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Jakub Urbanik

**P. CAIRO MASP. I 67120 RECTO
AND THE LIABILITY FOR LATENT DEFECTS
IN THE LATE ANTIQUE SLAVE SALES
OR BACK TO *EPAPHE****

INTRODUCTION

THIS ARTICLE HAS BEEN GROWING IN LAYERS. It started with a research on a deed of slave-sale preserved in the inexhaustible archives of Dioscoros. Naturally, I had to pay attention to the meaning of the clauses the contract stipulated and so I studied its contemporary counterparts. In this way I came across the old, but still vivid, vexed question of the meaning of the word *epaphe* in the warranty clause. The second part of the article is entirely devoted to this question (sections 4 & 5, pp. 232–245),

* This paper was originally presented as one of *Iza Biežuńska Memorial Lectures* in December 2010; BIEŻUŃSKA-MAŁOWIST'S classical study, *La schiavitù nell'Egitto greco-romano*, Roma 1984 (*Biblioteca di storia antica* xvii) remains the obvious work of reference for the studies on slavery in Graeco-Roman Egypt and for this paper; a rather abbreviated version thereof was also delivered at the 65th session of the Société Internationale d'Histoire de Droit d'Antiquité «Fernand de Visscher» in Liège in September 2011. I am grateful to the participants of both these gatherings for their rich comments and suggestions.

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I hope to have been able to prove that its explanation offered in the most recent works on the subject cannot be accepted and so the case will finally rest, contrary the prophesy of Bernhard Kübler, who seems to have lost hope in any happy ending of the controversy, when he entitled his last piece on the question ‘*Επαφή* ohne Ende?’ and ended it with a radical, yet, methinks pessimistic: ‘ich schreib nicht aus Rechthaberei, sondern aus dem Drang, die Wahrheit zu erkennen und ihr zum Siege zu verhelfen.’

1. LATE ANTIQUE SLAVE-SALES

The Dioscorean act, written *transversa charta* on the *recto* of *P. Cairo Masp.* I 67120 (some lines of the *verso* as well as the date in Fr. 1+2 may belong to this document), dated to the Antinoopolitan period of the notary (567–568), records a purchase of two female slaves, Eulogia and Rhodous, a mother and her daughter. The text, written alongside some examples of Dioscoros’ literary output, is a very interesting specimen of the late ancient legal practice.¹ First and foremost, it is one of a very few extant texts of this genre. There are only three other deeds of slave sales dated to the Late Antiquity:

(1.) *SB* xxiv 15969 (Hermopolis, reign of Anasthiosios I), the sale of twelve year old slave Nepheros by soldiers Ophis and Josephis, to Menas. The slave’s provenance is mentioned: he purchased from Epiphianos son of Makarios the former actuarius of Mauri in Hermopolis.²

(2.) *P. Princ.* II 85 (6th/7th century), so poorly preserved, that it cannot really provide any useful information on the subject; the seller seems to have been called Ioannes and the slave might have been sold together with the *peculium*.

(3.) *SB* xviii 13173 (AD 629), transfer of a twelve year old ‘Moorish’ slave girl Atalous *alias* Eutychia by the professional slave traders Patherouthis

¹ See the pictorial documentation at < http://www.misha.fr/papyrus_bipab/pages_html/P_Cair_Masp_I_67120.html>. For the edition and commentary on literary pieces on the same papyrus, cf. J.-L. FOURNET, *Hellénisme dans l’Égypte du vie siècle: la bibliothèque et l’œuvre de Dioscore d’Aphrodité*, Le Caire 1999 (*MIFAO* cxv), IV 14 (p. 404–405 and 556–564); IV 15 (pp. 407 and 564–566); IV 21–22 (pp. 418–419 and 595–599).

² Francisca A. J. HOOGENDIJK, ‘Byzantinischer Sklavenkauf’, *APF* 42 (1996), pp. 225–234 with fig. 36–37.

and Anatolios of Hermopolis, to Isidora; the girl had been acquired from the slave merchants 'of Ethiopians'.³

The reasons for such a decline of documentation, especially as compared to the previous period,⁴ cannot be ascertained. There is obviously the well-known drop-down in the number of the papyri from the 5th century and its later fluctuations, but it was also suggested by Itzhak Fikhman that there may simply have been no need for such documents as the use of slave-work in the Egyptian economy had been replaced by the labour of serfs.⁵ Roger S. Bagnall, adopting this view with some caution, pointed out that the place of slaves among the Egyptian workforce had never been particularly important.⁶ This statement gains a sound economical explanation in a recent study by Walter Scheidel. Hiring free labour seems to have been much more economically advantageous than keeping and using one's own slaves.⁷

And thus the exceptionality of the document makes worth studying its content, especially as there is only one more that post-dates the attempts at codification of the law by the emperor Justinian. The state of the conservation of the papyrus, albeit far from perfect, allows for reconstruction of the clauses typical for this type of deed, most notably warranties

³ R. H. PIERCE, 'A Sale of an Alodian Slave Girl: A Reexamination of Papyrus Strassburg Inv. 1404', *Symb. Oslonenses* 70 (1995), pp. 148–166, first published by F. PREISIGKE, 'Ein Sklavenkauf des 6. Jahrhunderts: P. gr. Str. Inv. Nr. 1404', *APF* 3 (1906), pp. 415–424.

⁴ For the general and most recent overview of the problem see J. A. STRAUS, *Lachat et la vente des esclaves dans l'Égypte romaine. Contribution papyrologique à l'étude de l'esclavage dans une province orientale de l'Empire romain*, München 2004 (*APF Beiheft* XIV). A comprehensive overview of the documents in IDEM, 'Liste commentée des contrats de vente d'esclaves passés en Égypte aux époques grecque, romaine et byzantine', *ZPE* 131 (2000), pp. 135–144.

⁵ I. F. FIKHMAN, 'Slaves in Byzantine Oxyrhynchus', *PapCongr.* XIII, pp. 117–124 (= Andrea JÖRDENS [ed.], *Wirtschaft und Gesellschaft im spätantiken Ägypten. Kleine Schriften Itzhak F. Fikhman*, Stuttgart 2006 [*Historia. Einzelschriften* CXCI], pp. 110–117).

⁶ Cf. R. S. BAGNALL, 'Slavery and Society in Late Roman Egypt', [in:] B. HALPERN & Deborah W. HOBSON (ed.), *Law, Politics and Society in the Ancient Mediterranean World*, Sheffield 1993, pp. 220–240, at 222–227 (= IDEM, *Later Roman Egypt: Society, Religion, Economy and Administration*, Aldershot 2003 (*Collected Studies Series* DCLLVIII), article 1. Cf. on this issue as well HOOGENDIJK, 'Byzantinischer Sklavenkauf' (cit. n. 2), p. 226 n. 4.

⁷ W. SCHNEIDEL, 'Real Slave Prices' and the Relative Cost of Slave Labour in the Graeco-Roman World', *Ancient Society* 35 (2005), pp. 1–17, conclusion at pp. 16–17.

for the possible latent defects. And these clauses compared to their contemporary counterparts and to the earlier legal practice are the chief argument of the present paper.

2. P. CAIRO MASP. I 67120

Before we proceed with their detailed analysis, let us have a closer look at *P. Cairo Masp. I 67120*. It will allow us to get acquainted with this document type, and as no translation of the deed has been published so far, I gather it will also be useful to provide one.

β[ασιλείας καὶ ὑπατείας τοῦ θειοτάτου ἡμῶν δεσ]πότηουλαΐτου [Ἰο]υσ-
τίνου τοῦ αἰ[ωνίου Αὐγούστου]
Αὐτο[κράτορος -ca. ?-]

?? *lines missing*

προπρ[ια]ταρίαν ?, μὴ προυποκει[μένας] οἱ [δήποτε]
ὀφειλῆ μὴ τέ συναλλάγματι ἢ πράγματι ἢ οἶα δήποτε ἀφορμῆ καὶ σκῆψι,
ἀλλ' οὔσας τὰς εἰρημένας δύο θεραπενίδας Εὐλογίαν τε καὶ τὴν ταύτης
4 θυγατέρα Ῥοδοῦν οἰκογενεῖς καὶ εὐτάκτης διαθέσεως καὶ καθαρᾶς
προαιρέσεως, ἃς ὑμῖν πέπρακα καλῆ καὶ πιστῆ αἰρέσει, δίχα κρυπτοῦ
πάθους καὶ ἱερᾶς νόσου καὶ σινοσίας καὶ ἐπαφῆς, ἀδράστως ὑπουργούσας
καὶ ἀρραδιουργήτως,
ὥστε ὑμᾶς τοὺς περὶ τὸν λαμπρότατον καὶ ἀγοραστήν τούτων Ἰωάννην
8 τὸν εἰρημένον τρακτευτήν, καὶ τοὺς σοὺς μετὰ σέ κληρονόμους καὶ δια-
δόχ[ους]
καὶ διακατόχους τῶν προωνομασθειῶν δύο δουλίδων κρατεῖν
καὶ κυριεύειν καὶ δεσπόζειν ἀπὸ τοῦ νῦν ἐπὶ τὸν παντελῆ ἅπαντα χρόνον,
καὶ ἐλάσαι αὐτὰς καὶ ἀπαγαγεῖν εἰς δουλικὸν ζυγὸν [ύ]φ' ὑμᾶς αἰεί ποτε,
καθ' ὃν
12 ἂν βουλευθῆτε τρόπον, ἐμῶ κινδύνῳ καὶ πόρῳ τῆς παντοίας μου
ὑποστάσεως

γενικῶς καὶ ἰδικῶς, πλήρει τύπῳ κρατουμένῳ καὶ ἐνεχομένῳ τῶ -----

?? lines missing

Verso⁸

1a [] εἰς πρὸς τοῦτον
καὶ ὁμολογημάτων ἐπερωτηθεὶς ὡ[μο]λόγησα ταῦθ' οὕτως ἔχειν δ[ώσειν]
1H ποιεῖν φυλάττειν εἰς πέρας ἄγειν ἄ[π]έλν[σ]α' (an encomium starts here)
2A [εἰσὶν] οἱ μάρτυρες τῆς πράσεως Ἰεζε[κι]ήλ (καὶ) Φιλήμων εκφλ(?) (καὶ)
Ἀχιλλεὺς σιγγ(ουλάριος)⁹

3. θεραπευίδας || 4. εὐτάκτου || 6. corr. from ἀδραστου || 9. ροονομασθεισῶν || v2. corr. from φυλαξαι

During the consulship and reign of our Lord Flavius Iustinus the Eternal August.

