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MUZEUM HISTORII POLSKI

THE ROMAN AUTHORITIES AND THE LOCAL LAW IN EGYPT BEFORE AND AFTER THE C. A.

The attitude of the Roman authorities as concerns the local law in Egypt has not been monographically dealt with in literature as yet. This is the first attempt. Accordingly we will deal with the epoch before and then with that after the C.A. and we hope to give a contribution which will help to clear up the so much in the last years tormented question on the legal force of the local law after this Constitution*.

I. The Roman Authorities and the Local Law before the C. A.[1]

The Roman authorities decided whether somebody is a citizen or not in conformity with the law of the fatherland. They decide therefore according to the statutes of the autonomous cities — because these cities can only be taken into consideration[2] — whether somebody is a citizen of Alexandria, Ptolemais, Naukratis or Antinoopolis. A good exemple offers in this respect Catt. recto IV, 16 — V,26 = M.Chr. 372 (II cent. A.D.)[3] In this law-suit which takes place before the prefect Aegypti Valerius Eudaimon, Octa-

* Arangio-Ruiz, *L'applicazione del diritto romano in Egitto dopo la costituzione di Caracalla* (Estr. dagli „*Annali del Sem. Giuridico dell' Università di Catania*" I 1947); *L'application du droit romain en Egypte après la constitution Antoninienne* (Extr. du „*Bulletin de l'Institut d'Egypte* t. XXIX 1946 — 1947 p. 83 ff); Schönbauer, *Das römische Recht nach* 212 *in ausschliesslicher Geltung?* (S.A. aus *d. Anz. der phil.-hist. Klasse d. Oest. Ak. d. Wiss* Jhg. 1949, N° 17); Wenger, *Neue Diskussionen zum Problem „Reichsrecht u. Volksrecht"* (*Mélanges F. de Visscher* II 1950 p. 52 ff).

[1] Since Mitteis, *Reichsrecht u. Volksrecht* 102 ff this problem was not treated in literature. Mitteis assumed that in the field of the law of persons and the law governing domestic relations and in the field of proceedings local law was in force whilst in the law of property Roman law was applied. Whether this proves right for Egypt see below.

[2] Cf. my *Law* II 18 ff.

[3] Cat. Recto III, IV = M. Chr. 372; col. IV = P. Meyer, *Jur. Pap.* N° 22 b. cf. Lewald 'Αρχεῖον ἰδιωτικοῦ δικαίου XIII (1946), 71 ff. does not belong here.

vius Valens a still active *miles cohortis*, a *civis Alexandrinus* requests V,10 to εἰσαχθῆναι εἰς τὴν πολιτείαν Ἀλεξανδρέων[4], his son born of an union with Cassia Secunda. The prefect rejects this request on the ground that the children of soldiers of land-forces born during the military service of their fathers are illegitimate (V,4—6) and an illegitimate son of a *civis Alexandrinus* cannot obtain the Alexandrian citizenship (V,6—8) μὴ ὢν δὲ νόμιμος υἱὸς τοῦ πατρὸς ὄντος Ἀλεξανδρέως Ἀλεξανδρεὺς οὐ δύναται εἶναι[5]. This is a provision not only peculiar to the Alexandrian law. Besides we find in the Greek law the general exclusion of bastards from the body of citizens[6]. This is in a sharp contrast to the Roman law where illegitimate children of parents *cives Romani*, acquire Roman citizenship[7-8].

The local law is not so strictly observed in the emancipations. The Roman authorities acknowledge — it is true — the local emancipation before a notary public, preceded by an authorisation issued by the ἐγκύκλιον office and sometimes followed by a public announcement of the effected emancipation through a heralds proclamation,[9] but they admit the peregrines also to perform the

[4] Cf. my Law II 24_{88}.

[5] Cf. the provisions in *Gnom.* § 46 concerning the status of children born of a marriage between an ἀστὸς and an Egyptian woman (*matrimonium iniustum*); in the case of ἄγνοια in relation to an *Aegyptia* the child is above all *Aegyptius* and follows its mother's nationality; but later *causae probatio* can take place. cf. Seckel-Meyer, *Zum. sog. Gnomon des Idioslogos* p. 27; Riccobono jr. *Il Gnom. dell'Idios Logos* 184 ff.

[6] Cf. P. Meyer *Arch. f. Pap.* III 85 ff with reference to Herodot I, 173 who communicates that in Lycia the children of a citizen and a ξένη or παλλακὴ are not citizens. Meyer refers also to Aristote (Πολιτικὰ 3,5 p, 1278 a. Susemihl) who formulates this principle in a general manner.

[7] Cf. Catt. Recto III, 19 ff see P. Meyer, l. c. 80, 85.

[8] Other lawsuits on *status civitatis* before the C.A. cannot be proved with certainty. I have supposed that in Osl. II 80 (after 161 A.D.) (cf. my *Law* I 28) such a lawsuit is in question; but as the word v. 9 *libertatis* shows, a lawsuit on liberty must be also taken in consideration; as far as BGU 1086 is concerned the papyrus refers to *causae probatio* of a *matrimomiun putativum* between a *civis Romanus* and a *peregrina*, cf. Col. I. 7 [πολιτεία]ν Ῥωμαίων; (v 8) κατ' [ἄγνοιαν] (v. 8) [δεό]μενον ἐπανορ[θώσεως] cf. Seckel—Meyer l. c. 28 and note 3; erroneously Arangio — Ruiz, l. c. 99 note 1; Schönbauer l. c. 385; on Oxy. 2199 (123 A.D.) cf. Arangio-Ruiz, l. c. 107_3 see below.

[9] Cf. my art. *Sav. Z.* 50, 165; *Law* I 73 f; it may be added SB 8017 (198—211 A.D.) a receipt on κηρυκικὸν τέλος (v. 10) Διέγραψεν Ἀμμωνίῳ ἐπιτηρητῇ κομακτορίας καὶ φόρου κηρυκίας ἀφ[ι]μένη ἐλευθ[έ]ρα ὑπὸ Εὐδαιμον[ί]δος Ἥρωνος τὸ [τ]ῆς ἀνακηρύξεως τῆς ἐλ[ευ]θερώσ[ε]ως αὐτῆς κηρυκ[ι]κὸν τέλος πλήρης.

manumissio vindicta.[10] This is the more surprising as in the inscriptions from Pamphile deriving from the imperial epoch there is made a sharp distinction between persons emancipated according to the Roman law called *vindictarii* and those emancipated according to the peregrine law called ἀπελεύθεροι[11] The *man. vindicta* was also practised by the Palestinian Jews but there the emancipated slave acquired the liberty of an inferior value as this form of emancipation was not recognized by the Talmudic law.[12] On the other hand the effects of a valuable manumission resp. the right of patronage and its contents are determined according to the law of the fatherland of the patron.

Oxy. IV 706 = M.Chr. 81 (115 A.D.)[13] refers to a law-suit between the patron Heracleides and his freedman Damarion. As first of all the enchoric law is inquired, Heracleides might have been at the time of the emancipation an Egyptian and had might some time later acquired the Alexandrian citizenship; the freedman is now a Greek, but in that way the placing of the patronage under Egyptian law which was primarly operative, could not to be put aside: only because this law did not contain the respective provision, ἀστικὸς νόμος[14] was subsidiarily applied. As far as its contents is concerned, the question at issue was the παραμονή which Damarion refused to perform on the ground that the patron did renounce the patronage and the renunciation of a patronage excluded the παραμονή[15]. The lawsuit hinges on the question whether a renunciation took place. Damarion understood the promise μηδὲν ἔξειν τὸ πρᾶγμα as a renunciation of the patronage whilst the judge referred the words to the ransom and to the not-calling in question the validity of the emancipation. Anyhow the lawsuit

[10] Cf. *Stud. Pal.* XX, 48_6 (II cent. A.C.), see my *Rez. d. röm. Rechts in Ägypten* (*Studi Bonfante* I 36_{222}); *Sav. Z.* 50, 166_7.

