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PRIVATE ARBITRATION IN THE LAW OF GRECO-ROMAN EGYPT.

Only some short mentions¹ but no monographic essays on the question of private arbitration² in the law of Greco-Roman Egypt are to be found in the papyrological literature. It is the task of the present article to fill up this gap³.

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Greek private arbitration⁴ appears already in the IV century B. C. in Ptolemaic Egypt⁵, brought there by Greek colonizers⁶. It

¹ Cf. Mitteis, *Hermes* 30, 616 ff.; Wilcken, *Arch. f. Pap.* I, 20 ff.; Taubenschlag, *Organizacja sądowa Egiptu w epoce rzym. i bizant.* 76 ff. (Rozprawy A. U. Seria II t. XXV [1907]); germ. summary: *Die Gerichtsorganisation Aegyptens in röm. u. byzant. Zeit.*, Bull. intern. de l'Acad. de Cracovie N° 6 — 7, p. 78 ff.); Berger, *Strafklauseln* 212 ff.; Mitteis, *Grundzüge* 32, 276; Modica, *Introduzione allo studio della papirologia giuridica* 201 ff.; Taubenschlag, *Spraw. Akad. Um. t. XXIV N° 3* p. 15 ff.; Wenger, art. *Receptum Arbitri*, RE I A., 369 ff.; Steinwenter, *Streitbeendigung im gr. Recht* 91 ff., 172 ff.; Berneker, *Sondergerichtsbarkeit* 185 f.; Taubenschlag, *Law I*, 304 f. and notes, 372₅₈, 375₇₇, 377₈₇; Seidl, *Ptol. Rechtsgeschichte* 24. From the private arbitrators in the meaning discussed in this article are to be discerned the mediators whose task is not to pass a sentence but to reconcile the parties cf. Wenger, *P. Mon.* p. 163 ad v. 31; RE I A., 371 ad Lond. 113; Steinwenter, *Streitbeendigung* 15, 92, 105; Taubenschlag, *Sav. Z.* 46, 81 note 4.

² On public arbitration see Taubenschlag, *Die ptol. Schiedsrichter* (Arch. f. Pap. IV, 1 ff.) cf. Idem, *Law I*, 370 f. and the later sources and literature cited there. On public arbitration in the Roman and Byzantine epochs see Idem, *Die Gerichtsorganisation* l. c. p. 42 ff. On the Alexandrian *δικοιτητα* mentioned in P. Hal. 1 (= P. Meyer, *Jur. Pap.* N° 74) (III cent. B. C.) v. 26 f., 41 f. see Graeca Halensis, *Dikaionata* 51 ff., (esp. 53); Schubart, *Einführung* 286; P. Meyer, *Jur. Pap.* 253; Collinet, *Münch. Beitr.* 19, 222; Peremans-Vergote, *Papyr. Handboek* 181; Taubenschlag, *Law I*, 369 with reference to Schwahn, RE VI A., 1 ff.

³ This article is based only on Greek sources; on the arbitrators in the light of Coptic documents see Steinwenter, *Stud. Pal.* XIX, 22 ff., 53 ff. and passim (cf. Koschaker, *Sav. Z.* 41, 330 ff.).

⁴ Cf. Semeka, *Ptol. Prozessrecht* 42; Berneker, *Sondergerichtsbarkeit* 185 f.; Taubenschlag, *Law I*, 304, 372₅₈; Seidl, *Ptol. Rechtsgeschichte* 24.

continues to develop during the Roman epoch, simultaneously with the rise of Roman private arbitration⁷ which reaches its full expansion in the Byzantine epoch.

In all the three epochs two deeds are needed to set up a private arbitration: 1) the recording of the arbitration, i. e. an agreement between the parties to choose jointly an arbiter and let him decide their litigation (*pactum compromissi*)⁸ and 2) the agreement between the parties and the arbiter in which the latter accepts his office (*receptum arbitri*)⁹.

⁵ Elef. 1 (311 — 10 B. C.). As to the origin of private arbitration and its importance in the development of the jurisdiction of State-courts see: in general — Bekker, *Z. f. vgl. Rw.* 1, 110 ff.; Bernhöft, *Z. f. vgl. Rw.* 2, 320; Wenger, *Das Recht d. Griechen u. Römer* 286 ff.; Beseler, *Sav. Z.* 50, 442 f. For Babylonian law — Lautner, *Die richterl. Entscheidung u. Streitbeendigung nach altbab. Prozessr.* passim. For Greek law — Steinwenter, *Streitbeendigung* 1 ff.; Stawros Huwardas, *Z. f. vgl. Rw.* 49, 289; Gernet, *Arch. d'Hist. Droit Orient.* I, 111 ff.; Pantazopoulos, *Festschrift Koschaker* III, 199 ff.; Wolff, *The origin of judicial litigation among the Greeks* (Traditio IV), 36 ff. For Roman law — the works by Wlassak, cit. in Wenger's art. *Studi Solazzi* 47 n. 1; Bekker, *Sav. Z.* 30, 49 ff.; Steinwenter, *RE* IX, 2485; Wenger, *Festschrift Hanausek* 6 ff.; Kaser, *Festschrift Wenger* I, 106 ff.; Monier, *Manuel* I^o, 128; Hoetink, *Seminar* V, 16 ff.; Weiss, *B. I. D. R.* VIII and IX, 194 ff.; in detail Wenger, *Studi Solazzi*, 47 ff. For Germanic laws — F. Beyerle, *Das Entwicklungsproblem im germ. Rechtsgang* I, 273 ff.; H. Mitteis, *Sav. Z.* (germ. Abt.) 42, 142.

⁶ See: in general — Matthias, *Festgabe f. Ihering* (1892), 5 ff.; Thalheim, *RE* V, 313 ff.; Steinwenter, *Streitbeendigung* 1 ff., 140 ff.; Gernet l. c. 111 ff.; Pantazopoulos l. c. 199 ff. For old Greek law — Steinwenter l. c. 29 ff. For the law of Gortyn — Kohler, *Gortyn* 10 cf. 81; Steinwenter l. c. 42 ff. For Attic law — Lipsius, *Att. Recht* I, 220 ff.; Steinwenter l. c. 91 ff.; Stawros Huwardas l. c. 289 ff. For other ancient-Greek-city laws — Hermann, *Lehrbuch d. griech. Rechtsaltertümer* 114₃, 156; Steinwenter l. c. 172 ff.

⁷ From the most important literature see Weizsäcker, *Das röm. Schiedsrichteramt* (1879); Matthias, *Die Entwicklung des röm. Schiedsgerichtes* (Rostocker Festschrift f. Windscheid, 1888); Wlassak, *RE* II, 408 ff., 412; Leist, *RE* IV, 796 ff.; Wenger, *RE* I A., 358 ff.

⁸ Cf. for the Greek law Matthias, *Festgabe f. Jhering* 23 ff.; Lipsius, l. c. 224; Steinwenter l. c. 91; for the Roman law — Weizsäcker, l. c. 52 ff.; Matthias, *Festschrift Windscheid* 30 ff.; Leist l. c.; Wenger l. c.; La Pira, *Studi Riccobono* II, 187 ff.; on *compromissum* in the provincial law — Taubenschlag, *Law* I 304 f. and the lit. cited there.

⁹ Cf. Steinwenter l. c. 91 ff.; Weizsäcker l. c. 61 ff.; Matthias, *Festschrift Windscheid* 19 ff.; in detail Wenger, *RE* I A., 358 ff.

The first of these deeds, i. e. the recording of the arbitration could consist either of a separate agreement or of a clause inserted into another contract. Such a separate agreement was already known to the Ptolemaic law¹⁰: it contained the obligation of the parties to abide (ἐμμένειν) by the decision of the arbiter¹¹ — and possibly also indicated the means guaranteeing this obligation¹² and gave the names of the arbiters¹³. Now, to learn what such an agreement was like later on, when it was transacted by Romans, we must turn to the numerous documents of the Byzantine epoch¹⁴ showing a similar structure, namely one founded — as it seems — on the existence of one form¹⁵.

