Taubenschlag, Rafał

"An essay on the nature of real property in the classical world", Angelo Segré, New York 1943

The Journal of Juristic Papyrology 1, 134-150

1946

money annually on account of clothing and oil. The worker is obliged to do work according to the orders of his master and not to absent himself from the work under the fine of two drachmas for every day of absence. He has furthermore to accompany the master everywhere he goes "according to the law." What law is meant is not known. The obligation to stay with the master is referred only to day-time (v. 10: ἀφήμερος, cf. v. 12) without any mentioning of the night, as so often in similar agreements (ἀπόκοιτος), cf. 241, 34 and Berger, *Strafklauseln,* 1911, 167. W. L. Westermann, *Class. Philol.* IX, 1914, 310. A. Zambon, *Aegyptus* XV, 1935, 53f.

P. Mich. V contains also six Demotic texts. For their edition William F. Edgerton is responsible. Four of them concern sales and, with one exception (342), all of them are provided with Greek subscriptions by the parties involved. The subscriptions generally confirm the contents of the Αἰγυπτίαι συγγραφαί referred to, sometimes not without some new details corresponding more to the Greek formularies, cf. for instance 249, 2; 250, 4; 253, 19; in the last sale contract the seller, a woman, appears with her son as a guardian, cf. Taubenschlag, *Law cit.* 128. In 347, a *syngraphe trophitis,* the Greek subscription unfortunately is very badly preserved. There appears twice the term *proprasis* which has been known from P. Mich. II 121 R (cf. p. 348 n. to vv. 1-2, where "and 6" is to be cancelled). The demotic text does not contribute to the elucidation of the term which seems to me obscure in spite of the explanation given by Arangio-Ruiz, *Persone e famiglia,* 1930, 51 and others.

The edition is technically perfect. Among papyrological publications P. Mich. V will rank with the most remarkable ones, not only because of its rich contents of which only a few samples have been rendered conspicuous above, but also because of the excellent conditions in which most of the papyri published are preserved, the successful decipherment and proper adaptation of all documents by the editors. It is self-understood that exact indices following the best models of the kind are added. They occupy not less than 74 pages. Six plates with the reproduction of one Demotic and five Greek papyri conclude the volume.

ADOLF BERGER.

ANGELO SEGRÉ, *An essay on the nature of real property in the classical world,* Paul Bassinor publisher, New York, 1943, pp. 143.

"The essay aims"—as the author p. 1 points out,—"to state some basic points on the nature of real property in antiquity." The chief result of his research "lies in having made clear the political character of the right of property in the ancient classical world"; to attain this result the author "was compelled to enter an exhaustive inquiry on the transfer of real

property—in the Greek Hellenistic law," the s.c. *καταγραφή*. Accordingly he divides his essay into three parts, two of which (p. 1-61) deal with katagraphe (i.e. "the supervision of the katagraphe," and "the form and meaning of the katagraphe"), while the third (p. 74-125) is devoted to the "evolution of property on real estate in the ancient classical world." It may be added that discussions on *καταγραφή* are also found in this part (p. 84/88).

The arrangement of the essay is very unfortunate. The author starts f.i. with the Roman epoch (p. 1-10), passes to the Hellenistic resp. to the Ptolemaic epoch (p. 10-15), in order to return to the Roman (p. 24-26) and again to the Ptolemaic epoch (p. 26ff.) and finally discusses the *καταγραφή* in Alexandria (p. 37ff.) which logically should have been discussed at the very beginning as the oldest known case of a *καταγραφή*. Taking as a starting point the latter, I shall try to give a short summary of Segré's essay.

In the Alexandrian law (cf. p. 37ff.) the katagraphe is "a document conveying property," kept in a separate register by the Alexandrian *ταμίαι* (cf. also p. 65_{41}) (see however Taubenschlag, *The Law of Greco-Roman Egypt*, p. 242). Originally (cf. p. 85) "only Alexandrian full citizens could sell real estate to other Alexandrian full citizens." In the later period, however, "very probably" Greek non-citizens (p. 80) could own real property in Alexandria, and in the Roman period "even native Egyptians (p. 80)—but they asked always to be chased from the city." (sic!) The author, however, fails to indicate whether or not these two classes of population could apply the Alexandrian katagraphe.

In the *χώρα* in the "earlier Ptolemaic period" (p. 28 l. 2 from the top) "when no agoranomic deed seems to have been used" (see however Tebt. 814 ll. 10-18, an agoranomic deed from 239 and 227 B.C.), "the katagraphe was only a registration of the syngraphai hexamartyroi" (unfortunately I don't see any evidence of such a registration); after the introduction of the agoranomic document (p. 26, l. 6 from the bottom), in the beginning of the second century B.C. (p. 26, l. 7 from the top) "the agoranomos (p. 27 l. 11 from the bottom) effected a katagraphe drawing up a double sealed syngraphe with *scriptura interior*, and transcribing the *scriptura interior* in a register, the *ἀναγραφὴ συμβολαίων*." In addition the katagraphe (p. 17) "in the later Ptolemaic period" "implied the change of the names in the *ἀναγραφὴ κτημάτων*" and the katagraphe "was legal only when all these three operations had been carried out. *But if they occurred on different dates* the katagraphe did not *always become effective from the date of the last operation**" (if the katagraphe could be effective with the second

*All underlinings made by myself.

operation, how could the change of the names in the ἀναγραφὴ κτημάτων be a requisite of a valid katagraphe?). The same holds for the Roman epoch "in the time of the Bibliotheke" (p. 17). (As far as the registration in the ἀναγραφὴ κτημάτων, evidently identified by A. Segré, p. 11 (l. 4 from the bottom) and p. 14 with διάστρωμα, is concerned, his view is completely wrong. "Ganz verfehlt" Mitteis *Grundzüge,* p. 177-8). Finally in the Byzantine era the katagraphe (p. 51) "was the drawing up of a deed of sale of estates and slaves and the delivery of the document to the alienee" (*traditio cartae?* utterly wrong, cf. Schwarz *Oeff. u. priv. Urk. im röm. Aeg.* p. 285ff.).

