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Γενηματογραφία in Greco-Roman Egypt

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ΓΕΝΗΜΑΤΟΓΡΑΦΙΑ IN GRECO-ROMAN EGYPT *

The law of the papyri knows a specific executorial remedy *publici iuris* for securing and covering claims of the state i. e. the seizure of the produce of immovables. We intend to deal in the following with this executorial remedy called by the Greeks γενηματογραφία.

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I. We find the γενηματογραφία for securing claims of the state already in a document from the II cent. B. C.: Tebt. 742 (157 B. C.). The document relates to persons against whom the government had claims: against βασιλικοὶ γεωργοὶ ἐνεσχημένοι λείαις καὶ ἄλλαις αἰτίαις¹. During an official inquiry which had been held, instructions were given for the handing over of the produce of the vineyards to guards (ll. 22—27): ἐπὶ τῆς γενηθείσης ἀνακρίσεως ἐπὶ τοῦ αὐτοῦ, Μελαάγρου τῆι κη τοῦ Παχῶν, ὧι ὑπάρχειν οἰκίαν καὶ ἀμπελῶνα ...α.. καὶ γενήματα ἐξ ὧν γεωργεῖ (ἀρουρῶν) ρι; ἐξ ὧν γεγραφέναι (ἔτους) κδ Παῦνι ιη ἐπιτελέσαντας ἕκαστ' ἀκολούθως καὶ τὰ ἐκ τῶν χωρίων συναχθησόμενα γενήματα παραδόντας τοῖς φυ(λακίταις) κτλ. The case resembles Tebt. 14 = M. Chr. 42 (114 B. C.) where pending an inquiry against a certain Heras accused of murder, Horus, probably the *basilicogrammateus* ordered the κωμογραμματεὺς (v. 13 ff.) ἀναγραψάμενος αὐτοῦ τὰ ὑπάρχοντα συντάξαι θεῖναι ἐν πίστει παραθεῖς τὰ τε μ[έτ]ρ[α] καὶ γεινίας καὶ ἀξίας ἀνενεγκεῖν². The difference between the two cases consists in that, that in

* Literature: Mitteis, *Römisches Privatrecht* 375 note 73; Wilcken, *Grundzüge* 297; P. Meyer, *Festschrift für Hirschfeld* 137, 143; Rostowzew, *Kolonat*, 136 ff.; Manigk, *Verfall d. griech. Pfandes* 160 ff.; Oertel, *Liturgie* 185 ff.; Plaumann, *Idiologos* 58 ff.; Collart, *Les papyrus Bouriant* 156 ff.; Rostovtzeff, *Soc. and Econ. Hist. Hell. World* 1496; Wallace, *Taxation in Egypt* 5, 309 ff.; my *Law II* 10340.

¹ Cf. l. 32 and Tebt. 56-7; on the term ἐνεσχεῖσθαι see Preisigke, 106 s. h. v.

² From the Roman period: BGU 106 = W. Chr. 174 (199 A. D.), BGU 8 = W. Chr. 170 (III cent. A. D.); see also M. Chr. 196 (307 A. D.) (information given by the βιβλιοφύλακες ἐγκτήσεων on the belongings of an accused person): order to secure these belongings for the claims of the state for indemnity cf. my *Strafrecht* 63 a.

the later case the seizure concerns not the crops but the whole property of the accused person.

Similar but not identical with Tebt. 742 is Tebt. 53 (110 B. C.)³, a petition addressed to Petesuchos, the successor of Menches as *komogrammateus* by a cultivator of crown lands complaining of the theft of certain „sacred” sheep, belonging to inhabitants of Kerkeosiris and requests that the (v. 25) κληροὶ αὐτῶν κατασχεθῶσι ἐν τῷ βασιλικῷ and we find below the decision (v. 27) συντάξης κατεγγυ(ᾶν)⁴ αὐτῶν τοὺς κλή(ρους) — ἀσφαλίσασθαι τὰ γενή(ματα): that their holdings to be impounded and the produce seized, a combination of seizure of holdings and γενήματα⁵.

II. More frequent is the γενηματογραφία for covering fiscal debts. This kind of γενηματογραφία appears in a double form: as γενηματογραφία on goods subject to κατοχή and on confiscated goods.

The claims of the state against liturgists and domanial tenants were in the Roman period certainly secured by κατοχή on their property; this happened at the very moment of the assumption of the liturgy⁶ resp. of the taking over of the tenure⁷. In case of a delay in payment by the liturgist or by the tenant, the authorities proceeded first to establish by inquiry all the property of

³ Cf. Rostowzew, *Kolonat* 142.