The prescript of such an agreement, which was often drawn up in two copies¹⁶ and couched partly in objective terms¹⁷ and partly in subjective ones¹⁸, contains an invocation of the divine name¹⁹ and the date²⁰; it then indicates the parties²¹ and often

¹⁰ An example of such an agreement we find in BGU 1465 (early Ptol. time), where we read: Σωσίπατρος Ἀμονώφρου || χάρειν. ἐμμενῶ ἐν οἷ || ζ Ὀννώφρου καὶ Ἰμουῖθης ἐὰν διακρίνωσιν || περὶ ὧν ἐγκλιῶ Ἄνδρωνι καὶ οὗτος || ἐμοί — it is not evident to whom this announcement is addressed, may be it is the representative of the partner.

¹¹ Cf. BGU 1465 v. 2; for Attic law see Matthias, *Festgabe f. Jhering* 25, 39 ff.; Steinwenter, *Streitbeendigung im gr. Recht* 101 ff.

¹² As in the Attic law cf. Lipsius l. c. 224₁₅.

¹³ Cf. BGU 1465 (see above n. 10); for Attic law cf. Lipsius l. c. p. 224₁₁.

¹⁴ In chronological order: Giss. 104 (399 A. D.); Jand. III 41 (V — VI cent. A. D.); Lond. III 992 p. 253 = M. Chr. 365 = Arangio-Ruiz, *Fontes* III N^o 182 = *Select Pap.* 61, (descr. p. LI) (507 A. D.); Lond. V 1707 (566 A. D.); P. Klein.-Form. 402 (VI cent. A. D.); BGU I 309 (602 A. D.); SB 5266 (608 A. D.); SB 5271 (615 A. D.); SB 5681 (623 A. D. cf. on the date Bell, *J. E. A.* 6, 132 f.); Lond. II 456 p. 335 (VII cent. A. D.); BGU I 315; SB 4673; SB 4847; SB 5257; SB 5258 (all from the Byzant. epoch); the contents of a *compromissum* is referred to also in SB 7033 + Princ. 82 (481 A. D.) v. 22 ff. (see below note 164).

¹⁵ Cf. Wenger l. c. 369 f.; about the structure of the *compromissum* in classical law cf. La Pira l. c. p. 195. A little different structure has the *compromissum* in SB 4672 (Arab epoch).

¹⁶ Cf. SB 5681 (623 A. D.) v. 37 f.: κύριον τὸ κομπρόμισσον διασπιδὸν γραφέν κτλ.

¹⁷ Cf. Jand. III 41₁₆; Lond. 1707_{2, 4, 5}; SB 5681_{4, 26, 32}; BGU I 315_{5, 5, 12, 13}; SB 4672₁₄.

¹⁸ Cf. Lond. III 992_{10, 12, 14, 19}; P. Klein.-Form. 402₄; BGU I 309₆; SB 5266₅; SB 5271₇; SB 4673₂.

¹⁹ Cf. BGU I 309₁₋₃; SB 5271₁₋₃; SB 5681₁₋₃; BGU I 315₁₋₃; SB 5266₁₋₃;

²⁰ Cf. Lond. III 992₁; Lond. V 1707₁; BGU I 309₂₋₅; SB 5266₃₋₄; SB 5271₃₋₇; SB 5681₃₋₄; BGU I 315₄.

²¹ Cf. Giss. 104_{3 ff}; Lond. 992_{4 ff}; Lond. 1707₂₋₄; P. Klein.-Form. 402_{1 ff}; SB 5266_{6 ff}; SB 5271_{8 ff}; SB 5681₆₋₂₃; BGU I 315_{6 ff}.

adds a formula of mutual compliments²². This is followed by the declaration that a dispute has arisen, the contested object being designated in a general manner²³, after which the parties state their concerted wish that the dispute may be decided by the arbiter whom they have chosen²⁴. Further on the parties declare that they will conform to the judgment by the arbiter (the clause-*ἐμμένειν*²⁵) and secure this promise by penal clauses²⁶ or oath²⁷ or by both²⁸. The document ends with the formula of stipulation²⁹, sometimes connected with the clause *κύριον τὸ κομπρόμισσον*³⁰, and with the signature of the notary before whom the agreement was recorded³¹. In addition, the compromise may give the date on which the parties have to come before the arbiter³² and also indicate the day on which the judgment is to be given³³. Some-

²² Cf. Lond. III 992₁₀; BGU I 315₁₀.

²³ Cf. Jand. III 41₁₃ f *ἡμφισβητήχότες πρὸς ἑαυτοῦς* || [περὶ φανερῶν κερφ]αλίσιων; similarly Lond. III 992_{10f}; Lond. V 1707_{4f}; P. Klein.-Form. 402₂; SB 5681_{23f}; BGU I 315₁₁.

²⁴ Cf. Jand. III 41₁₄; Lond. III 992₁₂ *ἔδοξεν ἡμῖν κοινῇ γνώμῃ ἀπαντῆσαι εἰς δίκαιαν*; similarly Lond. V 1707₅; SB 5681_{26f}; BGU I 315₁₂; SB 5258₂.

²⁵ Cf. Taubenschlag, *Sav. Z.* 46, 81₂.

²⁶ Cf. P. Klein.-Form. 402_{4ff} (according to the supplement by Wilcken, *Arch. f. Pap.* V, 295); SB 5681_{32f} *καὶ ὁμολογοῦσιν στέρεξι* || *καὶ ἐμμεῖναι τῇ διδομένη αὐτοῖς παρ' αὐτῶν* || *δίκῃ*. *Εἰ δέ τις ἐκ τῶν μερῶν μὴ στέρεξη* || *τῇ αὐτῶν χρ[ί]σει, ἐπὶ τῷ τὸ παραβαῖνον* || *μέρος διδ[ό]ναι τῷ στέργοντι λόγῳ προσ[τί]μου χρυσίου κτλ.*; similarly BGU I 315_{14ff}. See also Jand. III 41₁₈.

²⁷ Cf. Lond. V 1707_{6ff}.

²⁸ Cf. Giss. 104₁₀₋₁₃ [*καὶ στ[οι]χεῖν καὶ [ἐμ]μεῖναι τ[οῖς ὄρ]ι[σθ]ησομέν]οις [παρ' αὐτῶν] || καὶ μὴ παραβῆναι τοῦτον τὸν ὄρον... τὸν [δὲ παρα]βάν[τα] || αὐτὸν παρέξειν τῷ ἐμμε[ν]οντι λόγου προσ[τί]μου χρ[υ]σ[ο]ῦ... [ἔνο]χοι ε[ἶ]ημεν τῷ θεῖῳ ὄρκῳ κτλ.* similarly Lond. III 992_{13ff}.

²⁹ *καὶ ἐπερωτηθέντης ὁμολογήσαμεν*: Giss. 104₁₃; BGU I 315₂₄; SB 5681₃₉; Lond. II 456 (p. 335) v. 3.

³⁰ Cf. BGU I 315₂₃; SB 5681₃₈.

³¹ The formula: *δι' ἐμοῦ* (cf. Gardthausen, *Stud. Pal.* 17, 1 ff.); Giss. 104₁₇; SB 5681₄₄; SB 4673₅; SB 5257₄; SB 4672_{22f}.

