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OBSERVATIONS CONCERNING THE PAPYRUS BARAIZE AND THE RIGHT OF REDEMPTION IN HELLENISTIC LAW

The Papyrus Baraize has been edited and commented by Paul Collart and Pierre Jouguet[1]. It bears the name of its discoverer M. Baraize, Ingénieur du Service des Antiquités. The text is highly interesting indeed, but also very difficult to be understood. It dates from the II century B. C.[2] and is not without interest for a famous controversy between Romanists concerning a later period. Students of Roman Law namely differ in answering that great fundamental question: „Imperial or national Law?". Mitteis in his epochmaking work[3] has framed a theory that has become a *communis opinio*. According to that theory national Law must be considered as an antithesis to Imperial Law. National Law is opposite to Imperial Law and as such — illegal.

But Schönbauer — in a series of essays[4] — rejected recently this theory of struggle and has proved the possibility of a peaceful competition and coexistence between Imperial and national Law. Newly discovered sources such as the Greek translation of

[1] *Un Papyrus ptolémaique provenant de Deir-el-Bahari (avec une planche)* in *Etudes de Papyrologie* II (1934) 23 — 40. Reprinted: *Sammelbuch* V 2 (1938) No 7657 = 8033.

[2] Wilcken in his *Urkundenreferat*, *Archiv für Papyrusforschung* XI (1935) 292 — 294.

[3] Mitteis, *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreiches* (1891); reprinted (1935).

[4] Schönbauer, *Studien zum Personalitätsprinzip im antiken Rechte*, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (*Sav. Z.*) XLIX (1929) 345—403; *Reichsrecht gegen Volksrecht? Studien über die Bedeutung der Constitutio Antoniniana für die römische Rechtsentwicklung*, *Sav. Z.* LI (1931) 277—335; *Zur Frage der Constitutio Antoniniana*, *Sav. Z.* LIV (1934) 337 f.; *Reichsrecht, Volksrecht und Provinzialrecht. Studien über die Bedeutung der Constitutio Antoniniana für die römische Rechtsentwicklung*, *Sav. Z.* LVII (1937) 309—355; *Rechtshistorische Urkundenstudien. Die Inschrift von Rhosos und die Constitutio Antoniniana*, *Arch. f. Pap.* XIII (1939) 177 — 209; *Diocletian in einem verzweifelten Abwehrkampfe? Studien zur Rechtsentwicklung in der römischen Kaiserzeit*, *Sav. Z.* LXII (1942) 267—346.

the original Latin text of the *Constitutio Antoniniana*,[5] the edicts of Augustus at Kyrene[6] and last not least the Inscription of Rhosos[7] contributed to make the new (i. e. Schönbauer's) opinion prevailing. They prove namely the possibility of a double citizenship after the grant of the Roman citizenship.[8] There were indeed voices of doubt and rejections, but the new opinion prevailed not withstanding in a brief time. But a convinced opponent of the prevailing opinion and a defensor of the Mitteis theory appeared lately[9] in the person of Arangio-Ruiz.

A few remarks — before we proceed to discuss the Papyrus Baraize — can therefore be useful. They will help to clear the situation created by the controversy and prevent to far going conclusions from Schönbauer's statements.

If we reject the possibility of a double citizenship of the subjects of the Roman Empire, who have been raised *en masse* to Roman citizenship by the generous *Constitutio Antoniniana*, then we must reject the admissibility of every Law that is not Roman Law. The possibility of application of the non-Roman Law in a Roman Court is then excluded *a priori*. The reception of a non-Roman Law could not even be thought of by a Roman court. That principle would prevail without discussion in every small local court and still more in the supreme Imperial court. But this was not the case: a Greek who — in a petition addressed to a Roman magistrate — defended a legal opinion incompatible with the Imperial Law was not dismissed as trespassing

[5] P. Giss. 40 Col. I, *Fontes Iuris Romani* I[2] ed. Riccobono No 88 pp 445—449; with the fortunate restoration of line 8 f. by Adolf Wilhelm in *American Journal of Archaeology* XXXVIII (1934) 178—180.

[6] *Fontes* l. c. No 68 pp 403 — 414.