[11] Cf. Mommsen, *Zt. f. Rg.* XXIV p. 304; cf. also Mitteis, *Reichsrecht u. Volksrecht* 108.

[12] Cf. Rubin, *Das talmud. Recht.* 1920 p. 103, 128—9.

[13] Cf the literature concerning this document in Schwarz, *Die öffent. u. private Urkunde im röm. Ägypten* 21, 126 ff, 296; Jörs, *Sav. Z.* 34, 148—9; Harada, *Sav. Z.* 58, 136 ff; Lewald, l. c. 74; my *Law* I passim.

[14] Cf. my *Law* I 12, 14.

[15] On ransom of the emancipation cf. my *Law* I 74; see however Harada, l. c. 151 ff.

proves that the Roman judge considered the renunciation of the patronage as admissible[16].

The legal effects of an ἄγραφος γάμος[17] between a Greek and an Egyptian which the Roman judge recognized as valid[18], are determined by the Egyptian law. According to the Egyptian law a son born of such a marriage is unable to make a valid testament[19] and the Roman judge acknowledges it having beforehand got the opinion[20] of an expert.[21] [22]

The *patria potestas* is also determined according the local provisions.[23] Pursuant to the local law as quoted in Oxy. 237, Col. VIII, 12 which the Roman practice did not attempt to contest, a father had the right to dissolve, at his discretion, the marriage of a daughter, the offspring of an ἄγραφος γάμος and married in an ἄγραφος γάμος. Contrary to enchoric law the Roman practice apparently deprived him of such a right if his daughter sprung of an ἄγραφος γάμος and married in an ἔγγραφος γάμος as well as in the case of a daughter the issue of an ἔγγραφος γάμος and married in an ἔγγραφος γάμος. The underlying principle can readily be understood. In an ἄγραφος γάμος the husband does not become

[16] Cf. the Roman law on the renunciation of the patronage in that time Harada, l. c. 149, 150 ff.

[17] Cf. on such unions my *Law* I 79_{10}.

[18] Cf. CPR 18 (124 A.D.); Oxy. 237 Col. VII, 13 cf. my *Law* I, 106; on ἄγραφος γάμος as an Egyptian institution cf. beside my *Law* I 87_{51} a. the most important remarks in Wenger, *Aus Novellenindex u. Papyruswörterbuch* p. 77—8.

[19] Cf. my *Law* I 87.

[20] Cf. on νομικοὶ my art. *The legal profession in Egypt* (*Festschrift Schulz*) cf. *Journal Jur. Pap.* IV, 371—2.

[21] [ἀν]α[γ]νώσθ[η] κατὰ λέξ[ιν ο]ὕτως. Ὁ τελευτήσας Ὡριγένης [ἐξ ἀγρά]φ[ω]ν [γάμων γε]νόμ[ε]νος τῷ πα]τρὶ φαί[νετ]αι κατα[λείπειν τὰ ἴ]δια διαθήκη[ς] ἐξουσία[ν] μὴ ἐσ[χη]κὼς τ[ούτου] [ζ]ῶντος.

Herein lies implicite the recognition of a farther local provision according to which the son born of such an union may only possess a *peculium* not a property of his own cf. my *Law* I 87_{50}.

[22] On the matrimonial regime in the edict of Tiberius Alexander cf. *The Temple of Hibis in El-Khargeh Oasis Part II Greek Inscriptions* (1939) N° 4 (v. 25) τὰς μὲν γὰρ προῖκας ἀλλοτρίας οὔσας καὶ οὐ τῶν εἰληφότων ἀνδρῶν καὶ ὁ θεὸς Σεβαστὸς ἐκέλευσεν καὶ οἱ ἔπαρχοι ἐκ τοῦ φίσκου ταῖς γυναιξὶ ἀποδίδοσθαι which is not taken here in consideration because it belongs not to the local but to the provincial law cf. lastly Schönbauer, l. c. 376; Arangio-Ruiz, l. c. 116; Wenger, l. c. 548.

[23] Cf. my art. *Sav. Z.* 37, 188 ff; *Law* I 105—6; Wenger, *Actes Oxford* 551 ff.

his wifes κύριος since her father retains that power. Hence the Roman practice conceded the father the right of divorcing his daughter if he had not lost his *patria potestas* through his daughters marriage. Therefore, though the wording of the papyrus is not clear, it is very likely that in the case of a daughter sprung of an ἔγγραφος γάμος and married in an ἄγραφος γάμος the fathers right to divorce her was not contested either.

In the local law the legal property-relations existing between a father and a child are characterized by a a mutual liability for debts.[24]. In Flor. 99 = M.Chr. 368 (I — II Cent. A.D.)[25] — where the strategos complies with the request of the parents of a prodigal son to proclaim that they were not willing to be liable for his debts, it does — of course — not appear which would be his attitude, should such a proclamation not be moved, but Fam. Tebt. 19 (118 A.D.) is in this respect quite clear. Here a certain Isidora owes money on the basis of an executional document, as she does not pay it back in time the creditor takes all the necessary steps in order to have the execution done and when the case came before the judicial officer ὁ ἐπὶ τῶν κεκριμένων Cascellus Gemellus[26], he decided to her disanvantage and ordered the arrest of her son Kronion as the advocate says (v. 9) ὅπως πείθονται κεκριμένοις: in order that they should submit to the verdict. The high officer made Kronion responsible only on the ground that he was Demetria's son[27].

In the field of guardianship there was in Antinoe a rule applied according to which the citizens of that city were the only persons entitled to become guardians of an Antinoite ward.[28] Besides the Roman law was practised. Thus the prescription of the *lex Plae-*

[24] Cf. my *Röm. Privatrecht zur Zeit Diokletians* 230 ff; *Studi Bonfante* I 407_{280}; *Law* I 33_{182}; Arangio-Ruiz, *L'application* 109 ff. This principle is rejected by the Roman authorities as far as penal law is concerned cf. Osl. II 18 (162 A.D.) (v. 4) Καὶ γὰρ εἰ ἀνδροφόνος [ἐ]κεῖνος λημφείη οὐ δεῖ τὸν πατέρα αὐτοῦ ὑπεύθυνον εἶνα]ι.

[25] Cf. Mitteis, *Grundzüge* 276; my *Law* I 33_{182}.

[26] Cf. on this official my *Law* I 401_3.

[27] Isidora being herself the debtor (v. 15 — 19) see the ed. p. 69 note 8; the editor however points out, that Kronion acted apparently as a guarantee on behalf of his mother (perhaps as her guardian as well) but this view finds no support in the papyrus.

[28] *Mich. Inv.* 2922 (v. 7) (cf. *J.E.A.* XVIII, 70) (172—3 A.D.) κεκελευσμένου οὖν ὑπό τε Ἐρεννίου Φιλώτα τοῦ ἐπιστρατηγήσαντος καὶ Ἀντω[ν]ίνου Μάρκωνος ὁμοίως περὶ τοῦ Ἀντινοέα μηδενὸς ἄλλου ἐπιτροπεύειν ἢ μόνου ἐν τῇ νομαρχίᾳ Ἀ[ν]τινοέως .

toria and the provincial edict on the protection of the minors prevailed also for the peregrine wards[29], the prescriptions on taking the inventory of the personal estate became effective for the peregrine guardians[30] and the institute of the *cura minorum* was sometimes extended to the peregrines[31]. The peregrine women made also use of the *ius liberorum.*[32]

The hereditary law shows another picture. We must submit, by turn, to an examination the lawsuits concerning the succession on intestacy, the hereditary provisions *inter vivos*, the acquisition of an estate and the responsability of the heirs.