⁴ On κατεγγυᾶν in private execution cf. Amh. 35 (132 B. C.) where the strategus lays an embargo (κατεγγυᾶν) on some wheat pending a subsequent decision as to the ownership of it; Ryl. 119 (54—67 A. D.) (v. 13—14) μετὰ τὰ ἐν κ[α]τεγγυήσει γεν[έ]μενα ἄλλα ἐκφόρια κτλ.; cf. Il. 23—5 τὰ παρὰ γεωργοῖς ἐν κατεγγυήσει ἀπὸ ἐπιστολῆς αὐτοῦ Τοῦσκου γενόμενα ἐκφόρια κτλ.; Catt. verso IV 18 = M. Chr. (ca 141 A. D.): the procedure described in connexion with the λογοθεσία is doubtless also a κατεγγυήσις; Gen. 31 = M. Chr. 119 (145/6 A. D.) (v. 12—14) τῶν δὲ ἀποκατέσχον διὰ στρατηγοῦ παρὰ γεωργοῖς ἄχρι κρίσεως κτλ.

⁵ This takes place also in an unpublished Berl. pap. 11.564 (cf. Plau-
mann, *Idiologos* 57) where an escaped fiscal debtor is summoned to return unless τὸν πόρον... σὺν ταῖς προσόδοις κατασχὼν δήλωσον μοι.

⁶ Cf. BGU 619 (155 A. D.) see Eger, *Grundbuchwesen* 72; Oertel, *Liturgie* 358 and note; Manigk, *Verfall d. griech. Pfandes* 152.

⁷ Cf. BGU 1047 (Hadrian's era), see on this papyrus, Eger l. c. 751; Rostowzew, *Kolonat* 184; Manigk, l. c. 160; this right of κατοχή on the property of the fiscal debtors is probably a precursor of the *ius fiscale* which was introduced by interpolation in D 40, 1, 10 *quo omnia bona debitorum iure pignoris tenerentur* see Bolla, *Die Entwicklung des Fiskus zum Privatrechtssubjekt* 82; see also Wieacker, *Festschrift Koschaker* I 245.

the debtor⁸ and to secure it; after this had been done they took into consideration whether or not the produce of the property would be sufficient for the settlement of the debt⁹; if it was sufficient, an order was issued for the sequestration of its produce. The γενηματογραφία concerned also properties where substance was already impounded. A circular letter of the prefect Minicius Sanctus (177—180 A. D.) stresses expressly upon this circumstance (v. 8 ff.) [ἐμ]αθον καὶ ἕτερα ἅπαντα γενηματογραφ[ο]ῦσθαι κρατούμενα ἕνεκεν ὀφει[λημ]άτων¹⁰.

The Idiologos and sometimes the *procurator usiacus* seem to have been competent to issue such an order; but we don't know exactly which was the competence of each of them¹¹. The strategus is their executive officer¹²; it is his duty to care for the appointment of an ἐπιτηρητής τῶν γενηματογραφουμένων ὑπαρχόντων¹³. Noteworthy is a papyrus from Cairo ed. by Vitelli in *Racc. Lumbroso* p. 24 ff. because it shows how a strategus has been made responsible for not having taken care for the appointment (not ὅτε ἔδει) of an ἐπιτηρητής for the estate of a debtor who

⁸ Cf. BGU 106 = W. *Chr.* 174 (199 A. D.); BGU 8 = W. *Chr.* 170 (III cent. A. D.) see Plaumann, l. c. 57. In the Ptolemaic period is this establishment of the belongings of the fiscal debtor called ἀναγράφασθαι τὰ ὑπάρχοντα; cf. Tebt. 2497 (117 B. C.) ἀναγράφασθαι τὰ ὑπάρχοντα αὐτοῖς (cf. Wenger, *Arch.* II 100; Mitteis, *Röm. Privatrecht* 375 note 73); Tebt. 27 (113 B. C.) Ἀσκληπιάδῃ προσπεφωνήκαμεν [ἀναγράφασθαι] [τὰ] ὑπάρχοντα αὐτῷ πρὸς τὰ ἐν αὐτῷ ὀφειλόμενα; BGU 1794 (cf. Schäfer, *Aegyptus* XIII 618) where a certain Heraclius becomes responsible for certain irregularities committed by his father while in office of a *sitologus* (cf. Tebt. 895; Oertel, *Liturgie* 359). The *komogrammateus* was ordered by the strategus to put up an inventory of Heraclius belongings (v. 4) δι' ἧς ἐσημαίνετο ἀναγράφασθαι τὰ ὑπάρχοντα κτλ.