[7] *Fontes* l. c. No 55 pp 308 — 315.

[8] Cf. especially F. de Visscher, *La condition juridique des nouveaux citoyens Romains d'Orient*, *Académie des Inscriptions & Belles Lettres*, *Comptes rendus* (1938) pp 24 — 39; *Le statut juridique des nouveaux citoyens Romains et l'inscription de Rhosos*, *L'Antiquité Classique* (Bruxelles 1946) pp 11 — 59; Taubenschlag, *The Law of Greco-Roman Egypt II Political and Administrative Law* (1948) 21[24].

[9] Arangio-Ruiz, *L'application du droit Romain en Egypte après la constitution Antoninienne*, *Bulletin de l'Institut d'Egypte* (Le Caire 1948) pp 83 — 130 (Enumeration of adherents and opponents of the modern opinion pp 87 — 89 and passim); *Storia del diritto Romano*[5] (1947) 340[1]. Cf. Kübler, *Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft* XXVIII (1936) 306 (important for the understanding of Schönbauer's thesis).

the Law. His petition was taken into consideration even by the highest authority — the *consistorium principis*. If this was so then there is only one explanation for it, namely: that the survival of Greek and generally speaking Hellenistic law must be recognized as the reason of this phenomenon.[10]

Even the most conservative protagonists of the classicity of the *Corpus Iuris* do not deny nowadays that there were possibilities of non Roman influences on Roman Law. There exist only differences (and wide ones) concerning the extent to which various factors have contributed in exercing the above mentioned influence. We care in that guess in two strongly diverging basic opinions: the first one has been formulated by the venerable senior of Romanistic studies Salvatore Riccobono[11] a defensor of the *Romanità* of Justinian's Law. We find the other in a book[12] published as a posthumous after the early death of Paul Collinet, the learned champion of the „byzantinity" of the *Corpus Iuris*. But it would be a mistake to assume that all scholars who admit that national Law survived the promulgation of the *Constitutio Antoniniana* are adherents of the Byzantine school[13]. They refuse, often manifestly (and this is essential) to admit Hellenistic influences and express their refusal in a frankly blaming tone, even in cases, when the existence of such influences seems to have been proved. Such intransigent an attitude shows that the discussion is of vital importance and belongs to the history of human mind. It raises itself to the level of the codificators of the *Corpus Iuris*. The partners of such a discussion are not diminished even by the glory of anonymous „men of Berytos". It is a matter of course that an answer to the question to what extent and in what manner Roman Law has undoubtedly undergone an influence by a foreign Law must be based upon the knowledge of this particular foreign Law. The papyri and the inscriptions are in this respect — in so far the Hellenistic period

[10] I have tried to explain my opinion in a contribution to *Mélanges Fernande de Visscher* (under press).

[11] Riccobono, *La definizione del Ius al tempo di Adriano, Estratto dal Vol. XX degli Annali del Sem. Giur. di Palermo* (1949).

[12] Collinet, *La nature des actions des interdits et des exceptions dans l'oeuvre de Justinien, Etudes historiques sur le droit de Justinien*, tome V (Paris 1947).

[13] Cf. also the opinion of Schönbauer that the Law of Justinian remains Roman in its essence, *Sav. Z.* LVII 355.

is concerned — a very promising soil for investigation.[14] It is quite obvious that opinions must diverge (and sometimes widely diverge) because juristic papyrology is a very young science. We have before us a multitude of sources; new ones appear practically every day and the reading of the text is a difficult one, as they often are full of mistakes and in very bad state of conservation. It is obvious that — under such circumstances — very diverging opinions can draw advantage from the same single papyrus. But even if we must resign to avail ourselves on a proof in a particular case, it does not necessarily mean that we have to change our mind about the essence of the question. This assertion can be proved on the basis of our present text.