[I declare to have sold to you according to the whole?]¹⁰ proprietary power and not subjected previously to any other debt or contract or deed or burden or claim but being declared two female slaves, Eulogia and her daughter Rhodus, born-at-home and of ordered behaviour and pure conduct whom I have sold to you in good faith and will, without hidden illness and epilepsy and vice and epaphe, laborious without inclination to run away and not dishonestly¹¹ and so, by you, by the illustrious purchaser Ioannes, the said finance official, and by your – after you – heirs and successors and praetorian heirs the above-named two slave-girls may be governed and mastered and empowered from now till the end of times; and to drive them and to lead them to the slave-fate by you for ever, in what-

⁸ One has to remember that neither the stipulatory clause on the *verso*, notwithstanding its mentioning a *praxis*, nor the date preserved in Frag. 1+2 belong with certainty to the deed of sale read in *recto*. Yet the editor had no doubts as to this attribution (see comm. *ad h. l.*).

⁹ Line 2a: Added in smaller letters between the already written lines 1 and 2.

¹⁰ The translation follows a tentative reconstruction of the immediately preceding lines by Jean MASPERO: [ὁμολογῶ – πεπρακέναι σοι – κατὰ πᾶσαν ἐξουσίαν]

¹¹ I choose the meaning suggested by the *LSJ*, as the adverb seems rather to refer to the act of selling and not to the slave's characters (*contra* PRESIGKE, *WB*, *s.v.* 'ohne Neigung zum Leichtsinne' – without inclination to levity).

ever way you may want, on my risk and under mortgage of my whole property, the inherited one and my own, in every way mortgaged and obliged to....

Verso:

and to all, that is agreed, having been asked, I have agreed, in this way to have and to give and to do and to warrant and to fulfil till the limits – I have destroyed?

And the witnesses of the act are Jezechiel and Philemon ekphal() and Achilleus singularius.

Despite the loss of large text portions at its beginning and end, we may still establish with some certainty that it follows the format typical for the genre. It must have started with the date, identification of the parties,¹² specification of the object of the sale and the price agreed.¹³ The final part of this section, actually preserved in *P. Cairo Masp.* I 67120, underlines the seller's free will to enter into agreement. Our attention is drawn by the extraordinary Latinism *προπρο[ιαι]ταρίαν*: perhaps an example of Dioscoros' show-off of his legal skills. The next segment comprises the description of the slaves sold, and it also plays role of the warranty clause. Finally, the full rights of the purchaser and his successors are elaborately described in the way typical for the late Byzantine documents (one may compare meticulous lists of the rights of the purchasers in the deeds transferring real estates).¹⁴ A typical document of the type con-

¹² Cf. *SB* xxiv 15969 and xviii 13173 as well as the introductions to both of them.

¹³ There is no indication that would allow us any guess at the approximation of the price agreed upon in our case. In *SB* xxiv 15969 eight golden solidi is paid for a twelve-years old male slave, and *SB* xviii 13173 has got four golden solidi for a twelve-years old girl, so considering we are dealing with a sale of an adult woman with her infant we may expect the sum to be somewhat greater. For the overview of the problem for the earlier period see, SCHNEIDEL, 'Real Slave Prices' (cit. n. 7), pp. 1–17.

¹⁴ See for instance the description of property rights in *P. Duh.* 30–31 or much earlier, but regarding, slaves *P. Freih.* II 8 (? , after 20 February AD 144), ll. 15–16: *κρατέιν αὐτῶν καὶ {κυ}κυριεύειν καὶ ἐξουσίαν ἔχειν ἑτέροις πωλεῖν ἢ καὶ διοικεῖν καὶ ἐπιτελεῖν περὶ αὐτῶν ὡς ἂν εἰαν αἰρήται οἰκονομίας ἀνεμπόδιστως* – '(so she may) own them and be master of them, and have them in (her) power, and let them out to the others or administer them and control them according the management she chooses unhindered'.

cludes with the seller's renouncement of claims to the slave sold and a guarantee under general hypothec not to get involved with slave again. The whole contract would usually be crowned by a penalty clause and a stipulation.

3. WARRANTIES FOR THE DEFECTS

Let us now turn to the warranty clause. The fragment in question, lines 4 though 6, stipulates that the slaves are 'sold in good faith' (literary: 'to the good and faithful taking') in proper conditions and 'without hidden illness and epilepsy, and vice, and *epaphe*, laborious without inclination to run away and not dishonestly'.

The formulation *καλῆ καὶ πιστῆ αἰρέσει* (the corresponding part of *SB* xxiv 15963, l. 13 has only got *κ[α]λῆ αἰρέσει*)¹⁵ is not a mere figure of speech, but involves important legal consequences. It most probably entails the application of the Roman law of sale to the contract. Let us recall that its standard form, upheld and confirmed by the Justinianic codification, foresaw vendor's liability for defects not only in the obvious case of his default of good faith, but also encumbered him with liability for latent defects of which the vendor did not, or could even not, know.

This principle was first introduced by the Edict of Curule Aediles, and its application was originally restricted to the cases in which the sale took place at a market: the area of the jurisdictional competence of these magistrates. However, by the end of the classical period (roughly mid-third

¹⁵ HOOGENDIJK, 'Byzantinischer Sklavenkauf' (cit. n. 2), p. 232 (comm. to line 13), tentatively suggests this expression might refer to the slave, promising his proper attitude ('mit guter Gesinnung'). As an argument therefor the editor recalls *P. Abinn.* 64, ll. 14-15 (= *MChbr.* 270 = *P. Lond.* II 251, p. 317, Fayum, AD 337-350). This is not quite exact, the editors of the Archive of Abbineus render, and rightly so in my humble opinion, the expression *διποκω* (l. *διπλω*) *χρήμαται πιστούς καὶ ἀδράστους καὶ || καλες ἐρεσις* (l. *καλῆ αἰρέσει*) *καὶ ὄντας ἐκτὸς ἱερᾶς νόσ[ο]υ καὶ ἐπ[α]φῆς κτλ.* with '(sold) *under honest intention* being faithful, not given to running away, and under guarantee of twofold return of the price, being free from leprosy and epilepsy'. I suppose therefore that HOOGENDIJK's final opting for the typical understanding of the clause, is more correct especially as it is supported by other evidence.

century AD), its scope was extended to all the contracts of sale. The provisions of the Edict, which expressly mentioned a number of vices,¹⁶ must have been triggered by the legal practice, by the specific clauses added to the standard contracts of sale. If a defect mentioned in the Edict manifested in the slave sold, the buyer was entitled to sue for either rescission of the contract (he had to return the purchased slave and sue for the price paid with *actio redhibitoria*), or reduction of the price (by means of *actio quanti minoris*).¹⁷ These provisions of the Edict seem to have influenced in turn the format of documents and the practice of slave-sales made out of markets. And thus we encounter the Graeco-Roman deeds not only furnished with the same catalogue of defects, but also with the express mention of the Edict itself.¹⁸ In two acts there is a further indication that the

¹⁶ D. 21.1.1.1 (Ulpianus libro primo *ad edictum aedilium curulium*):

Aiunt aediles: Qui mancipia vendunt certiores faciant emptores, quid morbi vitiique cuique sit, quis fugitivus errove sit noxave solutus non sit: eademque omnia, cum ea mancipia veniunt, palam recte pronuntiant. Quodsi mancipium adversus ea venisset, sive adversus quod dictum promissumve fuerit cum veniret, fuisset, quod eius praestari oportere dicitur: emptori omnibusque ad quos ea res pertinet iudicium dabimus, ut id mancipium redhibeatur.

The Aediles state ‘whoever shall sell slaves, shall make the buyers aware of what there may be infirm or faulty in them, if (the slave) is prone to run-away, or truant or if he has not been released from noxal liability. Let it all be clearly declared, at the moment these slaves are sold. If the slave be sold contrary to these (provisions) or be not in compliance with what may have been said or promised at the time of the sale, because of which one it would be held what ought to be carried out: we shall grant an action to the buyer and to all who may have interest, to rescind the slave-(sale)’.

¹⁷ There is abundant scholarship on the subject, from recent works see, above all, Éva JAKAB, *Praedicere und. cavere beim Marktkauf. Sachmängel im griechischen und. römischen Recht*, München 1997 (*Münchener Beiträge zur Papyrusforschung und. antiken Rechtsgeschichte* LXXXVII), pp. 125–152, esp. at pp. 129–131 with older literature and L. GAROFALO, *Studi sull’azione redibitoria*, Padova 2000, chapter I & II as well as on a more specific point but offering a very good overview of the problem and the literature D. CLOUD, ‘The *Actio Redhibitoria*: Puzzles and Tensions over Mental Defects and faults of Character from the Second Century BC to the Sixth Century AD’, [in:] J. F. DRINKWATER & R. W. B. SALWAY (ed.), *Wolf Liebeschuetz Reflected: Essays Presented by Colleagues, Friends and Pupils*, London 2007 (*Bulletin of the Institute of Classical Studies*, Supplement XCI), pp. 67–76.