⁹ Cf. Plaumann, l. c. 58.

¹⁰ Cf. Zilliacus, *Vierzehn Berliner Griechische Papyri* N° 4; see BGU 742 III 96 ὀφείλει κρατεῖσθαι κτλ.

¹¹ Cf. Plaumann, l. c. 59/60, from the later material cf. Princ. 229 (246/9 A. D.); an official letter addressed to Aurelius Philoxenus, strategus of the Oxyrhynchite nome, concerning arrears of wheat owed on ὑπάρχοντα γενηματογραφούμενα. Noteworthy is (v. 3) [τῶν ὑπάρχόντων γενηματογραφουμένων [ὀφεί] τοῦ ἰδίου λόγου ἐπιτροπῆς; on ἡ τοῦ ἰδίου λόγου ἐπιτροπή cf. Plaumann, l. c. 67.

¹² Cf. Rostowzew, *Kolonat* 140.

¹³ Cf. on this liturgy, Rostowzew, *Kolonat* 135 ff., 138 ff.; Wilcken, *Grundz.* 297; *Chrest.* 427; Plaumann, l. c. 58; Oertel, *Liturgie* 241; Manigk, *Verfall d. gr. Pf.* 162; Vitelli, l. c. 27 ff.; add the material collected in my *Law* II 10340.

was in delay with his payment of the ἐγκύκλιον¹⁴ (v. 10 ff.) πρὸς ἐπιτηρήσ(ε)ι ὑπαρχόντων Αἰλίου Ἰέρακος πρὸς ἐγκύκλιον πόλεως κελυσθέντων γεν[η]ματογραφ(ε)ῖσθαι ἕνεκα τοῦ ὅτε ἔδει μὴ κατε[2—4 ll.]σθαι ἐπιτηρητὰς τῶν ὑπαρχόντων.

Γενηματογραφία does not change — and this is understandable — the legal position of the owner of the estate subject to the γενηματογραφία¹⁵. He remains to be owner as he was before, obliged to pay over the collected πρόσοδοι to the ἐπιτηρηταί in money who deliver them to the πράκτορες¹⁶. The *epiteretes* who is adjoined to him, has the same task as the *missus in bona* in the Roman executorial proceedings¹⁷, he has namely to keep a watchful eye upon the estate of the debtor (*custodia*) and to make him pay the πρόσοδοι and δημόσια.

Γενηματογραφία ceases to exist as soon as the debt is payed out of the produce. This is showed by BGU II 599=W. Chr. 363 (II cent. A. D.) and by an unpublished papyrus of the collection of Strassburg. We see there one dioecetes giving orders to the strategus: ἐὰν [τοῦτο εἰσενέγκω]σι καὶ μηδὲν ἄλλο ὀφείλωσι, φρόντισον τ[ὴν γενηματογρα]φίαν ἀνεθῆναι τῶν ὑπαρχόντων and another one saying in another letter (after a conditional sentence) τὰς προσόδους αὐταῖς (two sisters) τῶν ὑπαρχόντων ἀνεθῆναι¹⁸.

How long can the γενηματογραφία last and what is to be done if it appears that the γενηματογραφία cannot pay out the debt at the set term? The circular of Minicius Sanctus¹⁹ (177—180 A. D.) gives us information about the question. The prefect gives (v. 12 ff.) the order: εἶνα [πᾶ]σιν φανερόν ποιήσητε ὅτι ἐὰν ἐν[τὸς] μηνῶν ἕξ μὴ ἀποδοθῆ τὸ ὀφιλό[με]νον τῷ φίσ[κω] [πρ]αθήσεται τὰ γε[νημ]ατογραφ[οῦμεν]α κτλ., to make it also clear to everybody that — unless the debts due to the fisc are

¹⁴ It is quite certain that the estate of a fiscal debtor was for taxes impounded with κατοχή; cf. my *Law* II 102, see also *C* VIII, 14(15), 1 *Universa bona qui censentur vice pignorum obligata sunt* (a. 213); *D* 49, 14, 46 § 3 *Fiscus semper habet ius pignoris*; cf. Wieacker, l. c. 241; 251.