Wilhelm Felgenträger undertook in his publication *Antikes Lösungsrecht* (1933) the study of a single phenomenon in the complex of possible influences of Greco-Hellenistic and Oriental Law on the Roman Imperial Law[15]. He assumes that — until the reign of Diocletian — the attitude of Roman Law towards non-Roman influences was negative and even a hostile one. But after that period Roman Law became receptive to non-Roman influences. M. Kaser[16] gives recently a general survey treating the same question in a scientific contribution to a periodic and formulates the following opinion: *Even Diocletian fought desperately against influences of racially alien provincial elements on the essence of the legal order.* Such an opinion was naturally incompatible with Schönbauer's theory that Roman Law proved receptive for provincial Law which although in modest limits survived the *Constitutio Antoniniana* and Schönbauer was therefore lead to a sharp repudiation of Kaser's assertions.[17]

[14] Cf. an important contribution to the great literature of the subject two volumes of Taubenschlag's *The Law of Greco-Roman Egypt in the Light of the Papyri (332 B. C.-640 A. D.)* I (1944), II (1948). It is the best guide based on a long study of sources.

[15] Cf. also Kaser, *Sav. Z.* LIV (1934) 435 ff; Friedrich Weber, *Gnomon* XI (1935) 53 ff; Montevecchi, *Aegyptus* XVII (1937) 294 f.; David, *Tijdschrift voor Rechtsgeschiedenis* XVI (1939) 372 ff; Wenger, *Arch. f. Pap.* XIV (1941) 222 ff.

[16] Kaser, *Die deutsche Wissenschaft vom röm. Recht seit 1933, Forschungen und Fortschritte* XV (1939) 205 ff, a quotation from p. 207.

[17] Schönbauer *Arch. f. Pap.* XIII 188 f. and especially: *Diocletian in einem verzweifelten Abwehrkampfe?* (cf. supra 4), *Sav. Z.* LXII 267 ff.

I have no reasons in principle to decline[18] Felgenträger's conclusion that the expression *Lösungsrecht* (*ius redemptionis*) shows some character of a non-Roman conception. *Lösungsrecht* means the right *to recover lost property by paying an adequate compensation to the holder of it.*[19] The idea inherent to such a definition of the *Lösungsrecht* is the idea of a compromise between diverging interests; a compromise deriving from a just policy of administering Law. Such compromise can be understood as a species of practical *aequitas* concording in principle with natural Law.

But I feel obliged to remind that we have still to establish the proof that such a conception did really appear in the history of ancient Law. The demonstration of such a proof is an undertaking not connected with our present considerations. Felgenträger undertook to demonstrate it for Babylonian and Assyrian Law, as well as for Greek and Jewish Law. But his conclusions raised strong doubts and contradictions[20] by some critics. As I do not know any Semitic language, I must refrain from expressing any personal view[21] about Semitic Law. But I feel able to assert that in my opinion the existence of the idea of a *Lösungsrecht* seems to be proved by a text belonging to the Ptolemaic epoch i. e. to the Hellenistic period. Concerning Greco-Hellenistic Law[22] and especially its importance for the internal administration of the state[23] I was able to quote the Papyrus Baraize a document unknown to Felgenträger when writing his book. But Schönbauer declined my attempt of interpretation.[24] [25]

[18] Felgenträger, *Antikes Lösungsrecht* 1 and passim.

[19] L. c. 222 f. cf. Weber l. c. passim and supra 15.

[20] About the general aspect of the question: Schönbauer (No 17) does not admit the conception of the *Lösungsrecht* (*ius redemptionis*) in one of the quoted laws. If this be so then there can be no question of an influence of those laws on Imperial law nor of a struggle and a surrender of Imperial Law.

[21] Concerning Babylonian and Assyrian Law (Felgenträger 53 ff) cf. the controversy (philological and material) between David 377 ff, Schönbauer 313 f. Jewish sources are more favourable for Felgenträger p. 89 ff, David 379 f., Schönbauer 311 f. (This scholar does not admit the possibility of a conflict with Imperial Law, 307 — 313).

[22] Felgenträger 63 ff.

[23] Felgenträger 70 ff. The author confesses frankly that the sources at his disposal are but weak ones. David (378 f. n. 5) and Schönbauer (307 f.) object strongly against conclusions driven from Chariton's *Callirhoe* 1—2 cent A. D.

[24] *Arch. f. Pap.* XIV 224.

[25] *Sav. Z.* LXII 306 V.