¹⁸ See, for instance, *TPSulp.* 43 (*TPomp.* 98 + 143, Puteoli, 21 August AD 38), tab. II, pag. 3, *scriptura interior*: [solutum] esse fugit[il]yom || [err]lonem [non] esse [et] cetera || in edicto aed[ilium] cur[ulium] [q]uae hujusque || an[n]i || scripta comprehensaque || sun[t]’ (cf. JAKAB,

sale was made *bonis conditionibus* – ‘under good terms’. This expression seems to have covered vendor’s assuming liability both on the basis of the Edict, for the defects therein specified, and on the basis of the good-faith nature of the contract for any other possible breaches of the promises made.¹⁹ The legal dogmatic actually knew this contractual clause and took interest in its construction:²⁰

D. 21.1.54 (Papinianus, 4 *responsorum*): actioni redhibitoriae non est locus, si mancipium bonis condicionibus emptum fuerit, quod ante non fuerat.

no action for rescission is to be sought, if a slave, bought under good conditions, who had not run away before, ran away.

The seller’s explicit assumption of liability for all defects of a slave does not trigger an action, if the slave becomes *fugitivus* only after the contract was made. Similar problem was dealt with in a *responsum* by Paulus:

Praedicere [cit. n. 17], pp. 283–285); *P. Lond.* II 229, p. XXI (= *FIRA* III 132 = *ChLa* III 200 = *CPL* 120 = *Jur. Pap.* 37), ll. 6–7 (Syria, Seleukia Pieria, 26 May AD 166): ‘eum puerum || sanum esse ex edicto’; *BGU* III 887 (= *FIRA* III 133 = *MChr.* 272 = *CPJud.* III 490), ll. 4–7 [= ll. 15–18] (Side, 8 July AD 151): ... ὑγιή ἐκ διατάγματος, likewise in *P. Turner* 22, l. 4 [= l. 19] (Side, AD 141). For further commentary on these papyri, see below, pp. 242–243.

TH. 60 (1st cent. AD – on this document, cf. JAKAB, *Praedicere* [cit. n. 17], pp. 281–283 with lit.), mentions instead the edict as the source of liability, foreseeing the compensation ‘ex [i]mp[er]io aedil[itiu]m curulium ita uti adolet || [h]oc anno de macipis emundis || [vendu]ndis cauta comprehensaque’.

¹⁹ See L. MITTEIS, *Grundzüge*, Leipzig – Berlin 1912, p. 194, in reference to *BGU* I 316 (= *MChr.* 271 = *FIRA* III 135, *Ascalon*, 12 October AD 359), which has got καλή αἰρέσει in line 5; O. EGER, ‘Eine Wachstafel aus Ravenna aus dem zweiten Jahrhundert nach Christus’, *ZRG RA* 42 (1925), pp. 452–468, at p. 458; JAKAB, *Praedicere* [cit. n. 17], pp. 187–196, at p. 196.

The documents are *P. Lond.* II 229, p. XXI (= *FIRA* III 132 = *ChLa* III 200 = *CPL* 120 = *Jur. Pap.* 37, Seleukia Prieria, AD 166), ll. 15–16: ‘tradedisse ei mancipium s(upra) s(criptum) Eutyche bonis conditionibus’, and *FIRA* III 134 (= *SB* III 6304, republished as no. 9 in J. KRAMER, *Vulgärlateinische Alltagsdokumente auf Papyri, Ostraka, Täfelchen und Inschriften*, Berlin – New York 2007 [APF Beiheft XXI], ca AD 151, Ravenna), a curious deed written in Latin with Greek letters, tab. III ll. 7–8: ... κουαμ ει δουπλα οπτιμς κον||δικτιωνιβου βενδιιδι{τ} ετ τραδιδι ... ‘whom (i.e. the slave-girl, Marmaria – *J.U.*) I have sold under best conditions and transferred to him’. It is true that in the last case the acts of sale were not secured by a stipulation, one could not then expect a claim based on *actio ex stipulato*.

²⁰ For a detailed analysis of these passages, see JAKAB, *Praedicere* [cit. n. 17], pp. 189–190.

D. 21.1.58.2 (Paulus, 5 *responsorum*): servum dupla emi, qui rebus ablatis fugit: mox inventus praesentibus honestis viris interrogatus, an et in domo venditoris fugisset, respondit fugisse. Quaero, an standum sit responso servi. Paulus respondit: si ei alia indicia prioris fugae non deficient, tunc etiam servi responso credendum.

I bought a slave in double (sale), he, having taken things, ran away. He was soon found and investigated in the presence of some honest men whether he had run away from the house of the seller, to which he responded affirmatively. I ask whether one should rely on the slave's answer. Paul responded: 'If other proofs of the previous escape do not lack, then one shall trust the slave's answer.'

Dupla emere – 'double purchase' of the slave must refer to the double penalty stipulation, by which the seller assumed the duty to pay damages equalling to two-fold price of the slave were the terms of the contract infringed. Thanks to some Roman evidence from Pompei and Herculanium Giuseppe Camodeca is able to reconstruct such promise: 'mancipium, quo de agitur, sanum esse, furtis noxaeque solutum esse, fugitivum erronem non esse et cetera quae in edicto aedilium curulium huius anni scripta comprehensaque sunt recte praestari et duplam pecuniam ex formula ita uti adsolet, si quis eum puerum partemve quam eius evicerit, duplam recte dari spondes?'²¹ Both subordinated clauses, the one promis-

²¹ See, CAMODECA, *TPSulp.*, pp. 115–116, and IDEM, *L'archivio puteolano dei Sulpici*, Napoli 1992, pp. 150–151, commenting *TPSulp.* 43 (cit. n. 18) and *TPSulp.* 42; 44. The double stipulation formula was inserted at the end of the Aedilician edict, cf. O. LENEL, *Das Edictum Perpetuum*, Leipzig 1927 (3 ed.), pp. 562–563.

The interpretation of *TPSulp.* 43 has been contested by JAKAB, *Praedicere* [cit. n. 17], pp. 284, who doubts CAMODECA's restoration of *duplam* in line 5. The Hungarian scholar notices that the tablet has no mention of the typical eviction clause and interprets '*ex formula*' as referring to the trial formula based on the Edict. Naturally she expects only simple damages and suggests restoration *tantam*. Yet Camodeca's restoration is doubtlessly correct: it is confirmed by the parallel documents (*TH.* 62 and *TPSulp.* 42 and 44, Camodeca reconstructs further *duplam* in *TH.* 60, l. 9). And thus Camodeca's interpretation of the '*formula*' as referring to the stipulation formula inserted in the Edict remains the only possibility. Concordantly with Jakab's opinion one has to understand 'double' as referring only to the stipulation for legal defects, physical ones are covered with '*recte praestari*'. See further, CAMODECA, *TPSulp.*, p. 115 as well as IDEM, 'Tabulae Herculenses: riedizioni

ing proper condition of the slave, and the one meditating eviction (on this aspect of the deed, see further, pp. 246–247), put in *accusativus cum infinitivo* depend on the same verb ‘to stipulate’, but only infringement of the latter entails double penalty.²²

It is likely that the very same problem is to be found in a post-classical compendium of juridical responses of Paulus, *Pauli Sententiae*. It is worth comparing the beginning of the passage to notice the tiny divergence in the formulation, which will conduct us back to our late antique papyrus’ ‘καλῆ καὶ πιστῇ αἰρέσει’. *PSent.* 2.17.11 meditates an escape of ‘a slave bought in good faith’.²³ If *bona fide compratus* is a synonym of *dupla emere* and of *bonis/optimis conditionibus vendere*, then it becomes obvious that our papyrus – and *SB* xxiv 15963 alike – conveys under ‘handsome and faithful taking’ the full liability of the vendor for all the defects.

The legal practice knew a different way of regulating these matters, too.²⁴ The Greek documents from the times of Roman rule in Egypt provide that the slave in question will be delivered τούτων τοιοῦτον ἀναπόριφον πλὴν ἱερᾶς νόσου καὶ επαφῆς – ‘as he is, irreturnable but for the case of epilepsy and *epaphe*’.²⁵ This formulation had the exact of opposite

delle emptiones di schiavi (*TH* 59–62), [in:] U. MANTHE & Ch. KRAMPE, *Quaestiones iuris. Festschrift für Joseph Georg Wolf zum 70. Geburtstag*, Berlin 2000, pp. 53–76, at pp. 61–63, and the overview of the warranty clauses at pp. 74–76.

It is obvious the parties were not confined to the edictal solution. *TH* 59 (before AD 63/64) and *TH* 61 (8 May AD 63) foresaw one-fold penalty, Paulus in *D.* 21.2.56 pr. (2 *ad edictum aedilium curulium*) positively meditates the effects of warranty stipulations made for three or four-fold value of the slave sold.

²² See *supra* n. 21 and also *D.* 21.2.32 pr. – Ulpianus 46 *ad Sabinum*.

²³ JAKAB, *Praedicere* [cit. n. 17], p. 190, note 115. *PSent.* 2.17.11: ‘servus bona fide compratus si ex veteri vitio fugerit, non tantum pretium dominus sed et ea quae per fugam abstulit reddere cogitur’ – ‘if a slave bought in good faith has run away due to the old defect, (his former) master is compelled to return not only the price, but also what (the slave) has taken because of the escape’.

²⁴ Which is admitted by Roman law as well: *D.* 2.14.31 (Ulpianus, 1 *ed. aed. cur.*): ‘Pacisci contra edictum aedilium omnimodo licet, sive in ipso negotio venditionis gerendo convenisset, sive postea’ – ‘it is allowed to make a pact against (norms of) the Aedilician edict, be it while making the transaction of sale, be it later.’ On the fragment see JAKAB, *Praedicere* [cit. n. 17], p. 186–187 with lit.