³² Cf. Lond. V 1707 v. 7: *ἐντὸς ἡμερῶν τεσσάρων ψηφίζομένων ἀπὸ τῆς σήμερον καὶ προγεγραμμένης ἡμέρας*, see Taubenschlag, *Periods and Terms in Greco-Roman Egypt* (Atti Congresso Verona, III) 365; SB 7033 + Princ. 82 (481 A. D.) v. 24 f. *ὁμολόγησαν* || *ἀλλήλοις εἰσω ῥῆτης προθεσμ[ί]ας ἀπαντῆ[σαι] πρὸς τ[οῦτον]* (scil. before the arbitrator) cf. Ensslin, *Rhein. Museum* 75, 434. On the term within which the parties have to come before the arbiter according to Roman law cf. Matthias, *Festschrift Windscheid* 80 and the sources note 2.

³³ Lond. III 992 p. 253 = M. Chr. 365 (507 A.D.) v. 18 cf. D. IV, 8, 21 § 8; 25 pr. § 1; 32 §§ 11, 21; 33; 50 see Berger, *Strafklauseln* 216₂; Wenger l. c. 366.

times the names of the witnesses who were present at the drawing up of the agreement³⁴ or on whose testimony the judgment will depend³⁵ are recorded.

As to clauses recording the arbitration and inserted into other contracts, it appears that the old Greek practice of instituting an arbitration in such a way lasted from Ptolemaic time³⁶ until the late Byzantine epoch. Thus in P. Lond. V 1711 (566 — 573 A. D.)³⁷ a marriage contract between a soldier and Scholastica, daughter of Theodore, the husband obliges himself not to repudiate his wife except in case of misconduct, which must be proved by three credible free men³⁸ — this reminds one keenly of an analogous item in the oldest Greek marriage contract from Egypt nearly nine centuries back³⁹.

Turning now to the *receptum arbitri*⁴⁰, we find in Ptolemaic papyri requests from one of the parties to a third person to accept the task of an arbiter and to summon the other party to take part in the proceedings. In the Ptolemaic epoch such a case is illustrated by UPZ 71 (152 B. C.)⁴¹ where Apollonios applies to Ptolemaios (l. 14 — 18): Διὸ καὶ ἡγγούμενος ἢ δεῖν ἐπ' ἄλλου μὲν μηθενὸς αὐτοῦ διακριθῆναι, ἢ ἐπὶ σοῦ δ' αὐτοῦ, γέγραφα σοι ὅπω[ς] ἢ Ἀπολλωνίωνι

³⁴ Lond. II 456 (p. 335) cf. Wenger l. c. 370.

³⁵ Cf. SB 4672_{16, 19} (Arab time) cf. Berger l. c. 214 f.

³⁶ Cf. Elef. I (310 B. C.) v. 6 — 8 (a marriage contract); Ent. 59 = Magd. 3 (222 B. C.) (a land lease-contract cited literally in a complaint to the king cf. Taubenschlag, *Arch. f. Pap.* XII, 188; *Law I*, 304.).

³⁷ See on this document (the draft of which is to be found in Cair.-Masp. III 67.310) Wilcken, *Arch. f. Pap.* VI, 446; Bell, *J. E. A.* II, 290; Mitteis, *Sav. Z.* 41, 316; Taubenschlag, *Law I* 89₅₈, 90₆₈, 315₁₈.

³⁸ Cf. v. 29 ff.: καὶ ἐν μηδενὶ κατὰ φρονῆσιν σῶ(ῦ) [μήτε] ἢ ἐκβαλεῖν σε ἐκ τοῦ ἐμοῦ συνοικεσίου [ἢ] παρεκτὸς λ[όγ]ο(ῦ) πορ[ν]ίας καὶ ἢ [ἀ]ίσχρας πράξεως καὶ σωματικῆς ἀταξίας ἀποδ[ε]ιχθ[ῆ]ναι [ἢ] [διὰ τριῶν ἢ πλεον ἄ]ξι[ο]πιστων ἀνδρῶν παγκρῶν ὄντων καὶ πολιτικῶν ἢ ἐλε[υ]θέρ[ων] cf. Taubenschlag, l. c. 304.

³⁹ Cf. Elef. I (311 B. C.) — it is characteristic that after nearly nine centuries the contents of the clause is identical and the terminology similar with Lond. 1711 v. 31 ff.

⁴⁰ Cf. Wenger, l. c.

⁴¹ = Par. 46 = Witkowski, *Epist. priv. gr.* N^o 47 (152 B. C.) cf. Wilcken's commentary p. 339 (with reference to Wenger, *Sav. Z.* 23, 161 f. and Sethe, *Sarapis* p. 52) see also P. Meyer, *Z. f. vgl. Rw.* 41, 289; Idem, *Sav. Z.* 46, 343 cf. however Bell, *Gnomon* II, 658.

παραγγείλης, καὶ αὐτὸς δέ, || ὡς ἂν εὐκαιρήσω, παραχρῆμα ταρέσομαι πρὸς σέ⁴².

Similarly in the Roman epoch, Heroninos, a well known figure in Theadelphia⁴³, asks Aurelios Heracles in a private letter written sometime in the III century A. D.⁴⁴ to accept the task of arbiter in a dispute with a certain Pesuas concerning the ownership of an ass; the same time he asks Aurelios to summon Pesuas to take part in the proceedings if he does not want to expose himself to a judicial or administrative action⁴⁵. One can also quote analogous cases from the Byzantine epoch, as e. g. Oxy. I, 131 (VI — VII cent. A. D.) where a Jew named Sousnes asks an honourable but unnamed person to intervene in a dispute which had arisen between him and his younger brother about the division of their father's property⁴⁶.

The setting up of private arbitration could have been preceded — just as the conclusion of any other agreement — by negotiations between the parties⁴⁷; thus e. g. in Oxy. VIII 1164 (VI or VII cent. A. D.)⁴⁸ Theodosius, „a minor local magnate”, suggests to come Petros to let the dispute about a question of possession which had arisen among their dependants be settled by arbitration; he assures in advance that he will do his best to get the arbiter's decision carried into effect⁴⁹.

⁴² Cf. also Oxy. VII 1061 (= O l s s o n, *Papyrusbriefe* N^o 8) (22 B. C.) where the author of the letter reproaches the addressee that he has not brought about an agreement between him and his brother: (v. 3) καὶ οὐ δὴήτησαι ἡμᾶς; it is possible that we have here a case of repudiation to accept the function of an arbiter.

⁴³ Cf. the sources cited by the ed. p. 28.

⁴⁴ P. Giss. Univ.-Bibl. III 27 (III cent. A. D.) cf. Wilcken, *Arch. f. Pap.* X, 275.

⁴⁵ V. 8 ff: διὰ τοῦτό σοι ἔγραψα, ὅτι || ματαίως ἐπεβάλατο ὁ Πεσουᾶς. || ἐ[ὰ]ν ὄν δύνῃ εἰς τὸ ἐμοὶ κεχαρισμέ[ν]ον πείσαι τὸν Πεσουᾶν ἀποστήναι || αὐτοῦ, καλῶς ποιεῖς μνησκό[μ]ενός μου, ἵνα μὴ κόπους παρέ[χ]ωμεν τῷ στρατηγῷ.

⁴⁶ It is less probable, that the addressee was an official and the complaint had to cause his administrative intervention.

⁴⁷ On πρόκλησις cf. Taubenschlag, *Sav. Z.* 46, 81 and n. 1.

⁴⁸ German translation Schubarth, *Ein Jahrtausend am Nil* N^o 98 p. 132 f.; cf. Taubenschlag, l. c. 81 n. 2.

⁴⁹ V. 8 f.: ἀλλὰ ἐὰν κελεύετε, ἐπιτρέψατε αὐτοῖς ἔλθειν εἰς διαίταν μετὰ τῶν || ἐμῶν πρὸς ὃν ἂν ἐρήσονται οἱ ἀμφοτέροι καὶ τὰ ἀπὸ διαίτης ποιῆσαι κτλ.