The question in P.Mich. III 159 (41—68 A.D.)[33] who of the two claimants to the succession, either the plaintiff Dionysius, or the

[29] Cf. *Studi Bonfante* I 400_{223} (*New. Palaegr. Soc.* II N° 226 = SB 5761) (91—96 A.D.) cf. Lewald, *Viertelj. f. Soz. u. Wirtschaftsg.* XII, 474—5 deals with an *in integrum restitutio* against an agreement signed by an ἐπίτροπος of the plaintiff as she asserts (v. 9—10) ἐπὶ περιγραφῇ ἑαυτῆς; Oxy. VII 1020_8 = Meyer, *Jur. Pap.* N° 17 (198—200 A.D.) Rescript of Severus and Caracalla: Εἰ τὴν ἐκ τῆς ἡ[λικίας ἔχεις βοήθειαν] τὸν ἀγῶνα τῆς ἀπάτης ὁ ἡγούμ[ε]νος τοῦ ἔθνου[ς] ἐκδικήσει; on the *lex Plaetoria* and on the *integrum restitutio* see my Law I 135_{17}.

[30] Fam. Tebt. 49 (205 A.D.) where the ἐπίτροπος appointed by the competent municipal authorities takes in the presence of three witnesses the inventory of the minor's personal estate. This ἀναγραφή is the *„repertorium quod vulgo inventarium appellatur"* mentioned in 26, 7, 7 pr. *Tutor qui repertorium non fecit..., dolo fecisse videtur... si quis igitur dolo inventarium non fecerit in ea conditione est ut teneatur in id, quod pupilli interest, quod ex iureiurando in litem aestimatur.* On the other inventaries see Kreller, *Erb. Unt.* 95_4.

[31] Cf. Oxy 487_6 = M. Chr. 322 (156 A.D.) see my *Rezeption* 401_{230}; *Law* I 126_{52}. — Whether the authorities complied with this application on the release from guardianship based on the Roman law on exemption we don't know.

[32] Cf. my *Law* I 133 with reference to my art. *Arch. d. droit oriental* II, 296 ff; 302 ff; 306 ff. If Arangio-Ruiz, l. c. 110 is surprised at this statement, I must confess that I am not less surprised at his one denying it, see my art. *Arch. d. droit oriental* II 312 and Hamb. 16 (209 A.D.) (v. 5) παρὰ Ἀντωνίας Θερμουθαρίου χωρὶς κυρίου χρηματιζούσης κατὰ τὰ Ῥωμαίων ἔτη τέκνων δικαίῳ; P. Strassb. 150 (III cent. A. D.) (v 2) [παρὰ Διοδώρας ?] τῆς καὶ Κοπροῦτος χρηματι[ζούσης κατὰ Ῥωμαί]ων ἔθη τέκνων δικαίῳ κτλ.

[33] *Actiones tutelae* against peregrines are frequent cf. BGU 136 (the epoch of Hadrian) see Gradenwitz, *Hermes* 28, 231 ff; PSI 281 (II cent. A.D.) cf. Wilcken, *Arch. f. Pap.* VI, 385; Rend.-Harr. 67, II, 11 (see San-Nicolò *Krit. Vjschr.* XXIX, 255) where in an Egyptian lawsuit a Latin rescript for an Egyptian is quoted; it is a Latin *subscriptio* on a *libellus* (cf. Wilcken, *Arch. f. Pap.* XII, 235). Cf. P. Meyer-E. Levy, *Sav. Z.* 46, 282 ff; Uxkull-Gyllenband, *Gnomon* 17—18.

brothers Apronius and Manilius (the sons of the deceased daughter X. of the also deceased Manilius, Dionysios brother) *proprior esset ad possidenda bona*, after the testator Dionysius' death (the brother of then deceased daughter X) is decided in favour of the plaintiff according to the Greek-Alexandrian law. In BGU 136 = M.Chr. 86 (135 A.D.) the advocate of the plaintiff asserts that the father of his client was the defendant's elder brother and as such had the right to a διμοιρία[34] of the paternal estate and in consequence he was entitled to devolve this estate to his daughter under age, — the judge joints in this point of view and takes it as the basis of his sentence[35]. In CPR 18 = M.Chr. 84 (124 A.D.) the plaintiff[36] emphazises that the last will made by his deceased son Origenes in favour of the defendant is invalid because Origenes was born of an ἄγραφος γάμος and the Egyptian law calls up in such a case the parents to the succession which the judge recognizes as being entirely founded. In a lawsuit BGU 19 = M.Chr. 85 (135 A.D.)[37] concerning the restitution of a share left by a grandmother the plaintiff calls an ordinance issued by Hadrian which established the right of succession in favour of the grandchildren and quotes the precedent of the epistrategos. The judge, however, has doubts about the interpretation of this ordinance and asks the prefect whether this ordinance does also apply to the Egyptians; the prefect answers affirmatively and decides that a legal share devolved from the grandmother's estate on the plaintiff's father, should be adjudged to the plaintiff, whereupon an adequate sentence is passed[38].

Rein. 94 = M.Chr. 42 (Hadrian's epoch) leads us to the hereditary provisions.[39] This papyrus concerns a lawsuit brought by Apollonios II, the son of the deceased Laodice, against Dionysios, the son of Apollonios I on account of purchases made by Apollonios I on the name of the defendant Dionysios after having arran-

[34] Cf. on διμοιρία my *Law* I 139.

[35] Cf. Gradenwitz, *Hermes* 28, 324 ff; Kreller, *Erbr. Unt.* 151.

[36] Cf. Kreller, l. c. 167; my *Law* I 87.

[37] Cf. Kreller, l. c. 162 ff and Jolowicz, *Case Law in Roman Egypt* 8 ff.

[38] I will not discuss BGU 613 = M. Chr. 89 (the time of Ant. Pius) because the grandmother's status which determines the case of succession is questionable cf. Kreller, l. c. 160_{81}; as far as the *epistula divi Hadriani* (BGU 140 = M. Chr. 373) is concerned cf. my *Law* I 142_{27}.

[39] Cf. Kreller, l. c. 131.

ged a συμφωνία with his daughter Laodice. This συμφωνία was an agreement of the testator Apollonios made with his heiress on intestacy, Laodice, whereby she renounced some hereditary claims. The judge upholds this ὁμολογία, joins the purchases made after the agreement to the estate and adjudges equal parts to both the parties. The above mentioned BGU 136 belongs hither, too. The γραφαὶ containing the provisions of a father in favour of his daughter are mentioned in this papyrus. If under this term γαμικαὶ γραφαὶ are meant then they would represent a marriage contract in which the father on the occasion of the marriage of his daughter assigns her some parts of his estate μετὰ τὴν τελευτὴν[40] which is fully recognized by the Roman judge.