²⁵ See, for instance, *CPR* VIII 18, l. 4 (Oxyrynchos, 3rd cent. AD); Similar formulation:

consequences from the one just described. It simply excluded vendor's liability for any latent defect of the thing sold, but for the expressively mentioned 'holy illness' and 'epaphe'. In some documents, interestingly all involving Romans, instead of *τοῦτον τοιοῦτον ἀναπόριφον*, we find the information that the purchase is made for 'simple (single) price': *ἀπλῶ χρήματι*, followed by the exclusion of epilepsy and *epaphe*.²⁶ It seems the latter have the same the same practical meaning as the former: the conditions that these contracts offer are thus logically different from these cases in which the parties agree upon 'double sale', or 'sale under good conditions', excluding hence any type of warranty.²⁷ These contractual solutions found their way to the jurisprudential discussion:²⁸

D. 21.1.48.8 (Pomponius libro 23 *ad Sabinum*): *simpliarum venditionum causa ne sit redhibitio, in usu est.*

BGU III 937, l. II (Hera, AD 250); *P. Col.* VIII 222, l. 21 (= *SB* v 7533, Oxyrynchos, AD 160/161), *P. Col.* VIII 222, col. II, l. 50; *P. Oxy.* XXXVI 2777, l. 24 (Oxyrynchos, AD 212?); *P. Stras.* VI 505, l. 18 (Tebtynis, AD 108–116); cf., JAKAB, *Praedicere* [cit. n. 17], pp. 200–202 and 210–212.

²⁶ A Roman lady in *P. Col.* VIII 219 (Alexandria, 13 of July 140 AD), ll. 9–10: *ἀπλῶ χρήματι καὶ οὐλλοσης ἐκτὸς ἱερᾶς νόσου καὶ ἐπαφῆς*; a Roman soldier, Marias Barsimes, in *P. Oxy.* XLI 2951 (26 May AD 267), l. 3: 'si]mplam pecuniam ta[ntam' and ll. 23–23 (in the Greek subscription); two sisters and an adoptive brother of the veteran Caius Iulius Gemellus, who sell to each other the inherited shares in two Alexandrine slaves: *P. Freib.* II 8 (?), after 20 February 144 AD), l. 12–13: *ἀπλῶ χρήματι καὶ ὄντω(ν) ἢ ἐκτὸς ἱερᾶς νόσου καὶ ἐπαφῆς* – see also J. PARSCH's *comm. ad h. l.* (pp. 28–30); *P. Ryl.* IV 709 (?), ca AD 294–296), l. 6: [-ca.-? -] *ὠνουμένω ἀπ[λῶ] χρήματι ου[- -]*. The same expression occurs as well in a report of trial procedure with some Romans involved: *P. Cair. Preis.* I (Fayum, 2nd cent. AD), l. 14, but the text is too fragmentary to ascertain the exact circumstances. The case-matter may, however, have been a sale of a slave.

One could perhaps advance the hypothesis, that 'single sale' is the Roman formulary transposition of the Greek 'sale of the slave as he/she is', see similar view of F. PRINGSHEIM, *The Greek Law of Sale*, Weimar 1950, p. 486.

²⁷ See further, JAKAB, *Praedicere* [cit. n. 17], pp. 200–202 and 210–212 as well PRINGSHEIM, *The Greek Law* (cit. n. 26), pp. 483–487. The original editor of *P. Col.* VIII 219, J. F. GILLIAN, understands the clause to refer to the vendor's liability in case of eviction. This, however, in view of the other documents that have this clause and therein cited Pompeian tablets, does not seem to be well-founded ('The Sale of a Slave through a Greek *Diploma*', *JfjP* 16/17 [1971], pp. 63–70, comm. to l. 9.

²⁸ Which does not surprise, given the fact that it, so far, has only appeared in contracts in which Romans were the parties (cf. *supra*, n. 26).

it is customary not to grant the action for rescission (of the contract of sale) on account of simple sales.²⁹

Prima facie, the parties to the latest of the late antique Greek deeds of slave-sale opted for this contractual regime for their agreement: SB 13173, ll. 21–22: κατὰ τήνδε τήν ἀπλήν ἢ ἔγγραφον ὠνήν, yet the second part of the clause, unlike its earlier counterparts, makes the seller practically liable for all types of physical and legal vices:

lines 28–34 (...) μὴ προῦποκειμ(ένην) ἢ οἷω δῆποτε κεφ[αλαίω] καὶ πράγματι καὶ συναλλάγματι ἢ καὶ οἷω δῆποτε σίνει π[α]λ[αιῶ] καὶ ἐπαφῶς καὶ ῥαπίσματος ἢ καὶ κρυπτοῦ πάθους, ἀλλ'ἐλευθέραν οὔσαν ἀπὸ ἢ παντὸς κεφαλαίου καὶ πρ[ά]γματος καὶ συναλλάγματος ἢ καὶ οἴου δῆποτε σ[ίνους] παλαιούς καὶ ἐπαφῶς καὶ ῥαπίσμ(α)τ(ος) ἢ καὶ οἴου δῆποτε κρ[υπτοῦ πά]θους, κτλ.

and she is not being previously mortgaged for whatever title or deed or contract and (branded) with any old defect and *epaphe* and whipping and hidden illness, but she is free from whatever type of title, deed and contract and old defects and *epaphe* and whipping and hidden illness whatsoever, *etc.*³⁰

It is probable, therefore, that what the parties actually meant here was not the exclusion of the liability for the defects but setting the penalty for default to the terms at one-fold of the price and not the two-fold as it was customary.

Evidently, the practice of slave sales in the ancient Mediterranean (or more precisely its oriental part) developed a binomial system of management of liability for defaults in slave sold, one with a very limited liability of the seller (present chiefly in Greek documents in Egypt), and one with an extensive responsibility for vice, originating in the native Roman

²⁹ See JAKAB, *Praedicere* [cit. n. 17], p. 187 and footnote 103 where she refers and rejects the doubtlessly wrong interpretation of the passage in the pandectistic literature. GAROFALO, *Studi* (cit. n. 17), in the chapter 11 on impossibility of rescission does not analyse this source, as he only considers material reasons which would prevent cancellation of the contract.

³⁰ On the meaning of the clause, see *infra*, sections 4 & 5.

practice and the Edict of the Aediles Curules. *P. Cairo Masp.* I 67120 seem to have been governed by the latter.³¹

4. EPAPHE

It is time now to turn to the second part of the clause. Until now I have deliberately left one Greek term untranslated, and it shall immediately become obvious why. The slave is sold

δίχα κρυπτοῦ πάθους καὶ ἱερᾶς νόσου ἄκαὶ σωσσίας' καὶ ἐπαφῆς, ἀδράστως ὑπουργούσας καὶ ἀρραδιουργήτως

without hidden illness and epilepsy and vice and *epaphe*, laborious without inclination to run away and not dishonestly.

This phrase swiftly brings about a recollection of the well known passages from the Edict of the Aediles: *quid morbi vitiiue cuique sit, quis fugitivus errove sit noxave solutus non sit*; also the expression οὔσας τὰς εἰρημένους – being declared, may be a reminiscence of the edictal obligation of *pronuntiare*.

Prima facie, there is a surplus in the Dioscorean formulation in respect to the well-known Edictal clause. Alongside inclination to play truant and hidden illnesses, holy illness, *i.e.* epilepsy and the mysterious *epaphe* are mentioned. The two contemporary counterparts provide us with a simi-

³¹ A further proof the longevity of both regimes is to be found in the *Syro-Roman Law Book*. §§ 35, 1–4 and 101 describe both ‘handsome taking’ (καλή αἴρεσις) and ‘simple/bad taking’ (ἀπλή ὀνή/κακή αἴρεσις): see on this point an extensive commentary by M. MEMMER, ‘Der “schöne Kauf” des “guten Sklaven”. Zum Sachenmängelrecht im Syrisch-römischen Rechtsbuch’, *ZRG RA* 107 (1990), pp. 1–45; as well as JAKAB, *Praedicere* [cit. n. 17], pp. 212–221; most recently: the edition of the *Syro-Roman Law-book* by W. SELB & H. KAUFHOLD, *Das syrisch-römische Rechtsbuch*, Wien 2002, Bd. III: Kommentar, pp. 96–97.

Just as we may expect, ‘single purchase’ makes it impossible to rescind the contract. The only exception would be provided by an attack of a daemon, whom the editors interpret as epilepsy recalling MEMMER, *ibidem*, pp. 14–16.

lar formulation.³² The mention of *morbus comitialis*, even if seemingly superfluous, does not present difficulties. A quick look at the dogmatic sources explains perfectly well its presence in the deeds.

D. 21.1.53 (Iavolenus libro primo *ex posterioribus Labeonis*): Qui tertiana aut quartana febris aut podagra vexarentur quive comitalem morbum haberent, ne quidem his diebus, quibus morbus vacaret, recte sani dicentur.

Iavolenus from the first book of the works of Labeo: these (slaves) who suffer from third day or fourth-day fever or gout or epilepsy are not to be considered properly healthy even on the days in which the illness does not appear.³³

The parties put it into the deed to be on the safe side and to expressly make a warranty against it because the legal theory had obviously doubts whether an illness attacking only for some time constituted a *morbus* in the sense of the Edict of the Aediles and hence allowed the claim for rescission or diminishment of the price.

But the latter term is of much more difficult understanding. A simple consultation of the *lexica* does not lead to the desired effect. Preisigke in

³² SB xxiv 15969.13–14: κ[α]λῆ αἰρέσει πιστὸν καὶ ἄδραστον ἐκτὸς ὄντα ἱερᾶς ν[όσου] καὶ σίνους καὶ ἐπαφῆς καὶ κρυπτοῦ πάθους καὶ συμπτώσεως δαίμονος; SB xviii 13173.21–22, 28–34: κατὰ τήνδε τὴν ἀπλὴν ἔγγραφον ὡνὴν ... μὴ προυποκειμ(ένην) οἰωδῆποτε κεφ[αλαίῳ] καὶ πράγματι καὶ συναλλάγματι καὶ οἰωδῆποτε σίνει π[α]λ[αίῳ] καὶ ἐπαφῆς καὶ ραπίσματος καὶ κρυπτοῦ πάθους, ἀλλ' ἔλευθέραν οὔσαν ἀπὸ παντὸς κεφαλαίου καὶ πρ[ά]γματος καὶ συναλλάγματος καὶ οἰουδήποτε σ[ίνους] παλαιοῦ καὶ ἐπαφῆς καὶ ραπίσμ(α)τ(ος) καὶ οἰουδήποτε κρ[υπτοῦ πά]θους,

³³ Cf. as well the Greek paraphrase, *Bas.* 19.10.53 Ὁ τριταίζων ἢ τεταρταίζων καὶ ὁ ποδαγρὸς καὶ δαμονιζόμενος οὔτε τὸν καιρὸν, ἐν ᾧ σχολάζουσιν, ὑγιαίνειν δοκοῦσι. – ‘those who suffer from third-day or fourth-day fever, or gout, or attacks of a daemon do not seem to be healthy even in the time in which they illnesses leave them in peace’.