The parties in proceedings before the court of arbitration⁵⁰ are denoted by the technical term μέρος⁵¹ taken from the State judicature — while the adversary in the litigation is called ἀντιδίκος⁵². The parties are Greeks⁵³ as well as Roman citizens⁵⁴ and their rights and duties correspond to those they had in proceedings in a State court⁵⁵.

In all three epochs the participation in the litigation may be extended to several parties (*litis consortium*)⁵⁶. In Ptolemaic times we find an instance in Ent. 59 = Magd. 3 (222 B. C.)⁵⁷ where three co-tenants sue the other contracting party, a certain Demetrios, for failing to fulfill the lease contract which contained an arbitration clause; although no arbitration ensued, it is clearly to be seen from the terms of the document that all three tenants who had jointly signed the contract would also have jointly participated in the proceedings⁵⁸. Instances of joint participation are shown in a number of documents dating from the Roman⁵⁹ and Byzantine epochs⁶⁰.

⁵⁰ See Weizsäcker l. c. 31 ff.; Matthias, *Fest. Windscheid* 42 ff.; Wenger, *RE* I A, 362.

⁵¹ Cf. the Byzantine documents: SB 7033 + Princ. 82 (481 A. D.) v. 31; Lond. 1707 (566 A. D.) v. 5; Lond. 1708 (567 A. D.) v. 186, 187; SB 5681 (623 A. D. ?) v. 34, 36; BGU I 315 (Byzant. epoch) v. 17, 20; P. Klein.-Form. 402 (VI cent. A. D.) v. 5, 6; Lond. I 113 p. 199 (VI cent. A. D.) v. 30; SB 4847 (Byzant. epoch) v. 5.

⁵² Cf. BGU VII 1676 (II cent. A. D.) v. 7 — 8.

⁵³ In the Roman epoch cf. Oxy. VII 1061 (22 B. C.); BGU VII 1675 (II cent. A. D.).

⁵⁴ Before the C. A. cf. BGU IV 1125 (13 B. C.) and Fouad 37 (48 A. D.) (see below note 101).

⁵⁵ Cf. Matthias, *Festschrift Windscheid* 42 f.; see Wenger, *Institutionen* 78 f., 96.

⁵⁶ Cf. Wenger, *Institutionen* 79 ff.; Taubenschlag, *Journ. Jur. Pap.* VI, 143 ff.

⁵⁷ Cf. Taubenschlag, *Arch. f. Pap.* XII, 188.

⁵⁸ Another case of *litis consortium* in the Ptolemaic period: Petrie II 4 (2) (255 B. C.) cf. Fitzler, *Steinbrüche*, 30.

⁵⁹ BGU VII 1676 (II cent. A. D.) (see v. 7—8 ἀπὸ τῶν ἀντιδίκων: plur. — cf. P. Meyer, *Sav. Z.* 48, 628).

⁶⁰ Boak, *Et. Pap.* V N^o 21 (296 A. D.); SB 7033 + Princ 82 (481 A. D.); Lond. 1707 (566 A. D.); Lond. 1708 (567 A. D.); Lond. 1709 (570 A. D.); Mon. I (574 A. D.); Mon. 7 (583 A. D.); Oxy. 943 (VI cent. A. D.); Oxy. VIII 1164 (VI or VII cent. A. D.) cf. v. 8 f. ἐπιτρέψατε αὐτοῖς (plur.) ἔλθειν εἰς δίαιταν μετὰ τῶν ἑμῶν (plur.); Wess. Stud. XX, 243 (VII cent. A. D.) and also SB 4672 (Arab. time).

Women could also be parties in arbitration proceedings⁶¹ — in the Ptolemaic epoch, when they take action for themselves in Elef. I (311 — 10 B. C.)⁶² and Tebt. III 821 (209 B. C.)⁶³, as well as in the Byzantine epoch when they act likewise for themselves⁶⁴ or with the cooperation of their husbands as guardians⁶⁵. In this epoch, one not unfrequently meets cases in which soldiers⁶⁶ or priests⁶⁷ are parties. In one of the documents⁶⁸, a third person himself not interested directly in the dispute⁶⁹ appears alongside the parties — it may be a case of the so-called litigation help⁷⁰. It is significant that disputes arise for the most part between family members⁷¹.

As in normal court proceedings⁷² so in arbitration the parties can act through their representatives. One perceives it clearly in Wess. Stud. XX (1921) N^o 243 (VII cent. A. D.)⁷³, a private letter in which Christodora asks her brother Theodoros, an epimeletes of the town

⁶¹ On the ability of women to be party in judicial proceedings cf. S e m e k a l. c. 225 f.; otherwise K i e s s l i n g, *Arch. f. Pap.* VIII, 248 f. Now of high importance is P. Mich. VIII N^o 507 (II — III cent. A. D.) v. 7 f. cf. T a u b e n s c h l a g, *Journ. Jur. Pap.* V, 268 with reference to his art. *Arch. Hist. Droit Orient.* III, 313.

⁶² Demetria as the partner in the marriage contract.

⁶³ On both sides: Histeia and Tauthes.

⁶⁴ Cf. B o a k. *Ét. Pap.* V N^o 21 (296 A. D.); Lond. V 1711 + Cair.-Masp. III 67.310 (566—573 A. D.); Lond. V 1709 (570 A. D.); Mon. 6 (583 A. D.); SB 5271 (615 A. D.); Grenf. II 99 a (VI—VII cent. A. D.).

⁶⁵ Cf. Lond. V 1708 (567 A. D.); Mon. 1 (574 A. D.); on guardianship of women see T a u b e n s c h l a g, *Law I* 128 ff.

⁶⁶ Cf. Lond. III 992 p. 253 = M. Chr. 365 (507 A. D.); Mon. 6 (583 A. D.); Mon. 7 (583 A. D.); Mon. 14 (594 A. D.); Lond. I 113 p. 199 (VI cent. A. D.).

⁶⁷ Cf. SB 7033 + Princ. II 82 (481 A. D.) — the diacon Theofilos versus the bishop Kyros from Lykopolis and his two brothers, presbyters to the bishop-church.

⁶⁸ Mon. 1 (574 A. D.) see the commentary of the editor p. 20.

⁶⁹ That is Tlou, the mother of the plaintiff Aurelia Tsia, see the comment. of the ed. l. c.

⁷⁰ Cf. W e n g e r, *Institutionen* 82 ff.

⁷¹ Between parents and children: Mon. 6 (583 A. D.); between brothers and sisters: Lond. III 992 p. 253 = M. Chr. 365 (507 A. D.); Lond. 1708 (567 A. D.); Lond. 1709 (570 A. D.); Mon. 1 (574 A. D.); Mon. 7 (583 A. D.); Jand. III 41 (V—VI cent. A. D.); between consorts — Elef. I (311 B. C.); Lond. V 1711 + Cair.-Masp. III 63.310 (566—573 A. D.); between other family members: B o a k, *Étud. Pap.* V N^o 21 (296 A. D.); Lond. V 1707 (566 A. D.); Mon. 14 (594 A. D.).

⁷² Cf. T a u b e n s c h l a g, *Law I*, 386 f. and the lit. cited there.

⁷³ Cf. T a u b e n s c h l a g l. c. 387. Other cases: Lond. V 1707 (566 A. D.); Mon. 7 (583 A. D.); a daughter acting probably for his father (D III, 3, 41): Oxy.

of Arsinoe, to represent her before the arbitration court in a dispute between her and Menas and Victor, *oikonomos* of the temple of Mary; she authorizes him to settle the difference by compromise and especially to assess penalties and to designate arbiters; she promises to fulfill all the obligations which her representative may enter into in this connection and gives in advance her approval to all the steps he will take in the matter⁷⁴.