In connection with Egypt A. Segré discusses the Hellenistic katagraphe outside Egypt (p. 32ff., 51 ff.), esp. in the Eastern provinces of the Roman Empire. The author quotes: PSI. 729, from Capadocia (?) (see below); Dura 23 (180 A.D.); 101 (227 A.D.); Lond. I 229 = Meyer, *Jur. Pap.* No. 37 (166 A.D.), Seleucia; S.B. 6304 (second cent. A.D.), Ravenna (does Ravenna also belong to the Eastern provinces of the Roman Empire?); BGU. 887 = M. Chr. 272 (151 A.D.), Side in Pamphylia; BGU. 316 = M. Chr. 271 (359 A.D.), Askalon; BGU. 913 (216 A.D.), Myra in Lycia (cf. Mitteis *Chrest.* p. 303, *Grundz.* 193 and Taubenschlag *Rez. d. röm. Privatrechts* 396_{185}). A. Segré further discusses the sales and the transfer of property in the Western provinces of the Roman Empire p. 55ff., quoting the Vandalic *traditio* of Tebessa in Algeria (cf. Wolff *Revue d'hist. d. droit* XIV (1936) p. 398ff.) and *mancipationes Transsilvanae*: Bruns Fontes[7] No.131 (139 A.D.); No. 132 (160 A.D.); No. 133 (159 A.D.) (cf. E. Weiss *Sav. Z. XXXVII,* 137ff.). A separate chapter (p. 45-49) dealing with "the security and the sale" gives some, mostly unintelligible, remarks on *arra* (s. below).

In the second part of his essay A. Segré takes up the following topics: "real estate in the realm of Syria" (p. 82ff.), "royal land and private land" (p. 88ff.), "property in Ptolemaic Egypt" (p. 109ff.), "property and hereditary leases in Hellenistic Egypt" (p. 119-121), "some characteristics of ownership of real estate in the ancient world" (p. 94-97), "transformation of the *ager publicus* into *ager privatus* after the fiscal reform of Diocletian" (p. 97-100), "the protection of property under Greek, Egyptian and Greco-Egyptian law" (p. 89-94). All this he treats on the basis of the literature of the subject. The discussion of his chief problem "on the political character of the right of property in the ancient classical world," that is (p. 74) of "the well known principle of Greek public law" that "real estate and citizenship were very closely connected," comprises a few pages (p. 74-82). These few pages are, as far as ancient Greece is concerned, based mostly on the literature of the subject (cf. Weiss *Griech.*

Privatrecht, p. 185ff.), but as far as Alexandria is concerned (p. 74ff.) "a problem disregarded by scholars who have studied the Greco-Egyptian katagraphe"—on no evidence at all.[1] The only evidence which could support this idea, namely, that the πολιτικὸς νόμος regulating the katagraphe (P. Hal. l. 246) applies only to the Ἀλεξανδρεῖς (cf. Taubenschlag l.c. p. 7_{27}), is by no means utilized by A. Segré.

Finally we have to give credit to the author for such unfounded hypotheses as that on p. 51 (l. 10 from the top) that "the delivery of the document may be considered as a substitute for the Greek registration as well as substitute for the Latin *traditio corporalis"*; on p. 8 (l. 3 from the bottom) that the "archives had the power to transform the promise of katagraphe of the synchoresis into an actual katagraphe," or on p. 38 (cf. also p. 66_{42}) that "the registration of a private document was equivalent to the acknowledgment of a legal deed before a tribunal or before a notary," and finally on p. 59: "I do not believe that a chirograph or synchoresis, could contain more than a promise of katagraphe even if it contained all the clauses which usually appear in the deed of katagraphe." (sic!).

As this summary shows, the author's study failed to produce new results. At the same time, however, the study is open to many objections.

First of all, as far as the presentation of the subject is concerned, there are dozens of sentences which are quite unintelligible. A short collection will justify this assertion.

p. 7 "The abstract character of the deed of conveyance of real estate and slaves depended essentially on the operations leading to the katagraphe which protected the purchaser from suits against his title." (sic!)

p. 7 "Generally the parties used such an imperfect deed when they had no possibility of drawing up a public deed of katagraphe. . . . This happened . . . when the alleged deed was not able to convey the property. . . ."

p. 10 "The katagraphe and its supervision of the conveyance of real estate in the Hellenistic laws."

p. 11 "With the anagraphe of the real property . . . and with the anagraphai of the deeds, the notary could draw up the kata-

[1] On p. 85 I find the following sentences: "But the conveyance of real estate belonging to the territory of the town and effected in Alexandria by the ταιῖαι, shows that the properties were filed in the registers κατὰ δήμους and that at least only Alexandrian full citizens originally could sell real estate to other Alexandrian full citizens." And note 39: "In Athens there was probably a land survey by the demarchos see Busolt, *Griech. Staatsalt.* 1926 II p. 968" (sic!)

graphe without using the punitive system of the prographe, which, however, would not be entirely useless in the case of defective anagraphe."

p. 12 "In Ptolemaic Egypt these two sorts of anagraphai do not appear so definitely as they do in the Roman period, although the katagraphe of the Ptolemaic period was based on the same principles as the katagraphe of the Roman age."

p. 29 "While in Egypt the katagraphe of the sale as well as the anagraphe of the mortgages were effected by the same notary, the agoranomos and the collection of the ἐγκύκλιον was made by the tax collectors in Alexandria."

p. 38 "As a matter of fact, if a creditor sued a debtor for a credit in the form of a syngraphe the magistrate could compel the debtor to write an acknowledgment of debt in the form of an ὑποφραφή under the syngraphe brought before the magistrate. The syngraphe could also be a private document (see p. 28) *but the* ὑπογραφή written before a magistrate or notary, if I am not mistaken, *transformed the syngraphe* and *hypographe* into a sort of public deed." (sic!)