An answer of mine[26] was destroyed on an infortunate day shortly before its publication. Thanks to the kindness of my editors I am now in the position to submit my interpretation to the verdict of my professional colleagues. It is a document proving the occurrence of the conception of the *Lösungsrecht* in the Hellenistic juristic world. Relying on such a proof I do not feel inclined to bow silently to the condemning verdict of my honourable friend and to acquiesce to his sentence that the study of Greco-Hellenistic sources has lead to completely negative results concerning the existence of such a *Lösungsrecht*.[27]

The text that I have in mind cannot be peremptorily declined as a proof in our case on the ground that it belongs to a different historical epoch being by centuries older than the late Roman period. What we have to prove is that a particular legal conception existed already during the Hellenistic period. And I think that this proof can be produced.

The Papyrus Baraize (ca 165—158 B. C.)[28] contains a *hypomnema* addressed to Daimachos who was διάδοχος[29] καὶ στρατηγός of the Perithebes. The writer of the *hypomnema* is a γεωργός named Petaroeris. He brings in a complaint bare of every juristic acuteness and critical sense[30] against a certain Pemsaïs who — on two different occasions — has deprived him of 80 *arourai* of land. The wording of the text whose clumsiness is one more stimulant to attempt a juristic interpretation is as follows:[31]

Δαιμάχωι διαδόχωι καὶ στρατηγῶι παρὰ
Πετεαροήριος τοῦ Φήξιος γεωργοῦ τῶν
ἀπὸ Διοσπόλεως τῆς μεγάλης. Ἀδικοῦμαι
ὑπὸ Πεμσάιος τοῦ Φανούφιος· ὑπαρχούσης
γὰρ τῆι ἐμῆι γυναικὶ Τσενονπμοῦτι γῆς
ἠπείρου, ἥ ἐστιν ἐν τῆι κάτω τοπαρχίαι
τοῦ Περιθήβας (ἀρουρῶν) π, συνέβη ἐν τῆι

[26] I expected it to appear in the *Literaturübersicht* X in the *Arch. f. Pap.* XV under No 434.

[27] Schönbauer, *Sav. Z.* LXII 306 V.

[28] This is the opinion Wilcken's *Arch. f. Pap.* XI 292 f.

[29] I. e. τῶν διαδόχων; about that title cf. the editors pp 27—30; Wilcken 292.

[30] Wilcken 293.

[31] The editors p. 25 f. I did not underline the gaps in the text. They consist in a few letters only and have been satisfactorily completed.

γενομένηι ταραχῆι πραθῆναι ἀπὸ τούτων
τῶι προγεγραμμένωι ἐν τοῖς ἀδεσπότοις
(ἀρούρας) νγ', τῆς γυναικός μου ἔτι περιούσης
ἐν τοῖς κάτω τόποις καὶ παραγεγενημένης
ἐπὶ τοὺς τόπους καὶ ὑπομενούσης
συνπληρῶσαι τὰς διὰ τῆς διαγραφῆς (ἀρούρας) νγ
οὐχ ὑπομένει ἐξεδιαζόμενος[32] τὰς λοιπὰς
(ἀρούρας) κζ παρὰ τὸ καθῆκον βιαζόμενος.
Ἀξιῶ οὖν σε μετὰ πάσης δεήσεως, ἐάν σοι
φαίνηται, συντάξαι γράψαι Ἰμούθηι
τῶι τοπογραμματεῖ προσανενεγκεῖν τὰ κατὰ
τὴν διαγραφὴν τὸ πλῆθος τῶν (ἀρουρῶν), ὅπως
ἀπομετρήσω αὐτῶι καὶ παραλάβω τὴν
ὑπάρχουσάν μοι γῆν ἄπρατον. Τούτου γὰρ
γενομένου τεύξομαι διὰ σὲ τοῦ δικαίου.
Εὐτύχει.

According to this petition the *strategos* is asked to order a letter to be written to the *topogrammateus* Ismuthes directing him to present a detailed report about the case which is very complicated indeed. Petaroesis expects evidently that after such an official exposition of his case the issue of the lawsuit will be favourable for him. That favourable issue would consist in a definitive recognition of his claim to the whole real estate: namely his claim to recover unconditionally 2 *arourai* as γῆν ἄπρατον and his claim to recover 53 *arourai* by paying a certain amount of money to the detentor of the land as indemnity (*Lösungssumme*).