The arbiters⁷⁵ are named *κοινοὶ ἄνδρες*⁷⁶, οἱ *κοινοὶ*⁷⁷ or simply *ἄνδρες*⁷⁸ in the Ptolemaic epoch. In the Roman epoch there appears the proper technical term *μεσίτης*⁷⁹ and in the Byzantine epoch a second one: *διαιτητής*⁸⁰ and also other terms such as *μέσοι*⁸¹,

893 = M. Chr. 99 (VI or VII cent. A. D.) (cf. Wenger, *Grazer Festg. zur 50 Vers. deutscher Philol.* 29 ff; Mitteis, *Sav. Z.* 30, 400; Taubenschlag, *Sav. Z.* 37, 222 f.; otherwise Seidl, *Eid* II, 103 ff). Some kind of representation at negotiations before setting up of a private arbitration: Oxy. VIII 1164 (VI or VII cent. A. D.).

⁷⁴ V. 19 ff. *παρῆκέλλη[κᾶ] σε ἀπκλλάσσειν τὸ ἐμὸ(ν) || πρόσωπον καὶ αἰτήσασθαι* (so in the edition by Wessely; *αἰρήσασθαι* according to Zereteli, *Aegyptus* 12, 376) *πρὸς αὐτ(οὺς) || ἐπὶ τῶν μεταξὺ σοῦ καὶ αὐτῶν αἰρεθησομ(ένων) || δικαστῶν καὶ κομπρόμισσα ἐκθέσθαι || καὶ πρόστιμον ἐπὶ παραβασία κύρια || καὶ βέβαια ἡγοῦμαι τε καὶ ἡγήσομαι πάντα || τὰ παρὰ σοῦ ὑπὲρ ἐμοῦ πραττόμενα κτλ.*

⁷⁵ See Matthias, *Festg. f. Ihering* 34 f; Weizsäcker l. c. 6 ff; Matthias, *Festschrift Windscheid* 48 ff.; Wlassak, *RE* I, 408 f.; Wenger, *RE* I A., 362 f.

⁷⁶ Cf. Ent. 59 = Magd. 3 (222 B.*C.) v. 6.

⁷⁷ Cf. Tebt. III 821 (209 B. C.) v. 10; BGU 1818 (60—59 B. C.) v. 9, 24.

⁷⁸ Cf. Elef. I (311—10 B. C.) v. 7.

⁷⁹ Cf. BGU VII 1676 (II cent. A. D.) v. 6—7. — On the difference between *μεσίτης* = an arbitrator and *μεσίτης* = an official designated by the authorities see Taubenschlag, *Law* I, 391₁₆. On *κριτής καὶ μεσίτης* in Rein. 44 = M. Chr. 82 (104 A. D.) v. 3; Lond. II 196 p. 152 = M. Chr. 87 (138—161 A. D.) v. 13—16; Catt. Verso I v. 3 = M. Chr. 88 (ca 140 A. D.); BGU IV 1019 (II cent. A. D.) v. 13; Gand. 5 = SB 7264 (II cent. A. D.) v. 4 see Mitteis, *Grundz.* 31, 43; Taubenschlag, *Law* I, 391. In Flor. 36 = M. Chr. 64 (ca 312 A. D.) *μεσίται* denote rather experts than private arbitrators (cf. Mitteis, *Sav. Z.* 27, 342 ff., may be the same holds good for Bok, *Étud. Pap.* V, 21 (296 A. D.) (cf. Taubenschlag, *Law* I 377₈₇; *Journ. Jur. Pap.* I, 119). On other meanings of the term *μεσίτης* see Mitteis, *Hermes* 30, 616; Manigk, *Sav. Z.* 30, 296 ff.; Taubenschlag, *Jura* II, 76₉.

⁸⁰ On this term see Thalheim, art. s.h.t. *RE* V, 313 f.; it appears in the Ptolemaic Egypt to define only the Alexandrian public arbitrators (see above n. 2); in the meaning of private arbitrator it is to be found in Lond. III 992 p. 253 (507 A. D.) v. 17.

⁸¹ Cf. SB. 7033 + Princ 82 (481 A. D.) v. 30 (see Enslin, *Rhein. Museum* 75, 422 ff.); Lond. I 113 p. 199 (VI cent. A. D.) v. 27, 29 f.

μέσατοι⁸², ἀκουσταί⁸³, ἀροραταί⁸⁴, κοινοὶ δικασταί⁸⁵, δικασταί⁸⁶, εἰρενικολοὶ ἄνδρες⁸⁷, ἀξιώπιστοι ἄνδρες⁸⁸ or simply ἄνδρες⁸⁹.

They act⁹⁰ — in all three epochs — either individually (*arbiter unus*)⁹¹ or jointly, two⁹², three⁹³ or six⁹⁴ of them or in an indefinite number⁹⁵.

⁸² Cf. P. Klein.-Form. 402 (VI cent. A. D.) v. 4 (see Wilck en, *Arch. f. Pap.* V, 295; W en g e r, *RE I A.*, 370).

⁸³ Cf. Lond. V 1708 (567 A. D.) v. 127.

⁸⁴ Cf. P. Klein.-Form. 402 (VI cent. A. D.) v. 3; Lond. 1708 (567 A. D.) v. 151.

⁸⁵ Cf. Wess. Stud. I N^o 2 p. 2 (IV cent. A. D.) v. 4 (see T a u b e n s c h l a g, *Law I*, 369 n. 26).

⁸⁶ Cf. Lond. V 1732 (586 A. D.) v. 4; Wess. Stud. XX N^o 243 (VII cent. A. D.) v. 22; see also P. Nessana Inv. N^o 14 (690 A. D.) v. 9 ff.

⁸⁷ Cf. Lond. I 113 p. 199 ff. (VI cent. A. D.) v. 27.

⁸⁸ Cf. Lond. V 1711 v. 32 = Cair.-Masp. III 310 v. 13 (566—573 A. D.); Oxy 893 = *M. Chr.* 99 (VI or VII cent. A. D.) v. 1; see also SB 5941 (509 A. D.) v. 13.

⁸⁹ Cf. e. g. SB 4672 (Arab time) v. 20.

⁹⁰ On the technical term for the joint choice of an arbitrator: αἰρέω (cf. Nov. 82 c. 11, 1 δικαστῆς αἰρητός) lat. *sumere* (cf. D. 4, 8, 33; 50 *arbiter ex compromisso sumptus*) see W en g e r, *RE I A.*, 358; J o l o w i c z, *R.I.D.A.* II, 480 and n. 15. It appears in: Lond. V 1707 (566 A. D.) v. 5; Mon. I (574 A. D.) v. 19; Oxy. VIII 1164 (VI or VII cent. A. D.) v. 9; SB 5681 (623 A. D.) v. 26; Wess. Stud. XX N^o 243 (VII cent. A. D.) v. 20 (cf. Z e r e t e l i, *Aegyptus* 12, 376); BGU I 315 (Byzant. epoch) v. 12. Once, in the Ptolemaic period: Elef. I (311 B. C.) v. 8 the term δοκιμάζω is used.

⁹¹ Cf. Petrie II 4 (2) (255—4 B. C.) (cf. P i t z l e r l. c. 30); UPZ 71 (152 B. C.) (cf. the comment. of the ed. p. 339 ad v. 15 f.; see however S e m e k a l. c. 42 n. 1 *in fine*); Oxy. VII 1061 (22 B. C.); P. Giss. Univ.-Bibl. III 27 (III cent. A. D.); Jand. III 41 (V—VI cent. A. D.) v. 16: πρὸς αὐτὸν; Lond. V 1708 (567 A. D.); Lond. V 1732 (586 A. D.) v. 4; Mon. 14 (594 A. D.) v. 31, 44, 56; P. Klein.-Form. 402 (VI cent. A. D.) v. 3, 4; Oxy. VIII 1164 (VI or VII cent. A. D.) v. 9; BGU I 315 (Byz. ep.) v. 14. See also Lond. V 1709 (570 A. D.) and from the documents outside Egypt P. Nessana Inv. N^o 14 (690 A. D.).

