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"Das römische Zivilprozessrecht", Max Kaser, [München] : [recenzja]

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Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

d'Antonia fille de Claude administrée par *kuriakos logos* que P. Collart interprète dans son commentaire comme une variation *usiakos logos*; il ne peut être question de considérer cette terre comme privée. Le second document, le P. Mich. VI 397, atteste un paiement pour la terre *katoikos* située sur le terrain de Kerkesoucha par des habitants de Karanis (*Kerkesouchon katoikon dia ton apo Karanidos*). Il s'agit dans ce cas sans aucun doute de la terre privée, mais la formule *dia ton apo* a ici une signification bien plus générale et elle n'est pas limitée à l'*epimerismos*. L'éditeur l'a très bien dit dans son commentaire: «the expression *dia ton apo* plus the name of village is well known in connection with *epimerismos* but in the present passage it implies an obligation assumed with respect to catocic land at Kerkesoucha exploited by possessors of catocic land at Karanis»

[Warszawa]

Hanna C e r e m e k

Max K a s e r, *Das römische Zivilprozessrecht*, pp. XXIV+570. C. H. Beck'sche Verlagsbuchhandlung.

The law of civil procedure dealt with in this volume, concludes the exposition of Roman civil law. Exactly 100 years earlier, studies of this type and this rank had been made by M. A. von Bethmann-Hollweg. Since that time, investigations of Roman civil procedure have been undertaken by several generations of scientists: Keller and Becker, Wenger and Steinwenter, Bertolini and Costa, Betti and Pugliese, Girard, Collinet and Levy-Bruhl, Broggin and Jahr, to mention a few of them. However, first place among this host of researchers takes Moriz Wlassak who by his fifty years (1889—1939) of unremitting investigations created in his numerous monographs and treatises the foundation of modern science about Roman civil procedure.

Max Kaser's work represents a scrupulous and comprehensive survey of all these studies extending over a full century. This author spared no effort to extract from the flood of literature what today is looked upon as certain, and to separate it from what is probable or possible. Kaser's synthesis, marking the boundaries of our recognition of the forms and the mechanism ruling in civil procedure, points out the shortcomings of research on a variety of problems of a both general and specific nature. In this domain, much like in the work: *Das römische Privatrecht*, Kaser's book is bound to fill for many years to come the function of inspiring the present and many future generations of Romanists towards further scientific investigations.

However, Kaser's *Römisches Zivilprozessrecht* brings not only a synthesis of today's knowledge of Roman civil procedure, in the first place it presents the author's own reconstruction and vision. It represents the result of long years of dealings with source material and literature, the outcome of innumerable studies of monographs, the issue of deep meditation and mature thinking. Apart from legal forms and legal norms, the author visualizes the complicated mechanism of social, economic and political conditions which determined them. He perceives the particular institutions of civil procedure in their profound historical perspective: the way they originated, lasted, and vanished. Faithful to

the notion of a historical reconstruction of Roman law in which he has been co-operating, the author abandoned the traditional trend of presenting the history of Roman civil procedure in three parts. He felt sufficiently justified to deal with cognitive procedure separately for the period of the Principate and, separately, for the period of absolute monarchy.

As far as his source material is concerned, the author took into consideration inscriptions and papyri only in so far as they may be useful to reconstructing Roman civil procedure. We are anxious to call special attention of readers of our *Journal* to this matter.

[Warszawa]

Henryk Kupiszewski

Max Kaser, *Das römische Privatrecht*. Erster Abschnitt: *Das altrömische, das vorklassische und klassische Recht*. Zweite neubearbeitete Auflage. pp. XXX + 833. C. H. Beck'sche Verlagsbuchhandlung. München 1971.

The first edition of this book appeared in 1955. R. Taubenschlag (*JJP* 9/10 p. 484 f.) commented on its high importance for juristic papyrology.

The second edition has been completely rewritten. Taken into account have been the yield of Romanist research accrued during the 16 years since the first edition was published. From a meritorious point of view it seems appropriate to call attention to the following subject-matter.

The author is adherent of the trend assigning to the works of classical jurisprudence, transmitted by the Justinian compilation, a higher degree of authenticity than used to be the rule up to then. He proclaimed the theoretical vindication of his attitude to texts of classical scholars for the first time at the congress of Società Italiana di Storia del Diritto, held at Venice in 1967 (cf. *Atti del Congresso Intern. La critica del testo*, p. 291 ff.), and afterwards in his monograph: *Zur Methodologie der römischen Rechtsquellenforschung* (Wien 1972). He restricts the range of interpolations and elaborations of texts to such he considers rationally justified. In consequence the author vindicates to classical Roman law many legal opinions, notions and phenomena heretofore ascribed to East-Roman law schools or to Justinian's compilers. He also pays more attention to controversies in opinions held by jurists of the classical period.

[Warszawa]

Henryk Kupiszewski