The facts are as follows[33]: the deceased wife of the petitioner owed 80 *arourai* of arable land not exposed to inundation. She was compelled to fly northward owing to an insurrection.[34] The administrative magistracy officially alienated 53 *arourai* of her property to the respondent because it considered the land as a derelict *res nullius*. It would lead us to far to investigate in the present context the legal consequences of political revolutions. We know them sufficiently well from the history of Ptolemaic

[32] L. ἐξιδιαζόμενος. ἐξιδιάζεσθαι (med.) *to appropriate something, embezzle* cf. Preisigke-Kiessling, *Wörterbuch* s. v.

[33] I have based myself mostly on the excellent commentary of the editors.

[34] See the explanation by Wilcken 293 1.

Law as well as from other sources.[35] The position of the respondent Pemsaïs is in our case more favourable for him than if he had simply put himself in possession of the land during the unrests and owing to the absence of the displaced proprietor. He was namely in the position to refer to have purchased the *arourai* from the state[36] i. e. probably from the ἴδιος λόγος[37] whose existence seems to be proved from 162 B. C.

As the acquisition of the land through purchase from the state became legally valid the proprietor lost all hope to recover her property by means of vindication. Nevertheless she tried to recover her estate — as it is told to us by the plaintiff who is her heir — but the only way was to repurchase it, to συνπληρῶσαι τὰς διὰ τῆς συγγραφῆς (ἀρούρας) νγ. She had to repay fully[38] to the purchaser Pemsaïs all the expenses connected with the acquisition of the 53 *arourai*[39] i. e. the price that had been payed for the estate in the first place and all other expenses.[40] She declared probably to Pemsaïs her readiness[41] to bear all those burdens, but he was not inclined to grant her request. It seems quite certain that Tsenonpmutis as she offered to redeem her estate recognized that her opponent had acquired her property. It could be doubtful whether in her sense of justice she was in possession of a right of redemption and whether she was able to prevail with her claim in court. That she did not do it in fact, cannot be considered as an argument against our thesis. Her illness and her

[35] P. 36 ff and sources: case of Hermias P. Tor. 1; now Wilcken *UPZ* II 1 (1935) No 162 VII 22 ff p. 83. Cf. especially the decree of Euergetes II (118 B. C.) P. Teb. I 5 I 6—9 for pardonned fugitives who have returned.

[36] Cf. also the Correspondance of Zenon P. Cair. Zen. III 59460 and Berneker, *Die Sondergerichtsbarkeit im griechischen Recht Ägyptens*, *Münch. Beiträge* 22 (1935) 86 concerning acquisition through purchase of an officially seized real estate belonging to a debtor of the fiscus.

[37] Editors 33 f. The ἀδέσποτα belong to the βασιλικόν.

[38] συμπληρόω, συμπλήρωσις, συμπληρωτικός cf. Preisigke-Kiessling, *Wörterbuch*. It means a *full settlement of a payment*. Cf. n. 40.

[39] Concerning the broad possibilities to use the expression διαγραφή in the Ptolemaic legal language v. the editors (p. 36 l. 14). They refer justly to Wilcken, *UPZ* I p. 532 f.

[40] The expression συμπληρῶσθαι has all those meanings (not only: *repaying of the price*).

[41] Concerning the expression ὑπομένειν that has been used in the bill of complaint referring to the attitude of both parties cf. Preisigke-Kiessling, *Wörterbuch* s. v.

death could have prevented her from bringing in her claim. Facts speak on the contrary in favour of the existence of a *Lösungsrecht*. The husband of the deceased proprietor qualifies namely in his petition the refusal to accept the offer of his wife as a case of ἐξιδιάζεσθαι[42] an embezzlement, an unrighteous appropriation, in one word a *dolus*. The occupation by force of the remaining 27 *arourai* is qualified by the petitioner as an unrighteous and illegal measure παρὰ τὸ καθῆκον βιάζεσθαι[43]. *Dolus* and *vis* are opposite. The deceased wife left her inheritance to her husband in a very sad state of possession. After having described the facts, the husband brings in his petition based upon them. The petition is very *badly worded*[44] — all students of the papyrus agree about that point. It can be considered as a true *crux interpretationis* and opinions of the interpretators vary. I think that I have found in the petition of the widower a full reception of both chief claims of the deceased testator i. e. those she had actually presented and those she could have presented in case she had survived. I mean claims concerning the 53 ar*o*ur*ai* sold by the state to Pemsaïs and also claims concerning the 27 *arourai* that he occupied by force.