⁹² Cf. BGU VI 1465 (early Ptol. ep.) v. 3 f.; SB 7033 + Princ. 82 (481 A. D.); Lond. III 992 p. 253 = *M. Chr.* 362 (507 A. D.) v. 12 f.; Lond. V 1707 (566 A. D.) v. 5 f. (see R o u i l l a r d, *L'adm. civ. de l'Eg. byz.* 156).

⁹³ Cf. Elef. I (311—10 B. C.) v. 7; Ent. 59 = Magd. 3 (222 B. C.) v. 6; BGU 1818 (60—59 B. C.) v. 24 ff.; Lond. V 1711₃₂ = Cair. Masp. III 310₁₃ (566—573 A. D.) (see the note in Cair.-Masp. III 310 ad v. 13 „πλέον très douteux”); SB 4672 (Byz. ep.) v. 20 τρεῖς ἄνδρες; Oxy. VI 893 = *M. Chr.* 99 (VI—VII cent. A. D.) three μείζονες.

⁹⁴ Cf. SB 5681 (V cent. A. D.) v. 27 ff.

⁹⁵ Cf. Tebt. III 821 (209 B. C.) v. 10; Jena Inv. 75 (Ptol. ep.) (see B e r n e k e r, *Sondergerichtsbarkeit* 185); BGU 1676 (II cent. A. D.) v. 6—7; Mon. 6 (583 A. D.) v. 4, 23; Mon. 7 (583 A. D.) v. 34; Lond. I, 113 p. 199 ff. (VI cent. A. D.) v. 27; Wess. Stud. XX 243 (VII cent. A. D.) v. 21 f.; Wess. Stud. I N^o 2 p. 2 (IV cent.

In a document from the Byzantine epoch a military board acts as private arbitrator⁹⁶. In another document a priest is appointed as arbiter⁹⁷. The sources indicate clearly that arbiters were chosen from among prominent and esteemed persons⁹⁸, trusted by the parties, well-disposed towards them⁹⁹ and versed in law¹⁰⁰ ¹⁰¹.

In all the three epochs the subject of a dispute¹⁰² could

A. D.) v. 4; Cair.-Masp. III 67.313 (Byzant. epoch) v. 24. See also: B o a k, *Ét. Pap.* V, N^o 21 p. 85 (296 A. D.) v. 15; SB 5941 (509 A. D.) v. 13; Fouad I 85 (VI—VII cent. A. D.) v. 13 f.

⁹⁶ Mon. 1 (574 A. D.) v. 19 ff. the collegium of the *devoti priores* of the Numerus from Syene cf. S e i d l, *Eid* II 106 ff.

⁹⁷ Mon. 14 (594 A. D.) v. 31 ff. (cf. v. 44 f. 55 f.); Σερῆν — πρεσβύτερος τῆς ἁγίας ἐκκλησίας Ὁμβων and SB 5681 (V cent. A. D.) v. 27, 30 three arbiters are ἄπχ.

⁹⁸ Cf. e.g. UPZ 71 (see W i l c k e n l. c. p. 340 ad. v. 20 *in fine* — about Ptolemaios); Jena Inv. 75 (Ptol. epoch) (see B e r n e k e r l. c. 185: „der Gymnasialarch wird als vornehmster Privatmann des Dorfes zum Vorsitzenden des Schiedsgerichtes gewählt worden sein”); Oxy. VI 893 = M. Chr. 99 (VI—VII cent. A. D.) the μερίζονες (see Oxy. 900 ad. v. 19 — “general terms for a person in authority” and R o u i l l a r d, *L'admin. civ. de l'Ég. byzant.*² 156); Lond. V 1732 (586 A. D.?)—Marcus the λογιώτατος δικαστής; Oxy. I 131 (VI—VII cent. A. D.) — „a honourable but unnamed person”.

⁹⁹ Ἀξιόπιστοι ἄνδρες see above note 88; φίλοι — Mon. 7 (583 A. D.) v. 34; Cair.-Masp. III 67.313 (Byz. ep.) v. 24; Fouad I 85 (VI—VII cent. A. D.) v. 13.

¹⁰⁰ *Advocati fori Thebaidis* or σχολαστικοί in SB 7033 + Princ. 82 (481 A. D.); Lond. III 992 p. 253 = M. Chr. 362 (507 A. D.); Lond. V 1707 (566 A. D.) v. 6 ... ἄνδρας τοῦ δικαίου ἀντιποιουμένους — see on them W e n g e r, *P. Mon.* p. 67 f.; T a u b e n s c h l a g, *Festschrift Schulz* II, 192 n. 10.

¹⁰¹ In Cair.-Zen. III 59.421 = P. Edg. 86 (III cent. B. C.) (cf. P. M e y e r, *Sav. Z.* 46, 346) and 59.520 (III cent. B. C.) Zenon, the well-known administrator of the domains of Apollonios, is not a private arbitrator but rather a kind of s.c. „Sondergerichtsbeamte” cf. B e r n e k e r, *Ét. Pap.* II, 65. The same holds good of the commissions set up in contracts of apprenticeship (cf. T a u b e n s c h l a g, *Law* I, 284₃): BGU 1125 (13 B. C.) v. 10 ff. (cf. S c h u b a r t, *Arch. f. Pap.* V, 79₃) and Fouad 37 (48 A. D.) v. 7 ff. (cf. T a u b e n s c h l a g l. c. 304₃). It may be noted that BGU 1125 v. 10 is to be supplemented: ὁμοτέχ]νων τριῶν (cf. Fouad 37 v. 7 f.), and Fouad 37 v. 8 supplemented: ὦν ἐὰν κοινῇ γνῶμη ἐ[λῶ-μεθα (cf. SB 5681 v. 26 f.).

¹⁰² For the Roman law cf. W e i z s ä c k e r l. c. p. 43 ff.; M a t t h i a s, *Festschrift Windscheid* p. 73 ff.; W e n g e r, *RE* I A., 364 f. The subject of a dispute is defined by the term κεφάλαιον (cf. Stud. Pal. XX N^o 243 [VII cent. A. D.] v. 27) resp. τινὰ κεφάλαια (cf. SB 5681 [623 A. D.] v. 24) or φανερά κεφάλαια (cf. Jand. III 41 [V—VI cent. A. D.] v. 14; Lond. III 992 p. 253 [507 A. D.] v. 11; Lond. V 1707 [566 A. D.] v. 5). On the term φανερός see M i t t e i s, *Chrest.* 80 n. 3.

arise out of all kinds of affairs *iuris privati*¹⁰³: rights in rem¹⁰⁴ and possession¹⁰⁵; obligations founded on contracts like loans¹⁰⁶, purchases¹⁰⁷, leases (or tenancies)¹⁰⁸ and *locatio-conductio operis*¹⁰⁹, partnerships¹¹⁰ as well as torts¹¹¹; next matrimonial¹¹², inheritance¹¹³ and other property questions the substance of which cannot be ascertained¹¹⁴ or was not precisely indicated by the parties

¹⁰³ On matters which could not be subject to private arbitration according to Roman law cf. D. IV, 8, 32 see Weizsäcker l. c. 48 ff.; Matthias, l. c. 73 ff.; Wenger, *RE I A.*, 364.

¹⁰⁴ Cf. P. Giss. Univ.-Bibl. III 27 (II cent. A. D.) (ownership of a donkey).

¹⁰⁵ Cf. Oxy. 1164 (VI—VII cent. A. D.).

¹⁰⁶ BGU 1818 (60—59) a loan of corn (see Taubenschlag, *Law I*, 261); SB 4672 v. 10; Wess. Stud. XX N^o 243 (VII cent. A. D.) v. 27.