Oxy 2199 (II cent. A.D.) brings us a very precious information on a woman's capacity to inherit. As I understand this document, Areia, a peregrine[41] had registered an[42] estate and Dioskoros (an official of the βιβλιοθήκη ἐγκτήσεων?) contested the validity of the registration because of his doubts: εἰ τῇ Ἀρείαι προσήκει ἡ κληρονομία. Consequently the strategos of Sebbennyte was ordered to establish whether Areia possessed the citizenship[43] and an identification card, as it is usual with the citizens of the autonomous cities. Areia belonged therefore to a πόλις — Alexandria[44] or Antinoe — according to the statutes of which the citizenship formed a basis for the capacity to inherit.[45] This municipal law is in our case consi-

[40] Cf. Kreller, 235_{57}. It would therefore fall under the collective name συγγραφοδιαθήκη (see Mitteis, *Grundzüge* 242); from the later material cf. Fam. Tebt. 7 (102—3 A.D.) (v. 12) ὁμ[ο]λογ[ία]ν συνγρ[αφοδιαθήκης].

[41] See Preisigke, *Namenbuch* s. h. v.

[42] The declaration is called [κατ[αγ[ραφὴ κληρονομίας] otherwise ἀπογραφὴ cf. Kreller, l. c. 107; the lecture [ἀπογραφὴ] is impossible because of the αγ which is certain.

[43] (V. 18) περὶ πολιτείας καὶ τὸ ζητούμενον τερὶ τῆς τοῦ παιδίου ἀπαρ[χ]ῆς; see on ἀπαρχὴ my *Law* II 27_2; from the later material see Fam. Tebt. 30_{18} = S. B. 7603 (133 A. D.); 33_8 = SB 7602 (151 A.D.); Pap. Antinoop. Part I 37_4 (209—10 A.D.); it may be added Lewald, l. c. 71; Meyer-Seckel, l. c. 29 and the lit. quoted there.

[44] On a woman's capacity to inherit in Alexandrian law see my *Law* I 151 ff.

[45] If the citizenship is missing the estate falls to the fisc (as *caducum*) cf. v. 20 ff: Καὶ τὸν Διόσκο[ρ]ον ὅτε μὲν προφέρεσθαι μὴ δύνασθαι ἀπο[δοῦναι ὅ]τε δὲ ἐκζητῆσαι τὴν ἀπαρχὴν ἐπ[ιγεννήσε]ως καὶ ἐποίσειν, πεπομφέναι ἐπὶ [Ἰούλιον Πά]ρδαλᾶν τὸν γενό[ε]νὸν πρὸς τ[ῶι], Col. ü. [ἰδίωι λόγωι]. On Iulius Pardalas, the idioslogos in the year 123 A.D. cf. Plaumann, *Idioslogos* p. 68.

dered decisive for the determination of Areia's capacity to inherit[46].

The heir of the debtor of the state is treated according to the Roman laws relating to the unlimited liability of the heirs.[47] In Oxy. 1102 (about 146 A.D.)[48] the judge rejects the objection of the defendant having its source in the local law — that he is not liable for the debts of the testator as he did not receive anything from his estate. On the contrary the judge declares to think it right, that the defendant even without taking anything of his brothers property, having once entered on the inheritance, should be condemned to fulfill from his own means the liabilities of the estate.

In this connexion Ryl. 76 (II cent. A.D.) may take place[49]. The papyrus contained in all probability the processual statement (deposition preparatory to a lawsuit) by which somebody established that he had registered for taxes the half of the property accruing to him after Hermiones death, his cousin, who died leaving as heirs him and his brothers on his mother's side and likewise the half of the property of his mother Helene. Evidently to justify this division between him and his half brothers, he refers to the laws and decisions of several procurators and prefects[50], and offers to read them when the case will be argued[51].

Finally it may be mentioned that the provisions of the *lex Julia vicesimaria* concerning the opening of a testament were applied also to peregrine testaments[52].

The lawsuit in Tebt. II 286 = M.Chr. 83 (121—138 A.D.)[53] deserves attention for the law of possession and ownership. There a rescript of imperator Hadrian is handed down to us in which the

[46] Arangio-Ruiz, l. c. 107 is therefore wrong asserting that this text and Oxy. 1503, PSI 1247 Recto as well, where the word πολιτεία occurs „permettent d'établir qu'il s'agit de la qualification necessaire pour les charges publiques et pour les liturgies".

[47] Cf. my *Rezeption* 401_{227}.

[48] Cf Kreller, l. c. 43. The doubts expressed by this scholar on the peregrine quality of the testator are not motivated, cf. on this document also Mitteis, *Sav. Z.* 32, 343 ff.

[49] Cf. Mitteis, *Sav. Z.* 37, 320; Kreller, l. c. 413 ff.

[50] Cf. Ryl. 269 (II cent. A.D.).

[51] It is not evident under which circumstances this *modus divisionis* takes place cf. Mitteis, l. c. 320.

[52] Cf. my *Rezeption* 401; the later material in my *Law* I 152_{12}.

[53] See my *Law* I 29_{140}.

application of the provisions on *iniusta possessio* is extended to peregrines: καὶ μάλιστα εἰδ[υῖαν] ὅτι νομὴ ἄδικος [οὐ] δὲν εἰσχύει. Otherwise is the case in Tebt. 488 (121—2 A.D.)[54]. In this protocoll asks the centurio Julius Quadratus the defendant who is supposed to have wrongfully constructed „how long ago did you intend to build ?". Answer „Three years ago". The centurio replied „You should κωλύειν when the defendant intended to construct. During such a long time you did not complain either to the strategos nor to another official. You are wrong claiming now although according to the law of the Egyptians..." Here again a reference to the local law is made.

From the Egyptian practice originates the ὑπάλλαγμα[55] which the Roman courts recognize and execute. The respective procedure is introduced in such a way[56], that the creditor, personally or by a representative, hands over to the prefect an application with the request, to bring about a respective decision of the chrematists, the sc. χρηματισμὸς ἐνεχυρασίας. It is noteworthy that the decision which in P. Meyer, Jur. Pap. N^0 48 (133 A.D.) in such a case is carried out on the order of the prefect runs as follows (v. 25) μετὰ ταύτας συντελῶσι τὰ τῆς πράξ[εως] ὃν τρόπον καθήκει [τοῖς] προστεταγμένοις ἀκολούθως, whereby under προστεταγμένα the royal προστάγματα are[57] meant by which the executory proceedings in ὑπαλλάγματα — still in force in the Roman period[58] — were regulated.

The same holds for the hypothec[59]. Also the local hypothec with its *lex commissoria* is acknowledged by the Roman authorities and its execution admitted. There also the ἀρχιδικαστὴς grants the ἐπικαταβολὴ and after having recorded the conveyance in the διαστρώματα, the ἐμβαδεία the official induction into possession takes place.

[54] See my *Law* I 191$_{17}$.

[55] See my *Law* I 207 ff.

[56] See P. Meyer, *Jur Pap.* p. 143.

[57] See the articles by Modrzejewski and Płodzień below.

[58] Cf. on the survival of the Ptolemaic legislation in the imperial epoch M. Th. Lenger, *Les vestiges de la legislation des Ptolemées en Égypte à l'époque romaine* (*Rev. int. d. dr. de. l'ant.* III 1949 p. 69—81) cf. *Journal of Jur. Pap.* IV, 349; M. Amelotti, J. Bingen, M. Th. Lenger, *Chr. d'Eg.* 50 (1950), 317 ff; also Jörs, *Sav. Z.* 36, 335 note.

[59] Cf. P. Meyer, *Jur. Pap.* p. 145; my *Law* I 213—214.