The interpretators of the text seem to be unanimous about those 27 *arourai*.[45] They have not been sold by the state; the defendant could not produce any title whatever concerning them, he acted merely by force (παρὰ τὸ καθῆκον[46] βιαζόμενος). The fact that the plaintiff mentioned the remaining 53 *arourai* although he recognized that they had been legally acquired by the defendant, the fact that he mentioned them not merely in the narrative part of his statement of the case — what is a matter

[42] V. supra n. 32.

[43] βιάζειν — *to compel*; *to use force* Preisigke-Kiessling, *Wörterbuch*. Here mediat *to appropriate something by force.*

[44] Wilcken, l. c. 294.

[45] The editors translate p. 27: *et que je reçoive de lui la terre qui m'appartient*, and explain additionally to γῆν ἄπρατον: *avant qu'elle soit vendue.* They are more accurate in the commentary p. 37 where they give an alternative: *que la terre appartient à Petaroêris parce que Pemsaïs ne l'a pas achetée au fisc.* Wilcken 294: *To get back the 27 arourai which have been unlawfully occupied by Pemsaïs. His petition has according to that only that aim.* Similarly Schönbauer l. c. 306: *According to my opinion the plaintiff asks to recover without a compensation the 27 arourai which have not been sold.*

[46] Irregular, Preisigke-Kiessling, *Wörterbuch* II 714.

of course — but he mentioned them in his *petitum* in a relatively full and detailed account (vv 18—20), finally the fact that Petaroeris based his expectation of a possible understanding with the defendant concerning those 27 *arourai*, chiefly upon the report that Imuthes was ordered to present, προσανενεγκεῖν τὰ κατὰ τὴν διαγραφὴν τὸ πλῆθος τῶν ἀρουρῶν; all those facts seem to prove that he had not lost all possibilities to recover them. But it is not to be denied that Schönbauer emits the opinion that Petaroeris has lost all his rights without any possibility to recover them; he takes for granted that the *settlement* of the case could be based not upon the *Lösungsrecht* (i. e. the right to redeem the *arourai*) but *on a particular category of Ptolemaic decrees whose purpose it was to regulate unlawful changes of possession that occurred during political unrests.* He reminds on the so called *decrees of indulgence* whose *existence has been proved by the Hermias case.*[47] But we still have to find an interpretation for the mysterious words ὅπως ἀπομετρήσω αὐτῶι and to prove that only the defendant Pemsaïs can be meant by them. The word ἀπομετρέω is translated in the first edition of the dictionary of Preisigke-Kiessling by the words: *to pay in goods* (as opposite to money) but Kiessling in his new edition[48] gives a more detailed translation namely: 1 *to measure corn, to pay* and 2 *to measure of, to find out by taking measure* and quoting one text he adds: *to make me verify for him the precincts of the arourai by measuring them*, and so enable me to get back that part of my estate that had not been sold. In this way he accepts the interpretation of Wilcken[49] (but he mentions my opposite opinion also). Wilcken's interpretation is that the plaintiffs claim culminates in a demand to find out by measurement the situation and the precincts of the 27 *arourai* and this because it is plausible to admit that Pemsaïs has obliterated the boundaries of the estate. I must confess that I am unable to consider as plausible such an interpretation of the expansion of the plaintiff which Wilcken himself considers very clumsy. The editors of the papyrus translate

[47] *Sav. Z.* LXII 306 supra 45. Connected with the quotation is the following sentence: *according to the editors the settlement of this dispute consists in a compromise. Restitution in exchange of compensation.* This means execution of the *ius retractus* in concordance with the opinion of the editors.

