

Rafał Taubenschlag

"Zu drei Fragen aus dem römischen
Zivilprozessrecht (Eine Nachlese)", L.
Wenger, "Sav. Z.", LIX, 1939 :
[recenzja]

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Artykuł został zdigitalizowany i opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

by Thompson, points out that the sentences of national courts had no juristic force. Another law-suit was therefore admissible. To prevent it the defeated party had to draw-up a deed of submission.

R. TAUBENSCHLAG, *La chose jugée dans le droit des papyrus*. Repr. of Archives du droit oriental III (1940).

The juristic force of judgment was not acknowledged in the national law. In order to create respect for a pronouncement, the defeated party had to draw up a declaration of submission; otherwise he could reopen the case.

In contrast with this practice, the sentence passed by the king or his *χρηματισταί*, according to a royal diagramma of the III cent. B.C., had juristic force and the reopening of the case was forbidden under threat of penalty.

This principle, however, does not apply to sentences of single officers. The case, once decided, could be reopened unless the defeated party drew up a declaration of submission. Hence it is clear that the parties reopened a lawsuit decided, for instance, by the epistates. The practice disregarded even declarations of submission and left the officers to deal again with cases once decided.

The Roman legislation proclaimed a principle: τῶν νόμων κωλύόντων δις περὶ τούτου κρίνεσθαι. The formulation recalls that of Hermogenes, τέχνη ῥητορική. It was the same principle which Tiberius Alexander emphasized in fiscal matters. The principle applied to sentences passed by the prefect's court, but not to those of other officials, such as epistrategos or strategos.

L. WENGER, *Zu drei Fragen aus dem römischen Zivilprozessrecht* (Eine Nachlese) Sav. Z. LIX (1939), p. 315ff.

The author deals with P. Yale Inv. No. 1528 (cf. B. Welles, *die Immunitas of the Roman Legionaries in Egypt*, Actes Oxford 1938, p. 521) and points out that from the three meetings with the prefect, mentioned in this papyrus, two took place "in transitu," but were recorded in his *ὑπομνηματισμοί*. The latter were available to anyone who could take copies and make use of them.

E. ZIEBARTH, *Mahnverfahren*. R. E. Suppl. VII, 436ff.

E. ZIEBARTH, *ὑπόμνημα*. R. E. Suppl. VII, 281ff.

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