In the field of obligation executional documents[60] (not secured by ὑπαλλάγματα or hypothecs) are considered executable. Mil. 25 (126—7 A.D.) brings us a step farther. In this papyrus the plaintiff sues for a debt in a deed which runs not on his own, but on another's name. The advocate of the defendant objects only that the document is stolen but does not contest that somebody else than the person mentioned in the deed is entitled to vindicate rights of the deed. The strategos' order seems to show that the strategos shares this view[61].

Very interesting is the attitude of the Roman courts as concerns the ἀλληλεγγύη. *Mutua fideiussio* in the local law means that the creditor is entitled to claim only partial payment from any of the debtors who are also only partially responsible. Thus the defendant in Oxy. 1408 (210—214 A.D.) emphazises[62] that he was in consequence of ἀλληλεγγύη responsible only κατὰ τὸ ἐπίβαλλον μέρος but the judge did not agree with his view and joins rather the view of the plaintiff that is, that the creditor has on the basis of ἀλληλεγγύη the right to claim the total amount of the debt from any debtor (v. 6—7) [ἀλλ]ηλέγγυοί εἰσιν, μία γὰρ ἔκκλ[η]τος καὶ ἓν πρόστειμόν ἐστιν. In this case the Roman judge rejects the local notion.

In connection with the surety BGU 1138 = M.Chr. 100 (18—19 A.D.)[63] deserves attention. The papyrus refers to a lawsuit against Ischyrion who effected the release of Papias by a bond of surety but later on did not fulfill his promise and was therefore — in acordance with the form of hellenistic bonds of surety[64] — sued for payment of the amount owed by Papias. The *iudex pedaneus* absolves the defendant, probably because he did not recognize this bond of surety. The creditor not satisfied with the verdict applied to the magistrate[65].

[60] Cf. my *Law* I, 406, 408 ff; as for the character of the private document in Flor. 61 = M. Chr. 80 (85 A.D.) which is once called ἐπίσταλμα, once χιρόγραφον see Schwarz, *Urkunde* 21_2; 56_3. The edict on *longi temporis praescriptio* is an provincial edict cf. my *Rezeption* 382_{80} and remains without consideration.

[61] Cf. Arangio-Ruiz l. c. 211.

[62] Cf. Mitteis, *Sav. Z.* 38, 296; my *Law* I, 232.

[63] Cf. Lewald, *Personalexecution* p. 35.

[64] Cf. Partsch, *Bürgschaftsrecht* 211.

[65] Cf. Schubart, *Arch. für. Pap.* V, 69; Mitteis, the introd. to this papyrus.

In Ross. Georg. II 20 (146 A.D.) a sale is declared null and void because the price, as provided by the local law, was not paid[66].

In the field of proceedings is Oxy. 37 (49 A.D.)[67] noteworthy. Here a lawsuit concerning the status is decided by a medial sentence, by which the judge imposes an oath upon the defendant. The settlement of lawsuits by such medial sentences is very frequent in the Ptolemaic period. The strategos follows, as we see, the local pattern.

On the contrary in executory proceedings the Roman law is sometimes applied. Thus prefectural courts hold that the *cessio bonorum* originally applicable to the Romans only, shall be accessible to peregrines;[68] thus in BGU 1085 II[69] the application of two fiscal debtors is settled with the words: κατὰ τὴν τοῦ Αἰλ[ί]ου Ἀντων[ε]ίνου χάριν δύνονται ἔχειν τὸν τάφον.

As this review shows, Roman authorities did neither unrestrictedly apply the local law in the law of persons and the law governing domestic relations nor exclusively the Roman law in the law of property and procedure. As in the former there are exceptions in favour of the Roman law, so in the latter there are exceptions in favour of the local law. Thus the local law is recognized in questions concerning the *status civitatis*, the emancipation, the renunciation of the patronage, the γάμος ἔγγραφος and its legal effects, the mutual responsibility of the members of the family in property relations, the succession on intestacy, the hereditary provisions in matrimonial contracts, the transactions about an expected estate, the *operis novi nuntiatio*, the ὑπάλλαγμα, the hypothec,

[66] (v. 5 — 7) ἐγένοντο ἐπι.]ωρηίου Κελεάρις γενομένου ὑπ[ομνηματογράφου] καὶ ἐπὶ τῶν κε]κριμένων ὃς ἀνάδαστον τὸν ἀ[γορασμὸν ἐποίησεν τῆς τιμῆς] φανείσης ἀδότου κατὰ τὴν γενο[μένην ἐξέτασιν] cf. my *Law* I 240 ff; see on this papyrus my art. in *Sav. Z.* 54, 137 note 2.

[67] Cf. Seidl, *Der Eid im röm. äg. Provinzialrecht* I 102—3.

[68] Cf. my *Rezeption* 401; *Law* I 20_{92}; $30_{153, 154}$; 405_{23}; from the later material cf. P. Lugd.-Bat. III (ed. Boswinkel) N⁰ 4 (280 A.D.) an application to the prefect for granting the ἔκστασις in private matters; we have not parallels of such an application in the papyri; a decision of the prefect in a similar case is conserved in Ryl. 75_{1-2} (the end of the II cent. A.D.) (v. 5—12) (a peregrine case) Ἀρχέλαος ῥήτωρ εἶπεν· ἄπορός ἐστιν ὁ Γλύκων καὶ ἐξίσταται. Μουνάτιος (the prefect) εἶπεν: ξητηθήσεται ὁ πόρος αὐτοῦ, ἤδη μέντοι τύπος ἐστὶν καθ'ὃν ἔκρεινα πολλάκις καὶ τοῦτο δίκαιον εἶναί μοι φαίνεται, ἐπὶ τῶν ἐξιστανομένων ὥστε, ἔι τι ἐπὶ περιγραφῇ τῶν δανειστῶν ἐποίησαν, ἄκυρον εἶναι.

[69] Cf. Uxkull-Gyllenband, l. c. 13 ff. on the treatment of τάφοι in the *Gnomon* cf. now Riccobono jr., *Il Gnomon* 110.

the executional documents, the cancellation of a sale because of the nonpayment of the price, the medial sentences. On the other hand the local law is declined in questions concerning the acquisition of an estate, the ἀλληλεγγύη and probably bonds for appearance. Now: we know that judicial decisions are source of a separate kind of law, the case—law[70], regarded by same scholars as a part of customary law. It is now the question whether the local law recognized by the courts before the C.A. remained also in force after the C.A. and how the local rules declined before the C.A. beheaved in face of the rejection.

II. The Local Law after the C.A.

Before we go to the details we will discuss on a papyrus which served for many scholars as the most important basis for the theory about the survival of the local law, outside the Roman law, after the C.A. The text runs as follows: Oxy 1558 (267 A.D.)

-]. π. [...] αι. [... — προ]ειληφόσιν καὶ ὅτι καθολικῶς, κε
[λευ—προσέ]ταξα χρήσασθαι τοῖς τῶν Αἰγυπτίων [νόμοις
— τ]ῇ τῶν Ρωμαίων πολιτείαι ——] Διονυσία ἐπιδέδωκα
(ἔτους) ιδ Τῦβι η (2-nd h.)

The editors supply this text with the following commentary: Fragment from the end of a petition by a woman with two ὑπογραφαί of officials, of which the first (11. 6—8) was apparently translated from Latin and may have been that of prefect. The „laws of the Egyptians" are contrasted with „the Roman constitution". Arangio — Ruiz[1] points out — and he is certainly right — that in this passus the πολιτεία does not mean „constitution" but „citizenship" and asserts that here the „Egyptian laws" are contrasted with the „citizenship". But we know from other sources that one kind of νόμοι used to be opposed to another kind of νόμοι, the νόμοι τῶν Αἰγυπτίων to the νόμοι ἀστικοί (Oxy 706 = M. Chr. 81), the νόμοι τῶν Ἀλεξανδρέων to the νόμοι τῶν Ἀθηναίων (Oxy. 2177). As the reading of Ρωμαίων πολιτεία is doubtless and the term

[70] Cf. Weiss, *Sav. Z.* 33, 226 ff; Jolowicz, l. c. 2; Wenger, *Atti Firenze* 552 ff.

