaning of *stipulatio* becomes completely lost. The *stipulatio* reduced to such a formula, was drawn up throughout the centuries in notarial practice and finally began to have an entirely different meaning.

Klaus Weiser, *Das Hypomnema in der Prinzipatszeit*, 1952.

This is the till now unpublished Erlangen Dissertation of which informs Seidl in the 11 Bericht, p. 358 ff. The author examines the so called lease-offer in the form of a hypomnema. If it were right to assume that more than a hundred papyri from the times of the principate which usually the author defines as "offers" should be regarded as really "binding offers", we should make use of them for the complement of the Digests. But as it is well known, already Mitteis was here indeed sceptical and explained these "offers", by a comparison with the classical Roman *pollicitatio* because the form of hypomnema is derived from the petitions to the authorities and the landowners in Egypt often acted in this capacity in relation to small tenants. Thereto comes Wolff's theory, that the lease in Egypt was sooner a real than a consensual contract. The author attempts at a fundamental exposition of the papyri against recent literature on the subject. Concerning *pollicitatio* he rejects the opinions of Mitteis and Wolff while he himself declares, that the lease-offers are indeed "binding" the lessors as well. Therewith he admits the consensual character of lease-contracts and recognizes the penetration of Roman juristic conceptions into the provincial law.

R. Taubenschlag, *Die actio de pastu, de pauperie und de arboribus caesis im Rechte der Papyri* (Archiv Orientalní, vol. XX, No. 3—4 = Diatribae Lexa, p. 65—68).

In the papyri there are numerous legal remedial measures concerning the protection of the landowner: the δίκη βλάβης, the δίκη καρπού, the action against the infringement of boundaries and the actions analogous to the Roman *actiones de pastu, de pauperie* and *de arboribus caesis*. To the requirements of the *actio de pastu* belong: ἐπαφιέναι = to let the cow loose and καταβόσκειν, κατανέμειν = grazing. The action aims apparently at the compensation of

damages. As to the damages that the cattle caused in the fields without the proprietor's provocation a Ptolemaic decree determined that the proprietor should be obliged to compensate these damages with the amount fixed by the court.

Self-help i. e. an arbitrary arrest of the cow was forbidden in the Ptolemaic period. Nevertheless it is possible that in the Roman epoch the proprietor of devastated fields had this right. He could also lay claim to the compensation of damages. Felling of trees on private grounds without a special permission of the owner was fined. Besides, the person against whose will the trees were felled sued a private claim. The *actio de arboribus caesis* aims in the Ptolemaic period either at the restitution of the cut down trees or at the compensation of damages. We have no information whether this action persisted in the Roman epoch.

FRANCESCO M. DE ROBERTIS, *Lex Rhodia. Critica e anticritica su D 14, 2, 9* (Studia in onore di V. Arangio-Ruiz III, 155).

The author analyses D 14, 2, 9 and comes to the conclusion that the *lex Rhodia* mentioned in this fragment is not a State-law of general validity but a local law which was obligatory in a certain part of the Mediterranean Sea. The emperor must then refer in his decision to this law since it was traditional Roman policy to recognize local laws.

#### THE LAW GOVERNING DOMESTIC RELATIONS

H. J. Wolff, *Die Grundlagen des griechischen Eherechts* (Tijdschrift voor Rechtsgeschiedenis = Revue d'histoire de droit, XX, I, [1952]).

The third section of this dissertation will interest the papyrologists. The author tends to prove that in the polis-order marriage was considered as a bond by which the wife was given over by her own community (*οἶκος*) to the husband for the preservation of his community (*οἶκος*). In the Hellenistic colonisation which either lacked the polis-organization or, as in Alexandria it was only its imitation, the marriage changed into a more free union in regard to personal relationship between the consorts. This explains the absence of the epiclerate or the mention of ἐγγύη which were characteristic of the ancient order.