p. 40 "It is probable that the ἀμφούριον *was originally a symbolic deed,* performed with the handing over of the ἀμφούριον before the neighbors of the owner of the estate, *when* the ἀμφούριον was considered *a symbol of the estate.* But the ἀμφούριον aimed also at determining the boundaries and at preserving the deed." (sic!)

p. 46 "In the cases where the *arrha* was a small amount of the price, the *purchaser* who anticipated the *receipt* of a small sum of money, probably preferred the fulfillment of the transaction to the penalty of the *arrha* by the seller."

p. 46 "The purchaser who *gave* the security is entitled to *retain* the *arra* if the seller defaults. . . ."

p. 51 "The translation of katagraphe with *mancipatio* is, however, not altogether incorrect because a certain degree of abstractness might be attributed to the katagraphe, at least the relative abstractness of the Greek written deed" (sic!)

p. 53 "Peregrini and Roman soldiers in the Roman imperial army in the castra soldiers *mancipi with the traditiones* (sic!) which may of course have applied as well to Romans as to peregrini as deeds of *ius gentium.*"

p. 54 "In the Eastern provinces until now only the documents redacted in the castra were sales with *traditiones,* (sc. *servorum*)—the others were mere sales. The traditiones in the documents redacted in the castra probably were not accidental. In the early Byzantine period when between the reigns of Diocletian and Constantine in Egypt the archives disappeared and with them all the system of the katagraphe, the katagraphe was replaced by the redaction of the document and its delivei to the purchaser. Then the delivei of the *document* was considered as a katagraphe for the Greeks or *a traditio for the Romans,* in both cases an act able to transfer the property. . . ." The author mixed up the *traditio servi* with the *traditio cartae!*

p. 56 "But in the Western provinces we are confronted also with *sale with mancipationes,* some with *mancipatio* and some without the *traditio.* I think that in most cases these *mancipationes* have to be interpreted only as sales with or without *traditio.*"

p. 67_{52} "As for private Roman estates, the *adiudicatio* attributed the title of the estate directly to an *actio divisoria.*"

6. 67 "The delineation of the boundaries could become later a form for a sort of indirect deed."

p. 80 "Very probably, Greek non citizens could own real property in Alexandria. Under Roman rule even native Egyptians could own real property in Alexandria, but they asked always to be chased from the City." (sic!)

p. 83 "The soil of the realm of Syria could be divided into two great categories, soil of Greek towns, liable to become the property of Greek individuals, and royal land which individuals *could possess only under the protection of the laws.*" (sic!)

p. 84 "The first Greek *apographai* we know of are perhaps the *declarations of the registers* of landed property of Mytilene in I.G. XIII, 2 No. 74 and 75 of the third century B.C."

p. 88 "Real property *which did not belong to him* (i.e. the king) and royal land *could become spurious private ownership through an act of renunciation by the king.*"

p. 103 "The affinity between sovereignty and ownership was recognized even in the modern world; both (sovereignty and ownership) are an affirmation of the mastery of the majority but in different fields, one in public, the other in private law."

p. 103 "Ulpian asserts that Roman ownership may be understood as an extension of the mastery of the pater familias at home.

This assertion leads us directly to the conception of a property sovereignty, because this *dominium* is extended to a sphere of rights *where law i.e. the state* may not interfere but customs and morals can." (sic!)

p. 104 "The title on real estate . . . is a privilege of the full citizen shared by a limited class of inhabitants to the government of the Greek town."

p. 110 "The concessioned land, as a rule, always paid a rental to the king the ἐκφόρια; it could also pay a taxation τέλη which, however, could be more directly connected with the qualification of the persons of the holdings than with the holders themselves."

The great number of these unintelligible sentences is matched by an equally great number of contradictions. We read: p. 2 "katagraphe" is "a deed of conveyance—*affected by the public notary supervising* the conveyance of real property and slaves"; p. 3 "deeds of conveyance . . . drafted under the supervision of the Bibliotheke"; p. 68_{60} "in Ptolemaic times *the seller, not the notary* made the katagraphe in Petr. II 23, IV, 1; p. 2 "the katagraphe was a deed closely related with the archives which registered *public deeds"*; p. 13 "the katagraphe drawn up before the agoranomoi in P. Col. 480 was *not necessarily* connected with an *agoranomic deed* as in Lond. II 220, p. 5, 11 (133 B.C.)."—P. 7 *"A private document* even if registered with an ἐκμαρτύρησις or a δημωσίωσις was not a deed of katagraphe"; p. 3 "other *public documents* did not convey property directly as the συγχώρησις, the χιρόγραφον registered with the δημωσίωσις and the ἐκμαρτύρησις."—P. 25 "the chirograph registered with the δημωσίωσις, or the ἐκμαρτύρησις were *public deeds"* (s. however: Mitteis *Grundz.* 83; P. Meyer *Jur. Papyri* 109; Woess *Unters. über das Urkundenwesen im röm. Aeg.* 352: "χειρόγραφον remains a χειρόγραφον").—P. 17 "in the time of the Bibliotheke . . . the katagraphe implied the change of the names in the ἀναγραφὴ κτημάτων (in addition "to (b) the drawing up of the document and (c) its registration in the ἀναγραφὴ συμβολαίων"); p. 24 "In the period of the Bibliotheke the katagraphe appears to have been the legal deed and its registration in the anagraphe of the deeds, *because the registration in the* διαστρώματα *through the apographe came later* and carried the date of the deed" (sic!). — P. 28 "Starting from Hal. 1 reconstructed on the base of BGU VI, 1213 we conclude that the katagraphe of the ταμίαι was the *registration* of the deed of conveyance of the ownership of real estate and slaves in the form of an anagraphe"; p. 37 "the katagraphe appears to have been *always a document conveying property*—real estates and slaves—filed in an anagraphe of documents"; "the katagraphai were not kept in a particular register, except in Alexandria