[1] Cf. l. c. 100.

[νόμοις — τ]ῇ rest on a complement made by the editors, it, may be permitted to propose another complement of the gap. A hint in this respect is given by BGU 19 = M.Chr. 85 (135 A.D.) where we read: καὶ Αἰγυπτίων υἱωνοῖς καὶ υἱιδαῖς. One should think here also about the „descendants". As such ones there must come first in consideration „sons". In that case the text would say — the text refers to a rescript written in Latin and translated into Greek in the form of a *subscriptio*[2] — that according to the imperial[3] order the sons of the Egyptians should make use[4] of the Roman citizenship. We must then conclude that their fathers did not enjoy it. And strange to say we find in PSI 1040 (III cent. A.D.) a draft of a testament where a father is a peregrine whilst his son is an Aurelius[5]. On this hypothesis the rescript would refer to an imperial order which was connected with the C.A. and which established the circle of persons who were granted Roman citizenship[6]. However it is, the papyrus must be eliminated from the chain of proofs for the survival of local law after the C.A.[7]

Proceeding to particulars, we will begin with the s t a t u s c i v i t a t i s. It is an established fact that the C.A. did not deprive the citizens of the autonomous cities of their citizenship, but that these citizens possessed simultaneously imperial and municipal (double) citizenship[8]. Bosw. N⁰ 2 (248 A.D.) shows how was this

[2] Similarly Oxy. VII 1020 = P. M e y e r, *Jur. Pap.* N⁰ 17 see W i l c k e n, *Atti Firenze* 112; Rend-Harr. 67 II, 11 (a Latin subscriptio on a *libellus*) cf. W i l c k e n, *Arch. f. Pap.* XIV, 237.

[3] Cf. e. g. Oxy 2106 (early IV cent. A.D.) (v. 2) ἡ θεία καὶ [σεβασμία τύχη τῶν δεσποτῶν ἡμῶν Αὐτοκρατόρων τε καὶ Καισάρων προσ]έταξεν γραμμάτων θείων πρὸς μὲ ἀποσταλέ[ντων χρῦσον] κτλ. On the πρόσταγμα in the sense of an imperial edict cf. L e n g e r, *Rev. int. d. dr. de l'ant.* I 123_2; III 79_{54}.

[4] On χρᾶσθαι cf. *W. Chr.* 27_{22}.

[5] Cf. H a r a d a, *Sav. Z.* 58, 147.

[6] This would be in harmony with the hypothesis that even after the C.A. there remained Egyptians who did not possess the Roman citizenship cf. my *Law* II 25_{43}.

[7] Otherwise S c h ö n b a u e r, l. c. 383; A r a n g i o - R u i z, l. c. 99—100 who rest on the complement of the editor.

[8] Cf. my *Law* II 21 ff; it may be added S c h ö n b a u e r, l. c. 375 ff; also A r a n g i o - R u i z l. c. 96 — 7; on ἀστοὶ who are simultaneously Roman citizens cf. d e V i s s c h e r, *Rev. int. d. dr. de l'ant.* IV, 19 ff and the literature quoted in *Journ. of Jur. Pap.* IV, 354—357; it may be also added Fam. Tebt. 53 (208 — 219 A. D. B c). (v. 2 — 3) Αὐρηλία — Μάρκῳ Αὐρηλίῳ Φιλωσαραπίδι Αντινοεῖ. (cf. W. Chr. 88 (213 A.D.) (v. 8): Αὐρήλιος Δίδυμος Ἀλεξανδρεύς).

municipal citizenship acquired. The papyrus contains a notification of the birth of an Antinoite child. The notification is connected with the privilege, granted by Hadrian to the body of citizens of Antinoopolis that the children of the citizens can be educated at the expense of the state. In order to get this privilege the children must have been notified within 30 days from their day of birth and the notification must have been endorsed by witnesses. Our papyrus does correspond to this prescription but it is noteworthy that although its mother is an Antinoite and its father a counselor of Heracleopolis — marriages between citizens of Antinoopolis and non — citizens were permitted[9] — the child is notified as a citizen. This[10] supports the idea that the municipal law of Antinoe contained such a respective provision and that this provision was still in force in 248 A.D. The *status civitatis* of the autonomous cities was as before the C.A. determined by the municipal law (statutes)[11].

The Greek emancipation before the notary public in a deed whereby the emancipator solemnly declares under Zeus, under the Sun and upon the Earth that he does release the slave, is to be found in Osl. III 129 (III cent. A.D.)[12] It is remarkable that the three emancipators are Antinoites[13] and we may suppose that they effected the emancipation according to the law of Antinoopolis, taken, as

[9] Cf. *W. Chr.* 27.

[10] On this question cf. Jouguet, *La vie municipale* p. 182 note 3; Kuhn, *Antinoopolis* 120; Pistorius, *Indices Antinoopolitani* p. 88. The provision is all the more characteristic as it was not in force in Alexandria cf. Oxy. 56 = M. Chr. 320 = P. Meyer, *Jur. Pap.* N° 15 (211 A. D.) (v. 4) παρὰ Ταβησάμωνος Ἀμμωνίου τοῦ καὶ Κασσίου ἀπὸ Ὀξυρύγχων πόλεως Διοφαντίδος ἀστῆς; on the notion of ἀστὸς cf. now Arangio-Ruiz, *Rev. int. d. dr. de l'ant* IV, 7 ff.

[11] Besides the πολιτεία is mentioned after the C.A. twice: Oxy. 1503 (288 — 9 A.D.) where Wenger, *Krit. Vjschr.* 18, 53_{24} cf. (my *Diokl. Privatrecht* 155_6 Arangio-Ruiz, *L'application du droit romain* 107_3) asserted that the aim of the establishement of the *status civitatis* was in this case the release from the liturgy; this however is not right as in the III cent. A.D. the liturgy was extended to the Romans and the establishement of the *status civitatis* was for the liturgy without any importance. The terms (v. 4) πολιτεία; (v. 7 — 8) ἐπι]τιμία or (ἀ)τιμία (v. 20) ἐνκλημάτων would rather support the hypothesis that the case refers to the forfeiture of citizenship as the consequence of condemnation to compulsory labour (cf. Mommsen, *Strafrecht* 953_2). The second papyrus PSI 1247 (cf. Arangio-Ruiz l. c. 107_3) is damaged and of no use.

[12] Cf. on this document my *Law* I 733_{150}.

[13] Cf. the demes (v. 12) [Νερουι]άνιος; (v. 13) Σεβάστιος; (v. 14) Μουσηγέτειος see Pistorius f. c. 43;44.

we know, from Naukratis. Also the renunciation of the patronage comes again in the deeds of emancipation[14].