¹⁰⁷ Lond. I 113 p. 199 ff. (VI cent. A. D.) cf. Mitteis, *Hermes* 30, 616; Wenger, *P. Mon.* p. 36; Taubenschlag, *Studi Bonfante I*, 429 f. (and the notes 466—473); Idem, *Byzantion XV*, 290 f.; Idem, *Law I*, 249 f. (and the notes).

¹⁰⁸ Cf. Ent. 59 = Magd. 3 (222 B. C.) (see Waszyński, *Bodenpacht* 132; Frese, *Aus dem gr.-äg. Rechtsleben* 36; Taubenschlag, *Arch. f. Pap.* XII, 188; Idem, *Law I*, 271 n. 19); P. Erl. 73 (N^o 74) (VI cent. A. D.) (see the comment. of the ed.).

¹⁰⁹ Cf. Petrie II 4 (2) = III 42 C (4) (255—4 B. C.) see Fitzler l. c. 30 ff.

¹¹⁰ Cf. Cair.-Zen. IV 59.651 v. 5—9 (III cent. B. C.) see Taubenschlag, *Law I*, 372 n. 58 *in fine*.

¹¹¹ Cf. Tebt. III 821 (209 B. C.) ὄβρις cf. Berneker, *Sondergerichtsbarkeit* 186; on ὄβρις see Taubenschlag, *Law I*, 329 ff. and esp. 332 note 46.

¹¹² Cf. Elef. 1 (311—10 B. C.) see Rubensohn's comment.; otherwise Schubart, *Arch. f. Pap.* V, 79₃. The papyrus supports the assumption that in the matters in question also a private arbitration was admissible in the ancient Greek law, as the parties make use of a form which they took from Greece cf. Wilcken-Partsch, *P. Freib.* III, p. 15 f. — Other instances: Lond. V 1711 + Cair.-Masp. III 310 (566—573 A. D.) v. 20; P. Nessana Inv. 14 (690 A. D.) from Palestine.

¹¹³ Cf. Lond. V 1707 (566 A. D.); Lond. 1708 (567 A. D.) see Lewald, *Sav. Z.* 41, 312); Lond. 1709 (570 A. D.) (see Lewald l. c.; Wenger, *Aus Novellenindex* 45 ff.); Mon. 1 (574 A. D.); Mon. 6 (583 A. D.); Mon. 7 (583 A. D.). See also: Boak, *Ét. Pap.* V N^o 21 p. 85 (296 A. D.) cf. Taubenschlag, *Journ. Jur. Pap.* I, 119; Wess. Stud. I N^o 2 p. 2 (IV cent. A. D.); Oxy. I 131 (VI—VII cent. A. D.); Cair.-Masp. III 67.313 (Byz. ep.); Lond. V 1732 (586 A. D.).

¹¹⁴ Cf. Jena Inv. 75 (see Berneker l. c. 185); UPZ 71 (152 B. C.) (see Wenger, *Sav. Z.* 23, 161 f.; Wilcken, comment. p. 339 ad v. 12—14); Oxy. 1061 (22 B. C.); BGU VII 1676 (II cent. A. D.); Grenf. II 99 a. (586 A. D.?): Oxy. VI 943 (VI cent. A. D.) cf. Wenger, *RE I A.* p. 371; Oxy. 893 = M. Chr. 99 (VI—VII cent. A. D.) cf. the introd. of the ed.; Fouad 85 (VI—VII cent. A. D.); see also Lips. 64 = W. Chr. 281 (ca 368 A. D.) (cf. Wilcken, *Arch. f. Pap.* III 567) and SB 5941 (509 A. D.) v. 12.

in the written record of the *compromissum*¹¹⁵. In none of the known cases the arbitration is concerned with several subjects¹¹⁶.

The proceedings in arbitration¹¹⁷, called *μεσιτεία*¹¹⁸ or *δίαιτα*¹¹⁹ follow in all three epochs a similar course. The litigation starts with lodging of a complaint; according to Roman law the summons must be sent by the arbiter to the defendant *per nuntium vel epistulam*¹²⁰. The presence of the parties in the court is obligatory¹²¹ and the obligation to come before the arbiter could be strengthened by means of suretyship¹²².

Both parties put their claims before the arbiter (usually *ἐγκλιεῖν*¹²³) and the contention may last quite for a long time as appears from the Byzantine document Lond. V 1708 (567 A. D.)¹²⁴.

¹¹⁵ See above note 23.

¹¹⁶ Cf. D IV, 8, 21, 6 *Plenum compromissum appellatur, quod „de rebus controversiisque” compositum est: nam ad omnes controversias pertinet.*

¹¹⁷ On the course of arbitration proceedings in Roman law see Matthias, *Festschrift Windscheid* 79 ff.; W e n g e r, *RE I A*, 365 f.

¹¹⁸ Cf. Mon. 6 (583 A. D.) v. 5, 28; Mon. 7 (583 A. D.) v. 34; Lond. I 113 p. 199 ff. (VI cent. A. D.) v. 27; Fouad 85 (VI—VII cent. A. D.) v. 13; Cair.-Masp. III 67.313 (Byzant. epoch) v. 24.

¹¹⁹ Cf. Lond. III 992 p. 253 (507 A. D.) v. 12; Lond. V 1707 (566 A. D.) v. 5; Mon. 14 (594 A. D.) v. 31; Oxy. VI 943 (VI cent. A. D.) v. 3; Grenf. II 99 a. (VI—VII cent. A. D.) v. 6; Oxy. VIII 1164 (VI or VII cent. A. D.) v. 8 and the documents quoted below in note 171.

¹²⁰ Cf. D. IV, 8, 49, 1 comp. 40 pr.; see W e n g e r l. c. p. 365.

¹²¹ In the Byzantine epoch the obligation to come before the arbiter can be taken up in the very act of the *compromissum* cf. Jand. III 41 (V—VI A. D.) v. 16 *παραγενέσθαι πρὸς αὐτὸν* (scil. the arbiter); Lond. III 992 p. 253 (507 A. D.) v. 12 *ἔδοξεν ἡμῖν... ἀπαντῆσαι εἰς δίαιταν.*

¹²² Cair.-Zen. III 59.421 (III cent. B. C.) (see P. M e y e r, *Sav. Z.* 46, 343); BGU VII 1676 = E d g a r, *Select Pap.* N^o 126 (II cent. A. D.) v. 9 f. *ἔδωκα ἐγγύην τῷ μα|χαιροφόρῳ ἕως κγ*, (see P. M e y e r, *Sav. Z.* 48, 628); Lond. V 1732 (586 A. D.) v. 2 ff.: *ὁμολογῶ || ἐγὼ ὁ προγεγραμμένος ἐγγυᾶσθαι καὶ ἀναδεῖχθαι... ὥστε παρασκευάσαι εἰς δίαιταν*; Grenf. II 99 a. (VI—VII cent. A. D.) cf. W i l c k e n, *Arch. f. Pap.* III, 126; W e n g e r, *RE I A.*, 370 f. On suretyship for the attendance in the court in general see T a u b e n s c h l a g, *Law I*, 379 f.