where a separate *register of katagraphai* seems to have been kept by the Alexandrian ταμίαι." — P. 59 "the problem of conflict of the titles between a purchaser C who bought an estate from a vendor through a document unable to effect the katagraphe and a second purchaser C_1 who bought the same property with a deed of katagraphe was a very exceptional one, because the first purchaser C might and consequently would protect himself with a παράθεσις" whilst on p. 5 he asserts "that the parathesis aimed merely to restrain the illegal disposition of the property by the owner" . . . and the παράθεσις . . . "prevented the seller . . . from alienating the property a second time." But how could a conflict arise between C and C_1 if C_1 could not buy the same property at all?—On p. 29 he concludes that "the anagraphe preceded the writing of the deed," while on p. 28/9 he asserts "probably the parties concerned *went to the* ταμίαι *with a syngraphe* hexamartyros . . . and presented it to the ταμίαι."—On p. 32 he asserts "there was a *notable difference* between the Greco-Egyptian katagraphai and the other Hellenistic conveyances"; the author states that "the katagraphai of Dura and Myra in Lydia (!) BGU. 913 (206 A.D.) appear to be like the Greco-Egyptian katagraphai," then he passes to the novel of Chariton and finds out that "the proceeding of the katagraphe in Chariton's novel was probably very like the proceedings of the katagraphe in Dura," (which are, as he mentioned, like the Greco-Egyptian katagraphai); in other words, there is no difference between the Greco-Egyptian katagraphai and the other Hellenistic conveyances—which A. Segré qualified before as "notable."—P. 89 "the cleruchic land becomes private land in the imperial age"; p. 107 "we may *not* properly call *private ownership* the rights of the people entitled to the *cleruchic land.*" —P. 126_8 "In addition to the arguments of p. 64 it would be difficult to admit that the Greek living in Alexandria could be excluded for the whole Ptolemaic period from an ἔγκτησις"; p. 78 "if the praxis of Alexandria was not different from that of Syracuse , Greek non-citizens of Alexandria *could be entitled* to the ἔγκτησις"; p. 75 "But did the Greek colonial polis originally exclude the Greek inhabitants who were not full citizens from the ownership of real property? *Probably not"*; p. 79 "In the Ptolemaic period Greeks, or at least Greek soldiers and descendants of soldiers, *very probably* owned real property in Alexandria"; p. 80 *"Very probably* Greek non-citizens could own real property in Alexandria." The same idea is twice expressed as a certainty (p. 75, 126), and four times as a probability (p. 78, 75, 79, 80); p. 82 "even if they owned such property it was under restricted conditions"; — P. 77 "these Greek κάτοικοι later constituted the bulk of the Greek colonial towns, because by the foundation of a Greek colonial towns, the mercenaries, *as a rule,* and κάτοικοι

the nearby villages were granted citizenship of the new polis"; and some pages later, p. 77 "in the Greek colonial towns κάτοικοι *sometimes* granted citizenship in the polis *where they dwelt.*"—P. 98 "when *fisc and aerarium* were merged the ager *publicus* could have been considered as ager *stipendiarius* . . . then all the possessores of the ager publicus could have been called *tributarii* . . . with the transformation of the different categories of the ager *publicus* into ager *tributarius.*"—P. 113 "when the rental was transformed in *land tax* the hereditary tenants of the estates could boast of having been turned into *genuine owners* according to the Greco-Egyptian law"; p. 110 "cleruchic land *paid taxes* τέλη and not rents"; p. 107 "we may *not properly call private ownership* the rights of the people . . . entitled . . . to the cleruchic land."—P. 4 "Bibliotheke concerned itself *only* with public documents of the nome which conveyed real property and slaves"; p. 4 (l. 7 from the top) is evident that the bibliotheke dealt also with public documents which did not actually convey property, registered with a παράθεσις. — P. 31 *"the anagraphe* of the *Egyptian syngraphe enabled this document to perform the katagraphe"* (sic!); p. 32 "I think the *Egyptian syngraphai* were able to effect a katagraphe *because* the *agoranomoi* in their archives *kept* the Greek anagraphai of the Egyptian deeds."—P. 31 "the document of the grapheion marks the passage between the Ptolemaic document and the document of the Roman age . . . it may be defined as a *registered* agoranomic document"; p. 13 "the katagraphe drawn up before the agoranomoi in P. Col. 480 was not necessarily connected with an agoranomic deed as in Lond. II 220 p. 5 l.11 (133 B.C.)." The question may be asked: was the agoranomic deed in Lond. II 220 p. 5 l.11 a *not* registered agoranomic deed and did it, in spite of that, convey property? According to the author's assertions on p. 17 the katagraphe would be in this case illegal.—P. 59 "private deeds . . . could not affect the katagraphe directly . . . but the author himself states on p. 20_{25} that P. Giss = M. Chr. 206 seems to contradict this assumption (cf. his interpretation p. 20_{26}).