Lips. 41 = M.Chr. 300 (sec. part of the IV cent. A.D.)[15] shows that ἄγραφος γάμος[16] as it was acknowledged in the Roman practice of the II cent. A.D. was still in force in IV cent. Flor 36 = M.Chr. 64 (312 A.D.) contains a ὑπόμνημα[17] directed to the governor whereby the father tries to dissolve an ἄγραφος γάμος concluded by his daughter. Very interesting is the prefect's decision (υ.32ff) [Εἰ εὐδοκεῖ] τῇ πρὸς τὸν ἄνδρα συμβιώσει ἡ παῖς, αὐτὸ τοῦτο φανερὸν γενέσθω παρὰ τῶι λο[γιστῆι ἀκολούθ]ως τοῖς νό[μ]οις[18], it should be therefore established by the *curator* whether the young lady agrees upon the living with her husband or not[19]. It is the same question which is basic for the process of Dionysia.

[14] BGU 96 (III cent. A.D.) (v. 14) [ἀπολελύσθαι (αὐτὸν)... ἀπὸ τῆς [πατρωνικῆς ἐξουσίας καὶ παντὸς τοῦ πεκου[λί]ου; PSI 1040 (III cent. A.D.) (v. 16) ἐλευθεροῖ καὶ ἀπολύει τῶν πατρονικῶν δικ(αίων) σὺν πεκουλίῳ παντὶ κτλ, cf. Harada l.c. 142.

[15] Cf. Mitteis introd. The papyrus refers to a lawsuit which takes place in the presence of the chairman of the office of the Praeses Thebaidis (cf. Wilcken, *Arch. f. Pap.* IV, 474).

[16] Cf. Wenger, *Aus Novellenindex u. Papyruswörterbuch* 77 and his reference to (v. 7) διὸ καὶ οἱ γάμοι συνήφθησαν by which the Egyptian marriage by simple consent and cohabitation is meant.

[17] Cf. on this document: Mitteis introd. and the lit. quoted there; Levy, *Ehescheidung* 17_7; Scherillo, *Studi sulla donazione nuziale* (*Riv. di storia del dir. ital.* II vol. II fasc. 3 1929 p. 14 ff); de Ruggiero, *Studi storici* I p. 362; Solazzi, *B.I.D.R.* 34 (1925) p. 23.

[18] Thus Wilcken, *Arch. f. Pap.* III, 534 in place of that proposed by the editors [εἰ ἠρέσκετο].

[19] Mitteis, l. c. tries to explain this papyrus from the point of view of the Roman law and thinks that the father intends to declare his daughter's marriage null and void because of the deficiency of his consent (cf. on the father's consent in the classical law, Cuq, *Manuel* [2] 159). But then it would be ununderstable why the prefect — il we accept Mitteis' complement of the gap — orders to investigate whether the daughter did agree upon her marriage or not. (On the daughter's consent to conclude a marriage see: P. Bosw. II N° 5 (305 A. D.) p. 21 (v. 11) παροῦσαν καὶ εὐδοκοῦσαν and the lit. quoted there). The daughter's marriage would be in case of deficiency of the father's consent invalid (cf. D 23, 2, 2: *Nuptiae consistere non possunt, nisi consentiant omnes id est qui coeunt quorumque in potestate sunt*; Ulp. Reg. V, 2: *Iustum est matrimonium, si inter eos qui nuptias contrahunt conubium sit et tam masculus pubes quam femina viripotens sit et utrique consentiant, si sui iuris sunt, aut etiam parentes eorum, si in potestate sunt*), even if the daughter would agree upon the marriage.

As far as the legal-property relations between father and children are concerned, the principle established for the mutual responsibility by the Roman courts before the C.A., continues to exist. The Roman extend the local principle to liturgical duties. Thus in Oxy. 1642 (289 A.D.)[20] the liability of a person chosen to a liturgy takes place: ἐπὶ πόρῳ ἑαυτοῦ καὶ τῶν ὑποχειρίων τέκνων[21]. In PSI VII 807 (280 A.D.)[22] however a man arrested by the δεκάπρωτοι for taxes, protests against such an extension by citing the doctrine of imperial law according to which (νόμοι) κελεύουσιν μηδένα κατέχεσθαι ὑπὲρ ἄλλ[ων] μήτε πατέρα ὑπὲρ υἱοῦ μήτε υἱὸν ὑπὲρ πατρὸς μήτε ἀδελφὸν ὑπὲρ ἀδελφοῦ. But outside the administration the creditors themselves apply this principle and don't shrink — as in Bell, Jews and Christians Nr. 1915 (330 A.D.) — from the abduction of the debtor's children in slavery[23] for the debts of their parents.

Entirely in harmony with the Roman jurisprudence before the C.A. are the agreements on the estate of still living testators:[24] and marriage contracts with hereditary provisions[25], which occur also in this epoch.

It is interesting to observe how the local concept on the limited responsability of the heir, declined by the Roman courts before the C.A., survives and struggles for its recognition. In Ryl. 117 (269 A.D.)[26] the applicant asserts (υ12) τοὺς μηδὲν [τ]ῶν κατοιχομένων κεκληρονομηκότας μὴ κατέχεσθαι τοῖς ἐκείνων ὀφε[ιλήμασιν] ἢ καὶ ξητήμασιν σαφῶς τοῖς θείοις νόμοις διώρισθαι, that the responsibility for debts depends on the fact whether one had inherited

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The difficulties fall out, if we accept Wilcken's complement of the text and the view that our text refers not to the annullment but to dissolution of a valid marriage.

[20] Cf. Wenger, *Krit. Vjschr.* XX, 3 *Folge, Heft* $^1/_2$ p. 271.

[21] Cf. my *Diokl. Privatrecht* 231.

[22] Cf. P. Meyer, *Sav. Z.* 46, 344; my *Law* I 34; Arangio-Ruiz, l. c. 109.

[23] (v. 25 ff) οἵτινες οἱ ἀνελεήμονες ἐκεῖνοι καὶ ἄθεοι ἀπέσπασαν τὰ πάντα τὰ ἑαυτοῦ τέκνα νήπια κομιδῇ; Bell refers it to the illegal practice of pledging children as security for debts, but this abduction can be also explained without Bell's assumption.

[24] Cf. Kreller, l. c. 131; my Law I 136, 162.

[25] Cf. Kreller, l. c. 235; my *Law* I 157.

[26] Cf. Kreller, l. c. 412; my *Law* I 164, Arangio-Ruiz, l. c. 109 is not correct when he refers this document to the joint responsibility of the members of the family.

something from the departed testator and appeals to imperial constitutions which don't exist.

Jand. VII 145 (225 A.D.) refers to παράδειξις and shows the executory proceedings of executorial documents secured by ὑπαλλάγματα still in force. The same holds for M. Chr. 241 = P. Meyer, *Jur. Pap*, N⁰ 49 (223—4 A.D.). This papyrus contains among the other parts a χρηματισμὸς ἐμβαδείας issued by the chrematists which runs as follows: (v 6,7) Τῆς τετελει[ωμέν]ης ἐμβαδείας ἀντίγρα(φον) μεταδοθήτ[ω ὡς] ὑπό[κ(ειται)] (v 7) συνεκρείν[αμεν] — ἐκχωρεῖν ἐκ τούτων ἐν ἡμέραις δέκα μετὰ ταῦτα συντ[ελ]ῆσαι τ[ὰ] τῆς [ἐ]μβ[αδ]είας ὃν τρόπον καθήκει τοῖς [προστε]ταγμένοις ἀκολούθως.

As Jörs already pointed out[27], this decision marks an entirely Ptolemaic character and quotes, like similar decisions from the epoch before the C.A., the Ptolemaic προστάγματα[28]

In Oxy. 1876 (abont 480 A.D.) the plaintiff complains that fifteen years elapsed since the defendants attempted to evade by flight the payment of the debt due to him and no one appeared in court. The plaintiff proposes evidently two motions: the *officium* of the governor may undertake some measures concerning a house which is a part of the property pledged by them for their debt 2. that the persons liable to him by the terms of the note may be compelled to a honest action. The first motion is the most interesting: starting from Ed. 29 of the *praefectus praetorio* Archelaus (524 or 525 A.D.)