The curious turn from epilepsy to the possession by a daemon, mental disease in the text simply shows that these two were associated (cf also the gospel context!), the same explains how the daemon found his way to the provisions of the *Syro-Roman Law Book* (§ 101.4: ‘wenn er aber in dem Sklaven oder der Sklavin einen Dämon findet, kann er zurückgeben und sein Geld nehmen’) and SB v 8007 (Hermopolis, 2nd half of the 4th cent. AD), l. 5: [πίστ]ι καὶ καλῆ αἰρέσει, πισ[τὴν κ]αὶ ἄδραστον οὔσαν ἐκτὸς [ἐ]ιερᾶς νόσου καὶ ἐπαφῆς [κ]αὶ ἀνεπίλημpton ἀπὸ δαίμονος.

his *Wörterbuch* gives ‘dinglicher Anspruch an eine Sache’, *LSJ* not without hesitation suggested ‘prob. *external claim*’ for the papyrological occurrences, but its most recent *Supplement* advises to change this definition to ‘perh. *skin-disease*’.³⁴ A further check of the earlier slave-sale contracts listed in the recent work by Jean Straus as well as a glimpse at a slightly earlier well-acclaimed book by Éva Jakab on market sales unearthed a huge scientific debate on the subject.³⁵ It turns out that the comprehension of the term in question is quite problematic. I shall now revise the standings taken by the scholarship and then – hopefully – prove that revisiting this question with the pretext of studying Dioscoros’ papers – was not entirely futile.

Epaphe first emerged in the scientific discussion with the publication of *P. Oxy.* 1 94 (= *MChr.* 267, AD 83, in the line 10) and *P. Oxy.* 95 (= *MChr.* 267, AD 129; in the line 20). In their translation of the latter document Grenfell and Hunt rendered this term – not without reservation – with ‘marks of punishment (?)’, being probably persuaded by the connotation ‘touch’ of the theme word ἀφή (cf. *LSJ*, s.v. 11). This view was criticized in the review of the first volume of the Oxyrynchus Papyri by Ulrich Wilamowitz von Möllendorf,³⁶ who suggested the meaning of the word be sought in the other sense of ἀφή, which especially in the biblical context may denote a outburst of a plague, sometimes of leprosy.³⁷ And hence he recommended *epaphe* be understood as *Aufsatz*, leprosy. This proposal seemed to be perfectly harmonious with the context in which the said word is found, alongside hidden illnesses and the holy disease, i.e. epilepsy, even if the use of the name *epaphe* for leprosy would be only restricted to these papyri.³⁸ We may also find it quite reasonable to exclude the first rendering *epaphe* by ‘marks’: after all the whole clause is about defects

³⁴ *LSJ* with *Revised Supplement*, Oxford 1996, s.v. ἐπαφή III.

³⁵ STRAUS, *Lichat* (cit. n. 4), p. 153, n. 282; and JAKAB, *Prædicere* (cit. n. 17), pp. 202–205 with n. 36 & 37. Straus entirely adopts and follows the views of Eva Jakab.

³⁶ U. WILLAMOWITZ VON MÖLLENDORF, rev. of *P. Oxy.* 1 in *Göttingische gelehrte Anzeiger* 1898, p. 683 (*non vidi*, cited after KÜBLER, *infra* n. 41 and PRINGSHEIM, *supra* n. 26).

³⁷ See *LSJ*, s.v. 11 8, and cf., e.g., *LXX Le* 13.2 and *Le* 14.34: ἀφή λέπρας.

³⁸ The regular names for the disease would be λεῦκαι, λέπρα, φοινικὴ νόσος, or ἐλεφαντίασις (cf. the sources cited *infra* in footnotes 52, 53, 54, 55 & 56).

undetectable at the moment of the sale! Following this suggestion the Dioscourioi of papyrology adopted the medical meaning publishing no. 263 in the second volume of *P. Oxy.* (21 April AD 77), without any further discussion of the point.

The next step in the debate was taken immediately after by Otto von Gradenwitz who commenting a second century slave sale, *BGU* I 193 (= *MChr.* 268, Fayum, AD 136), opted for ‘*manus injectio*’ as the equivalent of the mysterious *epaphe*.³⁹ This track was given by equalling ἐπ-ἀφάω with (*manum*) *in-icere*. This Roman legal term – which use in the context is rather misleading (one could hardly imagine the archaic Roman procedure be applied among Graeco-Egyptians) and seems therefore to have caused a bit of misperception among the non-lawyers⁴⁰ – should be understood as a legal seizure of the sold slave by a third party. Should such a thing happen, the purchaser was entitled to rescind the contract. And so the great controversy started parting the scholarship between the defenders of the medical meaning of *epaphe* and the partisans of its juridical explanation.

The latter party was championed by Bernhard Kübler who in three articles published in the 1st half of the passed century fiercely fought with the interpretation of *epaphe* as a malady.⁴¹ The legal significance offered in turn parted with the rigidly romanistic view of Gradenwitz: the term

³⁹ O. VON GRADENWITZ, *Einführung in der Papyrologie*, Leipzig, no. 5, p. 57 and 60 for the comm. This view was entirely adopted by M. J. BRY, *Essai sur la vente dans les papyrus gréco-égyptiens*, Paris 1909, pp. 298–301.

⁴⁰ See, e.g. Iza BIEŻUŃSKA-MAŁOWIST, *P Youtie* II 75, *comm. ad.* l. 5 and EADEM ‘Les esclaves nés dans la maison du maître (οἰκογενεῖς) et le travail des esclaves en Égypte romaine’, *StudClas* 3 (1961), p. 147–162 at p. 160.

⁴¹ B. KÜBLER, ‘Ἐπαφή’, *ZRG RA* 29 (1908), pp. 474–477; IDEM, ‘Nochmals Ἐπαφή’, *ibidem* 32 (1911), pp. 366–370 and, finally, ‘Ἐπαφή und kein Ende’, *ibidem* 60 (1940), pp. 226–230. The scholar (‘Ἐπαφή’ I, p. 477), quite sensibly decided for this very general expression. He pointed out that it would be wrong to understand it more narrowly as just ‘pledged’, ‘mortgaged’ or ‘indebted’ as these circumstances are already covered by the expression ἀνερχύραστος, ἀνεπιδάνειστος, καθαρὸς ἀπὸ παντὸς ὀφειλήματος present in some of the deeds (cf., e.g. *BGU* I 193 [= *MChr.* 268, Ptolemais Euergetis, after 26 October AD 136], II, l. 19 or *P. Mich.* v 264 [= 265, Arsinoites, 7 February AD 37], l. 19); see also IDEM, ‘Ἐπαφή’ 3, p. 227.

would generally denote slave's being free from any legal interference of any given third party.⁴²

Wilamowitz's intuition instead was taken further by Karl Sudhoff.⁴³ In a study of two hitherto unidentified illnesses present in neo-Assyrian slave-contracts, the founding father of the history of medicine classified *bennu* and *šibtu*, which occurrence allowed rescission of the sale contract within hundred days from its conclusion, as epilepsy and leprosy, respectively. One of his key-arguments was the striking resemblance of the pair to *ἰερά νόσος καὶ ἐπαφή* known from the Greek papyri. The view was entirely shared by Paul Koschaker.⁴⁴

The ranks of the supporters of the medical hypothesis were later most notably joined by Fritz Pringsheim,⁴⁵ and the most recent scholarship on the subject.⁴⁶

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⁴² Or in Josef PARTSCH's formulation – perhaps again too narrowly Romanistic – 'Vindikationshandlung': *P. Freib.* 11 (*Juristische Texte der römischen Zeit*, Heidelberg 1916 [*Sitzungsberichte der Heidelberger Akademie der Wissenschaften*. Philosoph.-hist. Kl. 10]), p. 30. The scholar used as his chief argument the interpretation of *P. Strass.* 79. A bit surprisingly at the same time PARTSCH conceded the medical meaning of *epapbe* for *SB XVIII* 13173, because the term was listed there under 'Gebresten', defects. He blamed for that slip in application the Byzantine notaries who were not to understand anymore the meaning of the contractual terms of the earlier period. I do not think the position of *epapbe* in the warranty clause provides a really convincing argument to identify it with a disease, see *infra*, pp. 245–246.

Kübler's view was then entirely adopted against Sudhoff by A. BERGER, *Die Strafklauseln in den Papyrusurkunden*, Leipzig, p. 140 with n. 4 and F. PREISIGKE, *Zum Papyrus Eitrem Nr. 5 (eine Bankurkunde aus römischer Zeit)*, Heidelberg 1916 (*Sitzungsberichte der Heidelberger Akademie* 1916, Abh. 3), p. 7.

⁴³ K. SUDHOFF, 'Die Krankheiten *bennu* und *šibtu* der babylonisch-assyrischen Rechtsurkunden', *Achiv für Geschichte der Medizin* 4 (1910/11), pp. 353–369, see in particular, pp. 363–365; *idem*, 'Ἐπαφή, der Ausatz?', *ZRG RA* 30 (1909), pp. 406–409.

⁴⁴ P. KOSCHAKER, *Babylonisch-Assyrisches Burschaftsrecht: Beitrag zur Lehre von Schuld und Haftung*, Leipzig 1911 (reprint Scientia Aalen 1966), pp. 246–247.