Not less boring are the repetitions. I quoted on p. 141 an example, where the right of the Greek population to possess property in Alexandria was repeated 6 times; on the p. 1/2 Greek conveyance of property is called katagraphe; the same p. 2 v. 10/11 from the top; on the p. 2 "deed closely related with the archives which registered public deeds"; the same p. 18; p. 4 (l. 4 from the bottom) "in the case where he had his property ἐν παραθέσει the seller did not write a katagraphe but a promise of a katagraphe," cf. the same 18_{21}; p. 3 "other public documents did not convey property directly as the συγχώρησις," cf. the same p. 7; p. 11 "anagraphe of the real property, probably corresponding to the διαστρώματα,"

the same p. 14; p. 26 "In the second half of the sec. cent. B.C. the syngraphe hexamartyros registered with the anagraphe and the *scriptura interior* shortened was drawn up by the same notary of the grapheion who wrote the *ἀναγραφή*" cf. the same on the same page 26; p. 28 "In a later period we may state that the scribes writing the *συγγραφὴ ἑξαμάρτυρος* before the introduction of the anagraphe kept private registers of the deeds in the form of schedae filed in chronological order, cf. the same on the p. 62_{18}; p. 60 "the Byzantine katagraphe was a scriptura plus a delivery of the deed to the alienee," the same on the p. 49ff.; p. 29 "*ταμίαι* copied the scriptura interior in the anagrafe of the deeds," cf. the same on the p. 63_{21}; on *περιορισμός* see p. 40/42, the same p. 66_{48}; p. 110 "cleruchic land paid taxes, the same p. 137_{86}; p. 74 "Women could not be considered as belonging to a demos," cf. the same on p. 125_{31}.

Finally I am obliged to call attention to some sentences which lack exactness and precision. P. 2: *βιβλιοθήκη ἐγκτήσεων* = the Egyptian "bureau controlling the activities of notaries," p. 3 "the register of property of the nome"; p. 10 "Bibliotheke . . . last step of the evolution of the archives supervising the titles"; p. 75 "Under the Roman rule all Greek towns and Alexandria, like all other Greek towns reveal numerous cases"; p. 3 "who wishes to sell his real property . . . must ask the *permission* . . . without this *authorization*"; p. 5 "the legal status of the parties as regards the titles" (sic!); p. 7 "by a regular conveyance of property, notaries . . . protected the owner"; p. 10 "archives registering the anagraphai of the estates"; p. 44 "a document of katagraphe contains a sale and katagraphe"; p. 53 "in the Roman castra . . . a form of Roman *territorial law* was applied which derogated from the Hellenistic terrestrial (?) law"; p. 96 "the Alexandrian democracy solemnly assumed the protection of the possessions (and of properties) of the citizens under the oath of the Archon (see p. 90.) which corresponded to an *uti possidetis*," a sentence which suggests that according to the author the *interdictum uti possidetis* protected not only possession but also property.

More important than all these formal deficiencies are the author's deficiencies to the point, the appreciation of which may be left to the better judgment of the papyrologists and students of Roman law.

As far as Greek resp. Hellenistic law is concerned he defines on the p. 34 *διαστολικόν* = "i.e. the tax which permits procedure to the foreclosure of the mortgage"; the same on the p. 64_{34} "the holder of the mortgage may proceed to foreclose at the expiration of the term of the mortgage without *paying* the ananeosis and the *διαστολικὸν* but he must pay the *ἐγκύκλιον*." This definition reveals that Segré is not familiar with this term, so frequently used in the papyri where it means summons (cf. Tauben-

schlag l.c. 382, 408).—The same applies to *ἀνανέωσις*, which in his opinion is also a tax (cf. however Taubenschlag l.c. 213_{19}). He is also wrong in writing on the p. 33 "this tax was paid by the mortgage (sic!) or before proceeding to the execution on the estate; i.e., before proceeding to the *προσβολή*," not knowing that the execution on hypothecs is called *ἐπικαταβολή* (cf. Taubenschlag l.c. 15,213/14) whilst *προσβολή* has a quite different meaning (cf. Taubenschlag l.c. 208, 403, 409). On p. 12 he asserts "that the transfer of property of slaves was "checked . . . with the *οἰκογένεια*, when he was born in serfdom," whilst *οἰκογένεια* (cf. Taubenschlag l.c. 70_{129}, cf. 60_{57}) refers to home-bred slaves, in contrast to purchased slaves. Very confusing and misleading are his ideas on Greco-Egyptian law (cf. Taubenschlag l.c. 7); p. 87 "the Greek and the Egyptian laws were merged in the Greco-Egyptian law of the royal edicts" (sic!); on the same page "Greek and Egyptian law were merged to a very extent in a sort of royal law in the second half of the second century"; p. 89 "Greek and Egyptian law, which we may consider as two different *iura civilia* had been absorbed by the royal law of the diagrammata and the prostagmata"; p. 90 "Royal edicts made Greek and Egyptian legislation little by little a territorial law by a procedure which recalls in some way the activity of the Roman praetor" (sic!); p. 138_{92} "Greco-Egyptian law which had absorbed much of the civil Greek law in the law of the royal edicts" (sic!)—On p. 8 he asserts that Schwarz (*Actes Oxford* 428) assumed "incorrectly" that the synchoresis became a deed able to convey real property as an agoranomic document" (in spite of a series of documents quoted by the latter, l.c.) with reference to p. Harris 75 (III cent. A.D.) where we read (l. 9) *κατὰ συγχώρησιν γεγενημένην διὰ τοῦ καταλογείου κατεγράφη*. The author writes on p. 8 "the katalogeion of Alexandria could draw up a synchoresis with a promise of katagraphe by the seller and not a katagraphe because the owner did not have his property *ἐν ἀπογραφῇ*" (sic!). This assertion proves that the author has no knowledge of the fact that katagraphe could also take place when the auctor was not *ἀπογεγαμμένος* and that we have a similar case in Oxy. X 1268 (cf. Lewald *Krit. Vierteljahr.* XII 480; P. Meyer *Jur. Pap.* 217.)—His further assertion (p. 13) that in "the earlier Ptolemaic period the agoranomos did not appear to draw up agoranomic documents" (cf. Schwarz, *Actes Oxford* 411_3) shows his ignorance with Tebt. 814 v. 10ff. (239/260 B.C.) [*ὠνῆς μέρους ἀ*]*ντίγραφον.* [[*ἔτους*]] *η* [*Γορ*]*π*[*ι*]*αίου β Φαῶφι α* [*ἐν Κροκο*]*δίλων π*]*όλει τοῦ Ἀ*[*ρσινοΐτου νομ*]*οῦ. ἀγορα*[*νομοῦντος Νικ*]*ολάου. ἐπ*[*ρίατο*] κτλ. His opinion on p. 62, that the syngraphai in Tebt. 815 (228-221 B.C.) were drawn up in a grapheion, indicates again his ignorance with the fact that the grapheia came into being after 146/5 B.C., and that the