[27] *Sav. Z.* 36, 274 cf. also 335_3.

[28] It should therefore not surprise if the parties apply in the III cent. A.D. to an νόμος τῶν παραθηκῶν — taking for granted that this νόμος is of Ptolemaic origin — which by no means is attested (cf. my art. *Journ. of Jur. Pap.* II, 68). If however Arangio-Ruiz, l. c. 113 asserts that this νόμος was no more in force after the C.A. and the notaries public after having copied the old forms to the last limits of possibility, stopped at the term ἐκτίσειν διπλῆν imposing liability on the depositee which the Roman judge would never recognize and therefore dropped after the term ἐκτίσειν the term διπλῆν (Lond. III 943 p. 175=M. Chr. 330 and PSI 699 (III cent. A.D.), I should like reply that forms where the ominous term is left are to be found long before the C.A. cf. GBU 729 (144 A.D.); Oxy 1039 (210 A.D.). If Arangio-Ruiz thinks further (l.c.) that in this way Wess. Stud. XX, 45 (237 A.D.) has to be explained, where „la citation du νόμος τῶν παραθηκῶν ait été transportée dans la phrase relative à l'obligation primaire de restitution du dépôt", I would refer to BGU 637=M. Chr. 336 (212 A.D.) where the same form as in Wess. Stud. XX, 45 occurs: ἀποδώσω [σο]ι [ὁ]π[όταν] βουληθῆς, τὸ προκίμενον πη[....] τὰς δραχμὰς τεσσαράκον[τα ἄνευ] δίκης καὶ κρίσεως καὶ πάση[ς εὐρη]σιλογίας κατὰ τὸν τῶν παραθη[κῶν] νόμον.

which established: εἰ δὲ ὑποθήκας προβάλλεται, κατὰ τὸ τῶν ὀφλημάτων παραδοθῆναι μέτρος that also a pledge entitles to a *missio in bona*, Steinwenter[29] is — with all reserves — willing to admit that already in 480 such official induction of the hypothecary creditor into possession — a reminiscence of the hellenistic hypothecary proceedings[30] — was admissible.

Giss. 34 = M.Chr. 75_4 (265—6 A.D.)[31] shows the survival of the executory proceedings of executional documents in the III cent. A.D. A certain Ammonios was entitled to demand 163 jars from an unnamed debtor on the basis of an executional document. After the debtor's death Ammonios proceeded on „legal way" against the debtor's daughter under age, represented by her grandfather, served in the admonishing proceedings a διαστολικὸν upon her and brought about a decision, a χρηματισμὸς ἐνεχυρασίας passed by the chrematists.

The conception of correality, as established by the Roman courts in spite of the local law, obtains a footing in the practise[32]. Thus we read in SB 5150 (297 A.D.) γενομένης τῷ Αὐρηλίῳ Διδάρῳ τ[ῆς π]ράξεως ἔκ τ[ε τῶν] ὁμολογούντων καὶ ἐξ οὗ αὐτῶν ἐὰν αἱρῆται κατὰ τὸ τῆς ἀλληλεγγύης δίκαιον.

The local bond of surety, declined probably by a Roman judge at the beginning of the Roman period, managed to get through in the epoch after the C.A.[33]

So far as the medial sentences are concerned, they are in this epoch frequent and survive as Oxy VI 983 = M.Chr. 99 shows till the late Byzantine times[34].

III

As the examination of the sources demonstrated, local law continued to exist after the C.A. on the whole in the same limits as it was recognized by the Roman authorities before the C.A. This concerns the provisions on the *status civitatis*, the emancipation

[29] Cf. Steinwenter, *Neue Urkunden zum byz. Libellprozess* p. 14.
[30] Cf. my *Law* I 214 ff.
[31] Cf. Jörs, *Sav. Z.* 36, 231 ff.
[32] Cf. my *Law* I 232.
[33] Cf. Berger, *Strafklauseln* 202.
[34] Cf. my *Law* I 397_7; Wenger, *Münch. Pap.* p. 65—6; Krüger, *Sav. Z.* 45, 681.

before the notary public, the renunciation of the patronage, the ἄγραφος γάμος, the father's right to dissolve the marriage of a daughter born in such a marriage, the mutual responsibility of the members of the family for debts, the transactions about an expected estate, the hereditary provisions in matrimonial contracts, the executional documents secured by ὑπαλλάγματα or without such security, the medial sentences. In cases in which the Roman court declines to recognize the local law e.g. concerning the heir's responsability with the bequest, we see the practice struggling for its recognition. What was however the matter with the local law which survived also in practice after the C.A. about which we don't know what was the attitude of the Roman authorities to it before the C.A.? We may think of the local adoption[35], of the marriages among relatives[36], of the *materna potestas*[37], of the assent given by children to legal acts performed by their parents etc[38]. Is it possible to suppose that the parties performed these acts at the risk of being declared null and void[39]? Is it not more probable that these acts were either recognized before the C.A. too, or struggled at least for their recognition or obtained the recognition after the C.A.? Very important were in this respect the arbitrators[40] and the local courts[41] where the local law found a similar refuge

[35] Cf. my *Rezeption* in *Studi Bonfante* I 406.

[36] Cf. Arangio-Ruiz, l. c. 102 on one side; Schönbauer, l. c. 382 on the other.

[37] Cf. Arangio-Ruiz, l. c. 112.

[38] Cf. my *Rezeption* in *Studi Bonfante* I p. 237, passim.

[39] Cf. Wenger, l. c. 547.

[40] In ecclesiastical courts (Lips. 43=M. Chr. 98, IV cent. A.D.) an oath of purgation is practised (cf. Seidl, *Eid* II p. 94, 99) and in BGU 103=W. Chr. 134 (VI—VII cent. A.D.) the μείζων of the village has to settle a lawsuit between relatives according to the customs of the village. The most interesting however is the compromise in Lond. I 113, 1) (VI cent. A.D.) before laic arbitrators confirmed in the VII cent. (cf. Preisigke B. L. p. 234) (v. 269) by a καθάπερ ἐγ δίκης clause.

[41] Cf. Mitteis, *Reichsrecht* 165 ff; Wenger, l. c. 540 ff; otherwise Arangio-Ruiz, l. c. 118, 120, 121. I may also point out that f. i. lawsuits on ἔδνα which in the local view are *condicio sine qua non* of the validity of marriage, used to be submitted to local authorities [Flor. 36_{11}=M. Chr. 64 (312 A.D.); Preis. Cair. N° 2 (362 A. D.)] and as Flor. 36 shows settled by μεσῖται (cf. Mitteis, *Sav. Z.* 27, 344) whilst the prefect (cf. the ὑπογραφή in Flor. 36) passes it over.

as the *legis actiones* in the courts of the *centumviri*. A good example for this assertion offers P. Meyer, *Jur. Pap.* Nr 11 = Arangio-Ruiz, *Fontes* N⁰ 15 an application to the local magistrates[42] with the request to make public an ἀποκήρυξις — from which we know that *Romanis legibus non comprobatur* — according to a decree of a magistrate, certainly also a local authority, who approved of this act.

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[42] Cf. Albertoni, *Apokeryxis* 115 ff; my *Law* I 102 ff. It was practised as Oxy 1206 (335 A.D.) shows still after the C.A. cf. my art. *Sav. Z.* 37 215.