⁴⁵ PRINGSHEIM, *The Greek Law* (cit. n. 26), pp. 465–470 and 486.

⁴⁶ JAKAB, *Praedicere* (cit. n. 17), pp. 202–205 with n. 36 & 37 and STRAUS, *Lachat* (cit. n. 4), p. 153, n. 282.

I will now overview the chief arguments of both parties and later try to ponder some additional points that may elucidate the meaning of *epaphe* at least in the few late Byzantine papyri.

We may immediately observe that the final point of verification of Sudhoff–Koschaker’s theory foresees a very important assumption: both authors expected the structure of the warranty clauses in Egypt to be owed to the influence of the Mesopotamian format of slave-sale. *Prima facie*, such statement seems to be supported by the apparent oriental origin of the fatal disease itself.

At first glance, this may be true, even if the genealogy of leprosy in *oikumene* is by no mean certain.⁴⁷ The whole case is rather complex, above all because the ancients most probably did not differentiate between Hanson’s disease and other not so fatal skin maladies – just like the known passages from the Bible most probably refer not the physical but spiritual impurity.⁴⁸ The plague seems, however, to have come from the East.

Gmrek accepts the view that the disease ‘was known in Mesopotamia as early as 2nd millenium BC.’ Furthermore, he follows Sudhoff’s identification of *sibtu* with leprosy, admitting, however, that the chief argument in favour of such an assumption is ‘the parallelism of expressions used in sim-

⁴⁷ See K. MANCHESTER, ‘Leprosy and Tuberculosis in Antiquity. An Interpretation’, *Medical History* 28 (1984), pp. 162–173, at 168 and the literature there in quoted. M. D. GMREK, *Diseases in the Ancient Greek World*, Baltimore – London 1989, chapter VI: leprosy, pp. 152–176, in this context esp. p. 155 where he underlines the difficulty of the interpretation because of the lack of examination material. For the confusion and ambiguities in ancient sources on leprosy, especially in Galen see also L. DEMAÏTRE, *Leprosy in Premodern Medicine: a Malady of the Whole Body*, Baltimore 2007, chapter 3: ‘The Many Labels of Leprosy’, esp. pp. 85–87. Most recently on the subject see the paper by J. GASCOU, ‘Léléphantiasis en Égypte gréco-romain’, [in:] *Mélanges Jean-Pierre Sodini*, Paris 2005 (*TravMem* xv), pp. 261–285, section II (pp. 269–276), especially interesting as the author chiefly deals with Egypt and the rise of leprosy there.

⁴⁸ See, GMREK, *Diseases* (cit. n. 47), pp. 162–164 for an overview of the Latin and Greek sources on the subject and commentary. GMREK in his description of the Hippocratic corpus (pp. 165–168) observes that even if *lepra* is often mentioned there, it is never so precisely described as to allow its identification with modern leprosy. The Treatise *Diseases* 1, for instance, places it among ailments that are not life-threatening and its treatment is advised only exceptionally (p. 165).

ilar Graeco-Egyptian documents'.⁴⁹ It becomes obvious that the identity of *šibtu* and *epaphe* is based on a vicious circle in argumentation. Moreover the modern Assyriological research dismisses the understanding of this word in terms of a skin disease.⁵⁰ But were even it not the case, we would still have to face an insuperable obstacle on the presumed Mesopotamian origin of the Graeco-Egyptian warranty clause, *viz.* the missing link in documentation between the neo-Assyrian deeds of sales and the Greek ones.⁵¹ It still does not prove that the deed format may not have spread from the Mesopotamia westwards, given the intense diplomatic and commercial contacts especially during the New Kingdom. The adequate documentation may simply have not been preserved... yet given all three circumstances, I daresay we need to abandon the Mesopotamian link altogether.

Yet it is still possible that Wilamowitz was right in his philological intuition. In fact, the Greek medical writers thought that the origin of leprosy-like skin diseases was the Orient: the author of *Prorrhethicon* II seeks the origins of leprosy in Phoenicia, a view confirmed by Galen.⁵²

⁴⁹ GMREK, *Diseases* (cit. n. 47), p. 159. The recollection of the unspecified norm of *The Code of Hammurabi* which would allow rescission of the contract should leprosy affect the purchased slave does not seem to be quite exact and therefore cannot be used an argument in favour of the medical theory. § 278 of the *Code*, to which Gmrek seems to refer, foresees right to cancel the contract in case of epilepsy (see Martha Tobi ROTH, H. A. HOFFNER & P. MICHALOWSKI, *Law collections from Mesopotamia and Asia Minor*, Atlanta 1997 (2nd ed.), p. 132 and n. 48 on the p. 142 where STOL, *Epilepsy* [cit. n. 50], p. 133–135 is cited).

⁵⁰ See *The Assyrian Dictionary of the Oriental Institute of the University of Chicago* xv (S) (1984), p. 163, *s.v.* *šibtu* B I a): 'seizure, attack referring to diseases'; B I b): 'epilepsy' (*sic!* – *JU*); *cf.* as well II (B) (1965), p. 205, *s.v.* *bennu* 'a type of epilepsy'. See also, M. STOL, *Epilepsy in Babylonia*, Groningen 1993, pp. 137–141, who even if much more cautious about the meaning of *šibtu* ('seizure', 'Hand of the God'), still meditates the possible influence of the Assyrian on the Greek one through the 'international slave market' (pp. 140–141).

⁵¹ *Cf.* STOL, *Epilepsy* (cit. n. 50), p. 140.

⁵² GMREK, *Diseases* (cit. n. 47), p. 167. *Prorrhethicon* II 43 (LITTRÉ IX, p. 74): γίνονται δὲ λεῦκαι μὲν ἐκ τῶν θανατωδεστάτων νοσημάτων, οἷον καὶ ἡ φοινικίη καλεομένη. – 'Leukai belong to the most fatal diseases, like the one called "Phoenician"', on which Gallen comments (LITTRÉ IX, p. 74, n. 8): φοινικίη νόσος, ἢ κατὰ Φοινίκην καὶ κατὰ τὰ ἄλλα ἀνατολικά μέρη πλεονάζουσα δηλοῦσθαι δὲ κἀνταῦθα δοκεῖ ἢ ἐλεφαντίασις. – 'Phoenician disease as it in majority of instances appears in Phoenicia and other oriental regions: it appears to be *elephantiasis*'.

For us it is important to notice that some of the ancient naturalists, Lucretius,⁵³ Pliny the Elder⁵⁴ and Galen⁵⁵ saw leprosy as a new pheno-

⁵³ *De rerum nat.* VI III5–III6: ‘est elephas morbus qui propter flumina Nili || gignitur Aegypto in media neque praeterea usquam.’ – ‘There is the elephant – disease which down || In midmost Egypt, hard by streams of Nile, || Engendered is – and never elsewhere’ (trans. by W. ELLERY LEONARD).

⁵⁴ *Nat. Hist.* 26.5 (7–8):

Diximus elephantiasim ante Pompei Magni aetatem non accidisse in Italia, et ipsam a facie saepius incipientem, in nare prima veluti lenticula, mox increscente per totum corpus, maculosa variis coloribus et inaequali cute, alibi crassa, alibi tenui, dura, alibi ceu scabie aspera, ad postremum vero nigrescente et ad ossa carnes adprimente, intumescens digitis in pedibus manibusque. 8. Aegypti peculiare hoc malum et, cum in reges incidisset, populis funebre, quippe in balineis solia temporabantur humano sanguine ad medicinam eam. et hic quidem morbus celeriter in Italia restinctus est, sicut et ille, quem gemursam appellavere prisci inter digitis pedum nascentem, etiam nomine obliterato.

‘We have already stated that elephantiasis was unknown in Italy before the time of Pompeius Magnus. This malady, too, like those already mentioned, mostly makes its first appearance in the face. In its primary form it bears a considerable resemblance to a small lentil upon the nose; the skin gradually dries up all over the body, is marked with spots of various colours, and presents an unequal surface, being thick in one place, thin in another, indurated every here and there, and covered with a sort of rough scab. At a later period, the skin assumes a black hue, and compresses the flesh upon the bones, the fingers and toes becoming swollen.

This disease was originally peculiar to Egypt. Whenever it attacked the kings of that country, it was attended with peculiarly fatal effects to the people, it being the practice to temper their sitting-baths with human blood, for the treatment of the disease. As for Italy, however, its career was very soon cut short: the same was the case, too, with the disease known as ‘gemursa’. (trans. by J. BOSTOCK).

⁵⁵ Kühn XI, p. 142: Κατὰ γοῦν τὴν Ἀλεξάνδρειαν ἐλεφαντιῶσι πάμπολλοι διὰ τε τὴν διαίταν καὶ τὴν θερμότητα τοῦ χωρίου. κατὰ δὲ τὰς Γερμανίας τε καὶ Μυσίας σπανιώτατα τοῦτο τὸ πάθος ὄπται γινόμενον. καὶ παρά γε τοῖς γαλακτοπόταις Σκύθαις σχεδὸν οὐδεποτε φαίνεται γινόμενον· ἀλλ’ ἐν Ἀλεξανδρείᾳ παμπόλλη ἡ γένεσις αὐτοῦ διὰ τὴν διαίταν ἐστίν. ἀθάραν γὰρ ἐσθίουσι καὶ φακὴν καὶ κοχλίας καὶ ταρίχη πολλά· τινὲς δὲ καὶ ὄνειρα κρέα καὶ ἄλλα τοιαῦτα παχὴν καὶ μελαγχολικὸν γεννῶντα χυμὸν. ἅτε δὲ θερμοῦ περιέχοντος ὄντος καὶ ἡ ῥοπή τῆς φορᾶς αὐτῶν πρὸς τὸ δέρμα γίνεται. – ‘Ainsi, à Alexandrie, les éléphantiasiques abondent du fait du régime comme de la chaleur de l’endroit, alors que dans les Germanies et les Mésies cette affection s’observe très rarement ; bien plus, chez les Scythes buveurs de lait, elle ne se manifeste pour ainsi dire jamais, mais à Alexandrie elle se déclare très fréquemment du fait du régime, car la population se nourrit de bouillie, de lentilles, de coquillages et de poisson confit en quantité, certains même de viande d’âne ainsi que d’autres choses analogues qui engendrent une humeur épaisse et mélancolique. Comme le climat est chaud leur transit est dévié aussi vers la peau.’ (trans. by GASCOU, ‘L’éléphan-

menon⁵⁶ and associated it with Egypt. The sources, both literary and papyrological, that may prove existence in Egypt of ailments that could be identified with Hanson's disease have been recently studied by Jean Gascoü (cit. n. 47). One could suspect therefore that leprosy may have posed a problem in the slave trade in Egypt and that the liability for it may have been 'naturally' borne in the local legal practice. Gascoü actually

tiasis' [cit. n. 47]. p. 277); see W. W. SCHEIDEL, 'Age and Health in Egypt', Princeton working paper, p. 8. <<http://www.princeton.edu/~pswpc/pdfs/scheidel/021003.pdf>> (accessed on 10.09.2011) and GASCOÜ, 'L'éléphantiasis' (cit. n. 47), 276–278 (section III).

