

# Taubenschlag, Rafał

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## Erlangen dissertations

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## NOTES

### ERLANGEN DISSERTATIONS

Prof. Erich Seidl was so kind to send us a report about four Erlangen-Dissertations accomplished in his papyrological seminar. These are:

1. Engelbert Niebler, *Die Aufrechnung im ptolemäischen Rechte* (Compensation in Ptolemaic Law), 1948.

The author has accepted the view — in so far the method of investigation is concerned — that historic and juristic investigation must be based on connection of cause and effect. He investigates — according to that principle — the law suit for mutual compensation as it appears in ancient and several modern legislations. Supposing that a claim of one party to receive a certain amount of good capable of being substituted, is opposed by the claim of the opposite party to receive another amount of the same goods, then the case can be resolved by law in different ways. One legislation can declare: *Ipsa iure compensatur*; the other one can decide that one party at least has to declare her will to compensate, and that in such a case the claims of both parties become partly extinct, in so far namely as the claim and counter-claim are equal. But the Law can just as well assume a totally passive attitude, and must not provide anything at all for a compensation and its consequences. In this case both parties must explicitly provide for the possibility of a mutual compensation and provide for it at the moment of the conclusion of the obligation. Based on BGU 1265 Dr Niebler explains (and he is right) that we have to assume that third alternative as far as Ptolemaic law is concerned. Ptolemaic documents quoted by him seem to prove his assertions. His opinion seems to be easily compatible with Seidl's view concerning the expiration of an obligation according to Ptolemaic law, presented by him in *Studi in onore di Siro Solazzi*, Napoli 1948, pp 197 ff. Dr Niebler investigates also carefully, if it is not necessary to amend partially the views of Preisigke about the existence of a vivid clearing house business in Ptolemaic Egypt. We have too

to modify the opinions of Beauchet concerning the application of the principle of mutual compensation in Athenian law. On the contrary we find that the views of Biondi concerning the development of the principle of the mutual compensation in Roman law are perfectly compatible with Niebler's conclusions.

2. Heinz Friedrich Karl Hübner, *Der Praefectus Aegypti von Diokletian bis zum Ende der römischen Herrschaft*, 1948.

Reinmuth's book *The Prefect of Egypt from Augustus to Diocletian*, Leipzig 1935, is since a long time an indispensable source of consultation. Dr Hübner tries to study the same subject in a later period. It is obvious that a most close loaning to the model was desirable and a matter of course. The author has investigated an extraordinarily rich material; he has given a list of prefects essentially longer than that given by Cantarelli, and has created a reliable manual for all papyrologists, analogous to Reinmuth's manual.

3. Otto Arndt Glossner: *Der Gebietsstreit zwischen Itanos und Hierapytna auf Kreta im 2 Jahrhundert a. Chr. n.*, 1948.

The works of Partsch and Kaser about the theory of the Roman interdict consider the inscriptions Ditt. Syll.<sup>3</sup> 685 and S.E.G. II 511 to be important proofs for their views. It was necessary to give a detailed commentary for each line of those inscriptions; a commentary dealing with all historic and juridical questions connected with the texts. The author has resolved this task, and I think in a satisfactory way. His work is connected with papyrology because the author gives a detailed explanation of each fragment of the inscriptions on the basis of Greek or Roman law.

4. Herwald Schmidt, *Der Einfluss der Rhetorik auf das Recht der Papyri Aegyptens*. Diss. Erlangen 1949.

The author has investigated thoroughly the works of Stroux and Volkmann about the construction of the plaidoyer before court. He applied to his study the rules established by the ancient rhetoricians, and he obtained new possibilities for the interpretation and understanding of the speeches of the advocates preserved in the papyri. It is true that the material contained in the papyri is not very rich indeed, but it is sufficient to prove that the rules established by the rhetoricians were known and applied. The author shows us further the influence exercised on the courts by the rhetoricians. The dissertation proves the influence of rhetoric to have been a real one during all the successive periods. It refu-

tes the thesis that rhetoric exercised an influence upon law either in the preclassic period only, or only in the Byzantine period, or in both of these periods, but not in the periods between them. (This theory is represented by Grosso, *Atti del V Congresso Naz. di Studi Rom.*, Vol. V). The dissertation delivers a proof that rhetoric was — besides imperial, popular and autonomous provincial law — a source of law in Roman Egypt. But of course it can be considered only as a modest source of law compared with the three above mentioned sources.

*R. T.*

The survey of the non-juristic literature and publications by G. Manteuffel will appear in the next issue.

*The editors*