[48] Marked as Vol. IV 1 part (1944) p. 254.

[49] *Arch. f. Pap.* XI 294 ff.

that expression as follows: *pour que je lui* (Pemsaïs) *en paye le prix en nature* (p. 27) and give the following explanation (p. 36): *Petaroesis propose d'en payer le prix à Pemsaïs „ὅπως ἀπομετρήσω αὐτῷ" Car nous ne voyons pas comment entendre ces mots difficiles.* I think that the editors are right. I also think that perhaps we can dissipate the doubts felt by the editors and recognized by Wilcken. The editors say: ἀπομετρεῖν *signifie un versement en nature* and they understand by it an offer of grain. Wilcken asks what sort of grain was meant by the petitioner as he has not specified it. He underlines that the offer is not defined as a τιμή and finaly that the value of the versement is not mentioned. According to Wilcken we miss here the precision of the act of doing which is essential for an offer of purchase. But are we obliged to take for granted that the word ἀπομετρεῖν means necessarily and exclusively only a *versement en nature*?[50] The *Thesaurus Graecae Linguae* translates ἀπομετρεῖν only by *metior, dimetior* and mentions other objects of measuring and apportioning too. Wilcken explaining the interpretation of the editors has omitted one point and asumes that it is hidden in the word πλῆθος or even more probably in the word ἀρουρῶν. But is it impossible that the word has been used in its intransitive form? We say for instance in German *abgelten* (*to repay, to give back the value of a service*). The plaintiff asks for a report of the *topogrammateus*, that will clear the situation. It will be possible — on the basis of such a report — to reach an official decision concerning the amount of the compensation that will be due to Pemsaïs, and the plaintiff will recover his estate by paying compensation. The recovery will be based upon his *Lösungsrecht* (*right of redemption*). If our interpretation is correct, then it is understandible, that the word τιμή is omitted. It is also matter of course that the amount of the compensation could not yet be precisely fixed. The fixation of that amount was possible only after the termination of the investigation lead by Imuthes. It is also easily understood that the parties did not reach an agreement concerning the compensation, which was legally due to Pemsaïs at the moment of the restitution of the *arourai*. Pemsaïs' attitude in the law-suit

[50] The payment of a compensation in nature instead of money is conceivable especially in a period of political unrest. But I do not intend to propose such an interpretation in our case.

shows clearly that he intended to retain the whole of the 80 *arourai*, having paid to the *fiscus* the price for only 53 (τῆς γυναικὸς... ὑπομενούσης... οὐχ ὑπομένει). Pemsaïs was — as we remember — a ἐξιδιαζόμενος and a βιαζόμενος. It is true that we have a presentation of the case by the plaintiff only, and that we have no possibility (as often happens) to hear the *altera pars*. It is possible that the plaintiff or perhaps the deceased lady neglected to appear in court during the legal space of time and therefore lost their right to redeem the estate, or that they have not complied with some other legal condition? It is quite certain — owing to the interpretation of Wilcken — that the sale of the 53 *arourai* was a legal one. It was a consequence of the flight of the landlady. The estate belonged to ἐν τοῖς ἀδεσπότοις i. e. to the block of the *bona vacantia*.[51] It is only under that condition that its recovery was possible by paying a compensation based upon the right of lost property. In every other case the plaintiff had only one way open before him: namely to recover the estate by vindication (the 53 *arourai* that had been sold as well as the remaining 27 *arourai*). But only 27 *arourai* are considered by the plaintiff as ἡ ὑπαρχούσα μοι γῆ.

If our interpretation proves correct, then we can consider the Papyrus Baraize not only as a certificate of the existence of a legal conception of a right to redeem lost property by paying a compensation in Hellenistic Law, but also that such a right existed in fact and was recognized by the judicial courts. I should like to mention in fine that Collart and Jouguet have tried to prove in a similar way the existence of a legal institution of the ἐπίλυσις[52] which was the object of investigations by Guéraud[53] on the basis of the Papyri Enteuxeis 61 and Eleph. 27.

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[51] Cf. concerning those questions and these of the 53 *arourai* the remarks of the editors p. 37 ff.

[52] P. 36 f.

[53] P. 148 ff.