⁵⁶ Likewise Celsus thought it to be new, cf. *De medicina* III 25, 1–3:

Ignotus autem paene in Italia, frequentissimus in quibusdam regionibus is morbus est, quem *ἐλεφαντίασις* Graeci vocant; isque longis adnumeratur: signo totum corpus adficitur, ita ut ossa quoque vitiari dicantur. Summa pars corporis crebras maculas crebrosque tumores habet; rubor harum paulatim in atrum colorem convertitur. Summa cutis inaequaliter crassa, tenuis, dura mollisque, quasi squamis quibusdam exasperatur; corpus emacrescit; os, surae, pedes intumescunt. 2. Ubi vetus morbus est, digiti in manibus ponderibusque sub tumore conduntur; febricula oritur, quae facile tot malis obrutum hominem consumit. Protinus ergo inter initia sanguis per bidentum mitti debet, aut nigro veratro venter solvi. Adhibenda tum, quanta sustineri potest, inedia; paulum deinde vires reficiendae et ducenda alvus; post haec ubi corpus levatum est, utendum exercitatione praecipueque cursu; 3. sudor primum labore ipsius corporis, deinde etiam siccis sudationibus evocandus; frictio adhibenda, moderandumque inter haec, ut vires conserventur. Balneum rarum esse debet; cibus sine pinguibus, sine glutinosis, sine inflantibus; vinum praeterquam primis diebus recte datur. Corpus contrita plantago et inlita optime tueri videtur.

'The disease which the Greeks call elephantiasis, whilst almost unknown in Italy, is of very frequent occurrence in certain regions; it is counted among chronic affections; in this the whole body becomes so affected that even the bones are said to become diseased. The surface of the body presents a multiplicity of spots and of swellings, which, at first red, are gradually changed to be black in colour. The skin is thickened and thinned in an irregular way, hardened and softened, roughened in some places with a kind of scales; the trunk wastes, the face, calves and feet swell. When the disease is of long standing, the fingers and toes are sunk under the swelling; feverishness supervenes, which may easily destroy a patient overwhelmed by such troubles. At once, therefore, at the commencement, he should be bled for two days, or the bowels loosened by black hellebore, then a scanty diet is to be adopted as far as can be borne; after that the strength should be a little reinforced and the bowels clystered; subsequently, when the system has been relieved, exercise and especially running is to be used. Sweating should be induced primarily by the patient's own exertion, afterwards also by dry sweatings, rubbing is to be employed with moderation so that strength is preserved. The bath should be seldom used; neither fatty nor glutinous nor flatulent food; wine is properly given except on the first days. Plantain crushed and smeared on seems to protect the body best' (trans. by W. G. Spencer in *Loeb*).

identifies some mentions in the papyrological corpus that could refer to modern leprosy. He is rightly sceptical about the evidence provided by the occurrence of epaphe: this would lead us to a vicious circle in reasoning. Instead, he puts forward three mentions in the tax rolls from Karanis, where the payments of the taxes due from Ioulios Ptolemaios are made through an attorney, Maximos, described as *λεπρός* (or *λυφρός*).⁵⁷ Now I daresay this 'leprosy' cannot refer to any conditions that would be as dangerous as elephantiasis proper, i.e. Hansen's disease and thus constitute a latent defect in a slave, making him or her unable to properly perform. Were it the case, Maximos could simply not act as the intermediary in any business, be it official or private. At any rate, even if the term indeed were to be understood in terms of true leprosy, we would not be able to trace any relation between it and *epaphe*. And the same applies to the late Byzantine sources referring to *κελαφία*, *κελαφός*, *κελεφός*, which Gascou analyses.⁵⁸ On a marginal note one could observe, that it seems a bit far-fetched to postulate that 'quelque régime juridique spécial ait été reconnu aux lépreux' on the basis of these sources.

Archaeological evidence is neither very satisfactory. A singular discovery of four skeletons of the Caucasian type with signs of leprosy in a secluded cemetery of Dakhla Oasis dated to the 2nd century BC. made believe its discoverer, Tadeusz Dzierżykray Rogalski that already then separation of lepers was practiced, hence some earlier knowledge of the disease was postulated.⁵⁹ This point seem to be somehow collaborated by a literary source. As Gmrek points out, the account of Rufus of Ephesus preserved in *Collectio medica* of Oribasius credits Straton of Alexandria with the first historical diagnosis of leprosy.⁶⁰ Straton was a pupil of Eristratos, founder of the anatomy school in Alexandria and former royal

⁵⁷ *P. Mich.* IV 223, l. 1189; 224, l. 2024; and 225, l. 1751; see GASCOU, "L'éléphantiasis" (cit. n. 47), pp. 281–282.

⁵⁸ See GASCOU, "L'éléphantiasis" (cit. n. 47), pp. 282–284.

⁵⁹ See, T. DZIERŻYKRAY ROGALSKI, 'Leprosy in the Dakhlen Oasis (Egypt)', *African Bulletin* 29 (1980), pp. 135–140 and IDEM, 'Paleopathology of the Ptolemaic Inhabitants of Dakhlen Oasis (Egypt)', *Journal of Human Evolution* 9 (1980), pp. 71–74.

⁶⁰ Oribasius, *Collectio medica* XLV 28 with GMREK, *Diseases* (cit. n. 47), pp. 168–169 (for translation of the passage).

physician of Seleukos I Nikator. It seems therefore likely that the plague was brought to Egypt from India by the troops of Alexander the Great, and spread to the rest of the Mediterranean sometime around the 1st century BC,⁶¹ and such is the standing of the most recent scholarship. It is assumed that Hansen's disease was quite common in Egypt, stressing, however, the data is not unambiguous.⁶²

All in all, I do not think that this evidence is strong enough to draw any irrefutable conclusions as to the ascertainment of the medical meaning for *epaphe*. Were it the case, we would expect the term to have appeared before the Roman period; and in a few Ptolemaic documents of slave sales it is not used. Furthermore, one could doubt the sensibility of foreseeing of the future attack of *lepra* and treat and thus it a latent defect. There seems to be no indication in the ancient medical writings that would consider this disease as hidden. The ancient physicians do not seem to have thought that leprosy may develop over a longer period, it was rather believed to strike suddenly.

How about the juridical hypothesis?⁶³ Already in his first paper on the subject Kübler started from comparison of the formulation of the warranty we find in *BGU* III 887 (Side, 8 July AD 151)⁶⁴ and *P. Lond.* II 229 (Syria, Seleukia Pieria, 26 May AD 166).

⁶¹ GMREK, *Diseases* (cit. n. 47), p. 175.

⁶² See, most recently, Helen M. DONOGHUE & al., 'Co-infection of *Mycobacterium tuberculosis* and *Mycobacterium leprae* in human archaeological samples: a possible explanation for the historical decline of leprosy', *Proceedings of the Royal Society B*, 272 (2005), pp. 389–394 with literature (just marginally it is worth noticing that this paper challenges the view in well-established in the earlier literature – see, e.g. GMREK, *Diseases* [cit. n. 47], chapter VIII 'Leprosy and Tuberculosis: Their Biological Relationship', pp. 198–209, that infection by tuberculosis provides immunity to leprosy and *vice versa*) as well as the pamphlet by SCHEIDEL cited in the footnote 55.

⁶³ I have consciously excluded from my evidence the dubious restoration of $\epsilon[\pi\alpha\varphi]\eta$ in § 61 of the *Gnomon of the Idios Logos*. It would obviously speak for my case, the norm refers to the undeclared slaves and the rights of their masters, but drawing conclusions from it brings about a vicious circle in argumentation. See also J. MÉLÈZE MODRZEJEWSKI, translation and commentary *ad h. l.* in the collection V. GIUFFRÉ (ed.), *Les Lois des Romains*. 7e édition par un groupe de romanistes des *Textes de droit romain*, tome II de Paul Frédéric GIRARD et Félix SENN, Camerino 1977, p. 543 with n. 77.

⁶⁴ Cf. also the new edition by J. NOLLÉ, *Side im Altertum* II, Bonn 2001, pp. 617–622 (with

BGU III 887, ll. 5-7: (= 16-18 of the outer text) [ἀνέπα]φον πρὸς πάντων καὶ μήτε ῥέ[μβ]ον μήτε δραπετικὸν ἱερᾶς τε νόσου ἐκτός· ἐὰν δέ τι τούτων ᾖ ἢ [ἢ μὴ ἢ ὑγιὲς ἢ ἐπαφ]ῆ αὐτοῦ ἢ ἐκ μέρους γένηται καὶ ἐκνεικηθῆ (l. ἐκνεικηθῆ), τότε διπλῆν τῆν τιμὴν χωρὶς παραγγελί[ας].