grapheia in the Ptolemaic epoch, registered only, but did not drawn up documents (cf. Partsch-Wilcken *S.B. Heid. Ak. d. Wiss.* VII (1927) p. 50ff.). On p. 47 he writes, "I think the opinion expressed by *some scholars* that the purchaser under Greek law could claim the completion of the transaction with a δίκη βεβαιώσεως (cf. Simonetos *Festschrift Koschaker* III 184ff.) is not correct." This opinion is not expressed by *"some scholars"* but by Harpokration: βεβαιώσεως. δίκης ὄνομά ἐστιν . . . . ἐνιότε δὲ καὶ ἀρραβῶνος μόνου δοθέντος εἶτα ἀμφισβητήσαντος τοῦ πεπρακότος, ἐλάγχανε τὴν τῆς βεβαιώσεως δίκην ὁ τὸν ἀρραβῶνα δοὺς τῷ λαβόντι who informs us that in some local laws, ἐνιότε, the δίκη βεβαιώσεως was applied in this case.—P. 135_{55}. His assertion that "very probably even the eternal tenancy of concessioned land was protected by the Greco-Egyptian law in the same way as if it had been genuine ownership" is wrong (cf. Taubenschlag l.c. 189, 187_{14}).—The same holds for p. 55 "therefore a traditio has no reason to be mentioned in a sale Greek or Latin, which had later to be transformed into a katagraphe" (cf. Taubenschlag l.c. 251) and his assertion p. 15 that a γραφὴ καταλοχισμῶν was (a) a "register of abstracts (!) of deeds" and at the same time (c) the register of those persons who were entitled to possess cleruchic land" (cf. Taubenschlag l.c. 171).

As far as Roman law is concerned, students of Roman law will be perplexed when reading p. 71_{80}: "Mitteis *Reichsrecht und Volksrecht* p. 133ff. says that the rules of the ius honorarium may be applied to the peregrini when they are not too technically connected with the Roman ius civile. This is probably not quite correct because the stipulatio was used by the peregrini also before the C.A. Of course, in this case the legal effects of the stipulatio are *questionable"* (sic!) A. Segré considers the stipulatio applied by the peregrini as an institution *iuris civilis,* the legal effects of which were in this case *"questionable."* Here A. Segré, the romanist may be reminded of a passage in Gaius III 92 "Verbis obligatio fit ex interrogatione et responsione veluti: *dari spondes? spondeo, dabis? dabo*...Sed haec quidem verborum obligatio: *dari spondes? spondeo* propria civium Romanorum est; *ceterae vero iuris gentium sunt, itaque inter omnes homines, sive cives Romanos sive peregrinos, valent;* et quamvis ad Graecam vocem expressae fuerint, veluti hoc modo : Δώσεις; Δώσω; Ὁμολογεῖς; Ὁμολογῶ," a form, which we find innumerable times in the papyri (cf. Taubenschlag l.c. 299).[1]

[1] Amazed by the above statements, I choose at random one of his former contributions, his article in Studi Bonfante III (1930). I was not a little surprised when I read p. 431:

> "Sabina Apollonaria, essendo ἀπάτωρ, non è soggetta alla tutela agnatizia in forza della *lex Claudia,* per cui se non aveva vissuto in giuste nozze col padre de'suoi figli e non aveva quindi potuto ricevere da lui un tutore testamentario per far testamento, doveva

No less striking is his discussion on *arrha* p. 45 "when the security consisted of a large part of the price it acted "practically" as *arrha poenitentialis;* when it was a ring given as earnest for a sale of 10 talents (to use the example of Theophrastos), the ring did not fulfil the role of penalty." According to the author the character of the *arrha* depends not on the intention of the parties to the contract, but on the fact whether it is "a *large part of the price*" or a "ring"; a "large part" of the price acts "practically" as *arrha poenitentialis,* a ring as *arrha confirmatoria.* In addition he invents a hitherto unknown institution *"arrha anulus"* (sic!) which he contrasts with *"arrha poenitentialis"* (cf. p. 48) "concluding we would distinguish in the Hellenistic law between an *arrha poenitentialis,* part of the price and *arrha anulus* (!) which was but a necessary requirement for creating the obligation of the seller to deliver and of the purchaser to pay the price." This "unknown" institution, however, is also known to Roman law, since we read p. 48/49: "For Roman law the arrha could only be an *argumentum emptionis* but while the *arrha* part of a price could limit the penalty to the extent of the security, the *arrha anulus* (sic!) could not affect the obligation arising from the *emptio venditio.*" This

---

richiedere dal prefetto un *tutor* optivus e se questi per caso fosse stato assente, un *tutor ad actum."*

The author made four elementary errors in these few sentences:

(a) He asserts that the woman being ἀπάτωρ was not subject to agnatic guardianship according to the provisions of the *lex Claudia,* not knowing of course, that the *lex Claudia* abolished agnatic guardianship about 150 years before this document was drawn up. (cf. Gai. 157 *Sed postea lex Claudia lata est quae quod ad feminas attinet, agnatorum tutelam sustulit.*).