¹⁵ Cf. Manigk, l. c. 162 (with reference to Wilcken l. c.).

¹⁶ Cf. Rostowzew, *Kolonat* 140; Oertel, l. c. 241.

¹⁷ Cf. P. Meyer, *Griechische Texte* p. 15 note 32.

¹⁸ Cf. Wilcken, *Chrest.* 428.

¹⁹ Cf. Zilliacus, *Vierzehn Berl. Gr. Pap.* No 3.

repayed within six months²⁰ — the sequestered property has to be sold by public auction²¹.

If the term set up for the sequestration expires without effect, the state proceeds to the realisation of the κατοχή incumbent upon the estate by its sale. The κατοχή incumbent upon the estate gives therefore the right to sell it²².

We have now to resolve the question: is the γενηματογραφία a necessary first step for fiscal sale of the estate impounded with κατοχή or is it not? BGU I 291=W. Chr. 364 (170 A. D.) contains the complaint of Theanous against a certain Petronius. Petronius wanted to take away the produce of an orchard belonging to Theanous. Petronius asserted that he purchased the orchard from the fisc. Theanous repudiates his claim by pointing out that the orchard was never subject to γενηματογραφία; if we assume that this assertion was right, we must consider the γενηματογραφία of the orchard as a necessary first step for its sale by the fisc. Theanous' orchard was probably not a confiscated one; because confiscated property could be sold without a previous γενηματογραφία²³. Therefore κατοχή only can be taken in consideration. The assertion of Theanous that the γενηματογραφία had to precede the sale by the fisc could also be right under assumption that the orchard in question was encumbered with κατοχή.

Concerning the γενηματογραφία on confiscated property we have to remind of SB 4512 (Ptol. era) in which we see that such property was subject to γενηματογραφία after its confiscation²⁴. In the Roman period we can assume this in all the cases where a property is described as e. g. γενηματογραφούμενος (ἐλαιών) πρό-

²⁰ On the term of six months see Ryl. 273 (176/7 A. D.) καὶ Μάγνος ὑπέγραψεν Πραχθήτω ἐντ[ὸς] μηνῶν ἕ καὶ ἐξ αὐτῶν τῶν ἐνεχομένων; see also BGU 832 (113 A. D.) (v. 26) τὸν ἑξαμήνιον χρόνον ἐν ᾧ ἐξέσθαι καὶ τοῖς βουλομένοις κτλ. cf. Rabel, *Verfügungsbeschränkungen* 22 note 1.

²¹ Cf. on public auction, Pringsheim, *Scritti in onore di Contardo Ferrini* vol. IV 284 ff.

²² The state can therefore proceed to sell without a previous confiscation of the estate as it was assumed by Wilcken, see also Manigk, l. c. 162.

²³ Cf. BGU I 291 = W. Chr. 364 (170 A. D.) and Wilcken, *Chrest.* p. 429.

²⁴ (V. 6) ἀνε[ι]λήφθαι εἰς τὸ βασιλικόν, ὅταν δὲ πρότερον Μύρωνος κτλ.; (v. 15) ἐφ' ᾧ κυρι[ε]ύσει τῆς γενηματογραφουμένης γῆς κτλ.

τερον (τοῦ δεῖνος)²⁵. Instances on steps on γενήματα after the confiscation are to be found in BGU 733₄²⁶ and probably also in Oxy. 986^{27 28}. But in all the cases is not clear whether or not the management of the property subject to the γενηματογραφία was invested with the former owner or at least in the Roman period with the ἐπιτηρηταί. It is a matter of course that such properties could be put to sale at any time.

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²⁵ Cf. BGU 28219 (Marcus era); see also Ath. 397 (170/1 A. D.) πρότερον Π]] καὶ γενηματογραφ.

²⁶ Cf. Plaumann, l. c. 59.

²⁷ Cf. Rostowzew, l. c. 139/40; 187; Plaumann, l. c. 59.

²⁸ On S.B. 5230 (seizure by the state of the produce of parcels of land, see Plaumann, l. c. 17, 29, 57; on PSI 104 and 108 (dispositions on γενήματα) cf. Plaumann, l. c. 59; on a case where wrongly a πρόσδοος was required from land which was sold: Lond. II 164 (p. 116), see Rostowzew, l. c. 136/7; Plaumann, l. c. 59; cf. BGU 619 and Plaumann, l. c. 59; on BGU 388=M. Chr. 91 see Oertel, l. c. 241; Plaumann, l. c. 59.