(the slave is) unencumbered by a claim of any third party, and not a truant, not prone to runaway, without epilepsy; and if should happen anything of that, or he be not healthy or there be *epaphe* of him or his part and be it successful, (the seller) shall pay the double of the price without legal action.

P. Lond. II 229 6-9. eum puellrum sanum esse ex edicto, et si quis eum puerum || partemve quam eius evicerit, simplam pecuniam || sine denuntiatione recte dare

and this slave-boy is healthy according to the Edict, and if someone legally recovers this slave or his part, (the seller) shall pay properly the one-fold of price, without legal action.

[ἐπαφ]ῆ αὐτοῦ ἢ ἐκ μέρους γένηται καὶ ἐκνεικηθῆ is an obvious equivalent of *quis eum puerum partemve quam eius evicerit*. *Epaphe* must simply mean a successful claim for eviction. The Greek text of BGU III 887 alone provides, methinks, an additional argument: leprosy is a malady of the whole body, how there could be a ‘partial leprosy’ especially in connection to the verb ἐκνικάω?

Another papyrus, *P. Turner* 22,⁶⁵ which provides us with the exact same formulation, fully confirms this reasoning.⁶⁶

the extensive bibliography on this document, p. 620). NOLLÉ translates *epaphe* as ‘Anspruch’, following as it seems Kübler, but does not discuss the arguments of either side of the controversy.

⁶⁵ New edition: NOLLÉ, *Side* (cit. n. 64) II, pp. 613-617.

⁶⁶ See D. Hagedorn’s commentary to lines 5 and 21. In this context I really do not understand H.-A. RUPPRECHT’s dismissal of this proposition and his opting for the medical significance, see his review of *P. Turner* 22, *ZRG RA* 99 (1982), p. 378.

The interesting clause runs as follows (the reconstruction is quite certain thanks to the remaining parts of the outer text): ll. 4-6 (= ll. 19-22 of the outer text) [(...) ὑγιῆ ἐκ διατάγματος [- ca. 10 -] ἀνέπαφον πρὸς πάντων καὶ μήτε ῥέ[μβ]ον μήτε δραπετικὸν ἱερᾶς || [τε νόσου ἐκτός· ἐὰν δέ τι τούτων ἢ ἢ μὴ ἢ ὑγιὲς ἢ ἐπαφ]ῆ αὐτοῦ ἢ ἐκ μέρους γέν[η]ται καὶ ἐκνεικηθῆ, τότε διπ[λῆ]ν τῆν τιμὴν χωρὶς παραγγελίας καλῶς δοθῆναι - ‘(and the slave girl

One more argument advanced by Kübler in his first *opusculum* on *epaphe* strengthened this reading.⁶⁷ He claimed that *epaphe* must be closely connected to the term *ἀνέπαφος* used in land-sales to declare the land being free from any legal interference: ‘unencumbered’.⁶⁸ As, furthermore, in some instances deeds of slave sales used both of these words, Kübler thought they would be synonymous.⁶⁹

In his second study on *epaphe* Kübler published another papyrus, nowadays referred to as *P. Stras.* I 79 (Syene, 16–15 B.C.), in which the context of *epaphe* does not allow to understand it in terms of an illness.⁷⁰ The slave girl is bought, ‘as she is’, save for the case of *epaphe*. But should it happen, the vendor obliges himself to either take legal steps to prevent it or to pay the full price back if he – we presume as the document is not well preserved – fails to do so.⁷¹

The pro-leprosy party obviously dismissed this evidence. In his monumental *The Greek Law of Sale* Pringsheim summed up and reorganised

is) healthy according to the Edict (of the Aediles), unencumbered by a claim of any third party, and not a truant, not prone to runaway, without epilepsy; and if should happen anything of that, or if (she) be not healthy or, if there be *epaphe* of hers or of her part and be it successful (the seller has promised with his good faith) to give the double price without further notice.’

Similar formulation is postulated in the *lacuna* of the line 4 of *P. Hamb.* I 63 (Thebais, AD 125–126), on quite solid grounds: the beginning of the document is very similar, the object of sale is a slave, there is a mention of the Edict and Roman citizens as the parties.

⁶⁷ KÜBLER, ‘*Επαφή 1*’ (cit. n. 41), pp. 476–477.

⁶⁸ Cf., e.g., *MChr.* 159 (= *CPR* I 4, Herakleia, post 7 August AD 52), ll. 17–19: ἀπὸ τοῦ νῦν ἐπὶ τὸν ἅπαντα χρόνον πάση βεβαιώσει καθότι προληγέγραπται διὰ παντός καὶ παρέξεσθαι ἀνέπαφα κ(αὶ) ἀνεχύραστα καὶ ἀνεπισδανιστα καὶ καθαρὰ ἀπὸ δημοσίων τελεσμάτων πάντων μέχρι τῆς ἐνεσταλλῆς ἡμέρας ἐπὶ τὸν ἅπαντα χρόνον. The term is well attested for Ptolemaic times, there are 3 occurrences for the 2nd cent. B.C. (*P. Tebt.* III.1 817; *P. Tebt.* III.2 970 and *P. Hamb.* I 28).

⁶⁹ *BGU* I 193 (= *MChr.* 268); III 887; 987; *P. Iand.* IV 54; *P. Mich.* v 264 (= 265); *P. Turner* 22;

⁷⁰ See, KÜBLER, ‘*Επαφή 2*’ (cit. n. 41), pp. 367–368.

⁷¹ Ll. 7–8: [– ca. 12 –] ἀναπόριφο]ν πλὴν ἐπαφῆς. ἐὰν δέ τις ἐπαφή γένηται, ἐγδικήσει ὁ ἀποδόμενος || [– ca. 20 –] [ἢ] [ἐ]κτείσει ἦν εἴληφε τειμὴν ἀπλὴν καὶ τὰ βλάβη καὶ τὰ δαπανήματα – ‘(slave girl) not returnable save for the case of *epaphe*. If there be *epaphe*, the seller will take legal steps ... or he will repay the one fold of the price he has taken and the damages and costs’. The translators of *The Elephantine Papyri in English* obviously chose the legal meaning of *epaphe* (see, *ibidem*, D II, pp. 426–427).

the pro-medical points.⁷² Where Kübler saw support of his thesis, Pringsheim sought the chief obstacle. He stressed that the presence of both *epaphe* and *anepaphos* in the same text proved to the contrary: they cannot have had the same meaning, otherwise the use of two different terms would have been misleading. Additionally he argued that the use of *epaphe* in juridical terms was superfluous in the documents which already provided for the case of eviction by the *βεβαίωσις* clause. I think we may rightly discard this argumentation, any reader of the ancient (and modern as well!) deeds is perfectly conscious that they are usually not pieces of legal art: they often use repetitions and superfluous clauses, just to make the parties feel more secure.

Pringsheim, unwillingly accepted the legal meaning of *epaphe* in *P. Stras.* 1 79, stating that ‘legal terminology was the older one as a survival ἐπαφή it was still used in Augustean age in the sense of (...) seizure by the owner.’ But if it was the case, why should we assume such a radical change in the meaning in documents that are immediately posterior?! And why is there not a mention of *epaphe* in the few extant Ptolemaic deeds of slave sale – especially if it is true that leprosy invaded Egypt at least two centuries before the Roman conquest?

Finally, Pringsheim put away the evidence of *BGU* III 887 (and he would have done alike with *P. Turner* 22): they both were drafted away from Egypt and in both cases the parties are the Roman citizens, hence one cannot draw any strong conclusions as to the meaning of *epaphe* in general.

That may be very well so... however, should we really imagine that the slave trade used contemporarily the very same word in two radically different meanings? Let us recall the ‘simple sale’ contracts to which also the Romans were the parties (cited, *supra*, n. 26), in which naturally *epaphe* appears as well.

5. EPAPHE IN THE LATE BYZANTINE DOCUMENTS.

It is time to come back to our starting point: the three late Antique deeds of slave sales and the role of the *epaphe* in their warranty clauses.

⁷² PRINGSHEIM, *The Law of Sale* (cit. n. 26), p. 465 and 465–470.

One final *caveat* has to be put. Kübler himself admitted that in these late antique documents, and especially in *SB XVIII 13173*, *epaphe* may have denoted physical defect as it is located just between other physical shortcomings of the slave sold.⁷³ I do not really think that we need to draw such an argument from the position of *epaphe* between illnesses. To prove the point let us turn again to the Roman formulation of the liability for the latent defects in slaves.

Qui mancipia vendunt certiores faciant emptores, quid morbi vitivae cuique sit, quis fugitivus errove sit noxave solutus non sit.

Among the possible vices of the slave sold we also have the existing noxal liability, i.e. liability for the delicts committed by the slaves. This liability burdens the present masters of the slave and not his or her owner in the moment of wrongful act. The wronged party will seek compensation and the master will have to pay the damages or noxally surrender the tortfeasor. *Noxa* cannot be understood under *epaphe* in the contracts made by peregrines – as what Kübler rightly observed, it would be absurd to seek noxal liability in Greek legal orders. But this reservation does not apply to the contracts made between the Romans. As we have seen, the liability for *noxal* goes under the regime for the liability for all physical defects, maladies included, and thus the fact that *epaphe* is listed among them does not constitute any proof for its medical meaning.

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I think therefore that ‘the unending dispute about the meaning of *ἐπαφή* must be settled’ – in Pringsheim’s own words – but not the way he saw it. Kübler was certainly right understanding *epaphe* as a claim to the slave by a third party (on whatever ground). I hope to have been able to prove that the legal meaning is also the only one we have to adopt for the

⁷³ See, KÜBLER, ‘*Επαφή* 3’ (cit. n. 41), pp. 229–230, see for similar reasoning PARTSCH, *P. Freib.* II (cit. n. 42), p. 30.

three Byzantine papyri. *Epaphe* seems also very likely to correspond to the Roman concept of a *noxal* claim in the sales to which the Romans were the parties in the pre-Byzantine Era and in the three late Antique deeds, including *P. Cairo Masp.* I 67120.

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