(b) He maintains that women had to apply to the prefect for a *tutor optivus.* He does not know that *"tutores optivi"* were tutores whom a woman could choose by herself if authorized by testament and will. (Gai. I, 150 *In persona tamen uxoris quae in manu est, recepta est etiam tutoris optio, id est, ut liceat et permittere quem velit ipsa tutorem sibi optare hoc modo: Titiae uxori meae tutoris optionem do.*)

(c) A. Segré points out that in case of absence of the *tutor optivus* the woman could apply for a *tutor ad actum;*—he is not familiar with the fact that in such a case only a *tutor ad omnes res* could be appointed at the request of the woman. (Gai. I, 173, *Praeterea senatusconsulto permissum est in absentis tutoris locum alium petere: quo petito prior desinit; nec interest quam longe absit is tutor.*)

(d) He contrasts a *tutor optivus* with a *tutor ad actum,* failing to realize that a *tutor optivus* could be also a *tutor ad actum* (Gai. I 150 *quo casu licet uxori tutorem optare vel in omnes res vel in unam forte aut duas.*)

passage means that the arrha in money—if I understand the author—is simultaneously *arrha confirmatoria* and *arrha poenalis,* the *"arra anulus"* (sic!) only *arra confirmatoria* . . . —On p. 36/7 (cf. 65_{38}) he considers as a sort of novation "the replacement of a private document by a public one," (see however Taubenschlag Sav. Z. 51, 84ff.).—On p. 141 n. 111 we read: "To dispose of the *familia* he had to use a will adrogatio according to XII tables v. 3 *Uti legassit super pecunia tutelave suae rei ita jus esto. Si agnatus nec escit gentiles familiam habento."* On p. 94 "Bonfante . . . believed that the Roman *dominium ex iure Quiritium* was fundamentally different . . . from ancient Greek ownership. I do not agree with him on this latter assumption and I think that Roman ownership *ex iure Quiritium* had nearly all the features of the ownership of real estate of a Greek free town," cf. 104 "because Greek and Roman property have similar political background," an assertion which shows a complete misunderstanding of the two fundamental conceptions of property (cf. Mitteis *Reichsrecht u. Volksrecht* 70), the Roman *esse ex jure Quiritium* and the Greek διαδικασία.

In this connection some remarks on the author's familiarity with the sources may be outlined.—On p. Harr. 75 l. 9 κατὰ συγχώρησιν . . . κατεγράφην is not a συγχώρησις of καταγραφὴ but a συγχώρησις περὶ καταγραφῆς, a promise of καταγραφή (sic!) ; on p. 9 A. Segré refers Freib 8 to a συγχώρησις περὶ καταγραφῆς with reference to l. 25, where however the predecessor's συγχώρησις, concerning καταγραφή in favor of Julius Gemellus is mentioned, whilst the author omits l. 30 where the *present* συγχώρησις is called an act, by which καταγραφή was consummated.—On p. 19_{22} he calls Lond. III 1157 p. 110 = M. Chr. N° 109 and Giss. 8 = M. Chr. N° 206 "documents promising a katagraphe which could obtain the parathesis on the diastromata," whereas the former is an application for notification in the βιβλιοθήκη ἐγκτήσεων of the applicant's right to prevent an intended sale, the latter an application for ἀπογραφή based on a χειρόγραφον.—On p. 19_{22} we read: "In Oxy. 1199 the purchaser of a house in Oxyrhynchos bought with an ἰδιόγραφος πρᾶσις ἐμαρτυρήθει (sic!) διὰ τοῦ μνημονείου applies for a *parathesis* of the deed because the vendor had not the house ἐν ἀπογραφῇ. Oxy. 1268 (III A.D.) is probably a case analogous to P. Oxy. 1199"; as a matter of fact, the latter is an application for ἀπογραφή, although the vendors were μὴ ἀπογεγραμμένοι.—On p. 20_{22} Fuad 39 (244/49) "meant only the alienator agreed that the purchaser might undertake the steps leading to the katagraphe"; actually the purchaser is in this document authorized ἐξεῖναί σοι ἀπογράψασθαι εἰς τὸ τῶν ἐνκτήσεων βιβλιοφυλάκιον.—On p. 20_{22} Oxy. 1636 and 1704_{25} "are not katagraphai but promises of katagraphai"; however, the former reads (l. 5) ὁμολογῶ παρακεχωρηκέναι (second hand) ἔσχον τὴν καταγραφὴν ὡς πρόκειται, that means "the con-

veyance has been made to me," while the latter Oxy. 1704_{25} contains a similar indication.—P. Dura 101 (227 A.D.) is—according to the author p. 52/3—"a sale without the tradition which is not expressed even in the rather insignificant form of the Greek"; in fact, we find (Welles, *Arch. d. dr. orient.* I 282) there: *καὶ τὴν χώραν αὐτῷ ἔδωκεν τὸ ἔχειν.*—On p. 22_{36} "Tebt. 814 (III cent. B.C.) and Petr. II 41 are anagraphai of houses probably drawn up for fiscal purposes"; actually, however, the former contains "records of sale of forfeited property," the latter "a description of town property."—On p. 22_{37}, BGU. 1219-1222 are according to A. Segré anagraphai of the komogramateus and of the topogrammateus (?) of sales by public auctions; but BGU. 1219-1221 are reports on auctions perfected by the state, and BGU. 1222 is a list of houses and lands auctioned by the state.—On p. 66_{42} the author identifies the *ὑπογραφή* in BGU. 1827 (52/51 B.C.) of the *χρηματισταί* with the *ὑπογραφή* drawn up by a party in Ent. 35.—On p. 62_{19} we read "in P. Tebt. 814 where a house was acquired after a foreclosure on the property, the agoranomos intervened. I think in this case he wrote a protocol when he drafted contracts. I suppose that parties went to him with a private document" (sic!). The papyrus however states unmistakably (l. 10ff.) *[ὠνῆς μέρους ἀ]ντίγραφον. [(ἔτους] η [Γορ]π[ι]αίου β Φαῶφι α [ἐν Κροκοδίλων π]όλει Ἀ[ρσινοίτου νόμ]οῦ, ἀγορα[νομοῦντος Νικ]ολάου. ἐπριατο* κτλ. and the sale by *προσβολή* was embodied in a formal contract between the *government agent* and the purchaser (cf. Taubenschlag l.c. 403).—On p. 58: C. 4, 21, 17 establishes, according to the author as requirement for the transfer of property through a sale . . . the delivery of the deed to the purchaser (*traditio cartae,* (?) cf. however Schwarz l.c.).—On p. 72: Cicero pro Flacco XXIV, 70; XXXII, 80 translates "the katagraphe with mancipatio" (sic!). In what handbook did Prof. A. Segré find this translation?—On p. 33_{32} (cf. p. 64) A. Segré illustrates proceedings of katagraphe of Dura with an inscription . . . from Caria which I was first to quote in *Actes Oxford* 480.—On p. 70_{70}: BGU. 887 = M. Chr. 272 of Side in Pamphilia (151 A.D.) "probably a *traditio* written in Greek." On p. 53 he defines the same document "as a sale of a female slave *without traditio.*"—On p. 70_{70} he defines S.B. 6304 as "traditio written in Greek"; in fact, it is "a sale with traditio."—On p. 54 he defines BGU. 316 = M. Chr. 271 "a sale without traditio"; in fact it is a sale with traditio.—Concerning P.S.I. 729 (77 A.D.) he asserts on p. 52 that the contract was drawn up in . . . Cappadocia (sic!); the parties to the contract were: a Roman soldier of the XXII legio, residing in Egypt throughout the first century (cf. *R.E. XII,* 2 p. 1793), and a soldier of the Ala Apriana which, according to his own statement on p. 70 "was transferred to Egypt in a

period between 77 and 83 A.D." I suppose that the author based his assertion on the fact . . . that the horse was from Cappadocia. (cf. l. 1 *emit equom Cappadocem nigrum*).—On p. 134_{53} A. Segré writes "and in suing before the chrematistai according to the πολιτικοὶ νόμοι and the ψηφίσματα he had to show the ἀπαρχὴ, the birth certificate = the tax on the birth certificate of a Greek, not the payment of the inheritance tax (as inaccurately Schoenbauer, *Liegenschaftsrecht* p. 25, and Wilcken, *UPZ II,* 46 and 70 and Cl. Préaux, *L'écon. royale d. Lagides* p. 237), and the declaration of the inheritance." I must confess that I belong also to those who interpret this passage so "inaccurately" (my book 159ff.) Instead of polemics I will quote the respective passage in my book: "According to the πολιτικοὶ νόμοι and ψηφίσματα the acquisition of the estate required not only proof that the claimant was the lawful son (cf. Tor. VII, 8 = U.P.Z. No. 162) but also the declaration of the acceptance (Tor. 1, VII, 11) of the estate and the payment of inheritance taxes Tor. 1, VII, 10 καὶ ταξάμενον τὴν ἀπαρχήν." The author, making his statement, has overlooked that the question concerning the origin of Hermias was already mentioned in l. 8 and it is improbable that the same question would be repeated again in l. 10. On p. 84 the author asserts wrongly that Col. 480 is from the beginning of III cent. B.C.

Finally, some remarks on the author's method of dealing with the literature: p. 25 "with Kunkel and Schwarz the μετεριγραφὴ of the catoecic land is to be considered as a deed parallel to the katagraphe"; Schwarz *Actes* 418 however says with reference to Kunkel "agoranomische Homologien, in welchen der Veräusserer seine εὐδόκησις zur διὰ τοῦ ἱππικοῦ λογιστηρίου erfolgten μετεπιγραφὴ erklärt, die καταγραφή, oder doch eine Parallelbildung dazu darstellen."—On p. 46 "νόμος ἀρραβῶνος (see Mitteis, *Grundz.* p. 186ff.) apparently the purchaser who claimed the fulfillment of the transaction was entitled to receive from the seller nothing more than the penalty of the arrha agreed to under an earlier transaction"; Mitteis however says: "Wenn der Empfänger nicht erfüllt, hat er die doppelte Arrha zurückzugeben. Umgekehrt verliert der säumige Geber die gegebene."—On p. 63_{25}: "Kunkel *Gnom. III* p. 146 supposes that the anagraphe of the demotic documents was a katagraphe," whilst Kunkel asserts l.c. 159 "die ἀναγραφή als Publizitätshandlung hier die gleiche Stelle wie die καταγραφή bei den griechischen Verträgen einnahm."—On p. 40 "In the Hellenistic period the ἀμφούριον was doubtless a document recording *the boundaries* of the estate and this was rightly pointed out by Schwahn, *Arch. f. Pap.* II (1933) p. 57," whilst Schwahn considers on p. 60 the ἀμφούριον as a "Vertrag über den Verkauf (Kauf) eines Grundstückes."—On p. 39 "the commentators of this passage (Theophr. fragm. 97, 4) were

induced to suppose that *ἀναγραφή* + *ὅρκος* were the *καταγραφή*." May the author indicate a commentator who in face of the text: *τὰ ἐκ τῶν νόμων ποιήσωσιν οἷον ἀναγραφὴν ἢ ὅρκον ἢ τοῖς γείτοσι τὸ γιγνόμενον* made this statement?—On p. 127_{20} "Polyb. 34, 4 in Strabo. XVII, 1, 2 distinguishes three elements in the population of Alexandria: the Egyptian, the *μισθοφορικὸν* (sic!) and the Alexandrians. See Schubart, *Causa Halensis*, Arch. f. Pap. XII, 1936 p. 27ff." But Schubart makes no such statement.—On p. 115 "Vineyards and orchards had been considered by scholars to have been objects of genuine real property"; note 91 "Guéraud Ent. 89." But again one looks in vain for a confirmation of this quotation.

The outlined detailed list of elementary errors, striking inaccuracies and misleading interpretations, seems to make it unnecessary to pass our own opinion on the essay as a whole. This may be left to the judgment of the reader.

RAFAEL TAUBENSCHLAG.