¹²³ Cf. Elef. I (310 B. C.) v. 7; BGU 1465 (early Ptol. time) v. 5; Tebt. III 821 (209 B. C.) v. 7—9. In Jena Inv. 75 (Ptol. epoch.) the contention of the parties is denoted by the expression (v. 4): *δικαιολογηθέντος μου αὐτῶι*. For the Byzantine period cf. the expressions: Mon. 14 (594 A. D.) v. 34 f.: *ἐκάτερον μέρος || ἀνέθετο αὐτῷ τὰς ἐαυτοῦ δικαιολογίας*; Lond. I 113 p. 199 (VI cent. A. D.) v. 28 *ἐφ' ὧν* (scil. *μεσίτων*) *τούτων καὶ ἄλλων κινηθέντων.*

¹²⁴ Cf. v. 185 ff. *καὶ τούτων οὕτως λεχθέντων καὶ ἀντιλεχθέντων παρ' ἐκατέρου || μέρους ἀνειπόντων τὰς δικαιολογίας ἀμφοτέρων || τῶν μερῶν κτλ.* A similar

In the court of arbitration — like in ordinary proceedings¹²⁵ — various sorts of evidence may be produced¹²⁶: first of all documents¹²⁷, then witnesses¹²⁸ and oath (*iusiurandum iudiciale*)¹²⁹ which e. g. in Mon. 6 (583 A.D.) (v. 7 ff., 25 ff.) was imposed by the arbiter on the defendant¹³⁰ to prove that she had hidden nothing of the contentious hereditaments¹³¹, lastly expert opinions¹³².

Having heard the arguments of both parties¹³³ and examined the evidence the arbiter announces his decision in the presence of the parties¹³⁴. The proceedings may also end in a *transactio*¹³⁵.

The decision of the arbiter is defined by following terms: τύπος¹³⁶, κρίσις¹³⁷, δίκη¹³⁸, ὄρος¹³⁹, φωνή¹⁴⁰, τὰ κριτήρια¹⁴¹,

expression is to be found in Lond. V 1731 (585 A.D.) v. 18 f. but it is not evident if the case has been put before arbitrators.

¹²⁵ Cf. Taubenschlag, *Law I*, 392 ff.

¹²⁶ The *onus probandi* in the Ptolemaic epoch can weight upon the plaintiff as in Elef. I (311 B. C.) v. 7 ἐπιδειξάτω δὲ Ἑρακλείδης ὅτι ἂν ἐγκαλήῃ Δημητρίαί.

¹²⁷ Cf. BGU 1676 (II cent. A. D.) v. 12 τὰ γράμματα; Lond. V 1708 (567 A. D.) v. 126 ff.

¹²⁸ Cf. SB 4672 (late Byzant. resp. Arab time) see above n. 35.

¹²⁹ Cf. Taubenschlag, *Law I*, 395.

¹³⁰ Cf. Mitteis, *Sav. Z.* 35, 348 f.; Seidl. *Eid II*, 108 f.

¹³¹ Other instances of oath of the parties: Lond. V 1708 (567 A. D.) v. 207, 243 f., 258, 261 cf. Seidl. l. c. 105 f.; Mon. I (574 A. D.) v. 25 ff. cf. Seidl. l. c. 106 f.; probably also P. Klein.-Form. 343 (VI — VII cent. A. D.) cf. Seidl. l. c. 109.

¹³² Lond. V 1708 (567 A. D.) v. 187 ff. On experts in Roman procedure see Wenger, *Institutionen* 285 f.; for the provincial law Taubenschlag, *Law I*, 396; Kupiszewski, below 225 ff.

¹³³ Cf. BGU 1676 (II cent. A. D.) v. 7 ἀκούσαντες, and from the Byzantine period: SB 7033 + Princ. 82 (481 A. D.) v. 32 f.: μέσοι αὐτῶν γεγονότες καὶ τῆς αὐτῶν ἀπάσης ἀκροασάμενοι δικαιο|λογίας κτλ.; similarly: Mon. I (574 A. D.) v. 20; Mon. 14 (594 A. D.) v. 35 f. See also the Coptic document Lond. V 1709 (ca. 570 A. D.) v. 16 „I have listened to them according to (κατὰ) their pleadings (δικαιο-λογία) against one another”.

¹³⁴ Cf. Ulp. D IV, 8, 27, 4 *proinde sententia dicta non coram litigatoribus non valebit* see Wlassak, *RE II*, 413. This is confirmed by CIL IX 2827 = Brunns, *Fontes*⁷ N^o 185 (I cent. A. D.) v. 5 — 8: *utrisque praesentibus iuratus sententiam dixit etc.*

¹³⁵ E. g. Mon. 6 (583) see the introd.

¹³⁶ Cf. Jand. III 41 (V — VI cent. A. D.) v. 16; Oxy. 893 = M. Chr. 99 (VI — VII cent. A. D.) v. 1 (cf. Taubenschlag, *Law I*, 397₆).

¹³⁷ Cf. Lond. III 992 p. 253 (507 A. D.) v. 18; SB 5681 (623 A. D.) v. 35; Oxy. VIII 1164 (VI or VII cent. A. D.) v. 11; BGU I 315 (Byz. ep.) v. 18; SB 4847 (Byz. ep.) v. 2 (cf. Nov. 82 c. 11, 1).

¹³⁸ Cf. SB 5681 (623 A. D.) v. 34; BGU I 315 (Byz. ep.) v. 17.

τὰ ὀρισθησόμενα¹⁴², τὰ ὀρισθησόμενα ἤτο κριθησόμενα¹⁴³, τὰ ἀπὸ διαίτη¹⁴⁴; the passing of sentence is denoted by the verbs: διακρίνειν¹⁴⁵, καταγγινώσκειν¹⁴⁶, συνορᾶν¹⁴⁷, συνορᾶν καὶ ἐπικρίνειν¹⁴⁸, δικαιοῦν¹⁴⁹ as well as by the expressions: ἤρεσεν τοῖς μέσοις¹⁵⁰ or ἔδοξεν (scil. the arbiter)¹⁵¹. It is the will of the parties that gives its binding authority to the decision of the arbiter, who, being elected by the parties, is in principle free from State control. Such a decision — in the Ptolemaic epoch¹⁵² as well as in the Roman and Byzantine ones, in accordance with the principles of Roman law¹⁵³ — is not definitely binding in law (*res iudicata*)¹⁵⁴ and any party might not abide by it¹⁵⁵, at the risk of incurring the penalties indicated in the penal clauses of the compromise¹⁵⁶. This came to

¹³⁹ Cf. Giss. 104 (399 A. D.) v. 10, 14.

¹⁴⁰ Cf. SB 4672 (Byz. ep.) v. 20.

¹⁴¹ Cf. Lond. V 1732 (586 A. D.) v. 6.

¹⁴² Cf. Giss. 104 (399 A. D.) v. 9; Lond. III 992 (507 A. D.) v. 14; Lond. V 1732 (586 A. D.) v. 5.

¹⁴³ Cf. Lond. V 1707 (566 A. D.) v. 8.

¹⁴⁴ Cf. Grenf. II 99 a. (VI cent. A. D.) v. 7; Oxy VIII 1164 (VI — VII cent. A. D.) v. 9.

¹⁴⁵ Cf. BGU VI 1465 (early Ptol. ep.) v. 4.

¹⁴⁶ Cf. Tebt. III 821 (209 B. C.) v. 10 f.

¹⁴⁷ Cf. Mon. I (574 A. D.) v. 20; SB 4712 (Byz. ep.) v. 14.

¹⁴⁸ Cf. Mon. 14 (594 A. D.) v. 44.

¹⁴⁹ Cf. SB 7033 + Princ. 82 (481 A. D.) v. 33.

¹⁵⁰ Cf. Lond. I 113 p. 199 (VI cent. A. D.) v. 29 f.

¹⁵¹ Cf. Lond. V 1708 (567 A. D. ?) v. 187.

¹⁵² Similarly as the decision of public arbitrators (the s. c. öffentliche Schiedsrichter) cf. Taubenschlag, *Arch. f. Pap.* IV, 1 ff.; *Arch. d'Hist. Droit Orient.* III, 306. The same holds good for the ancient-Greek-city laws cf. Berneker, *Journ. Jur. Pap.* IV, 261.

¹⁵³ Cf. Wenger, *RE I A.*, 367. It may be noted that Roman private arbitrators passed their sentences according to the rules of equity: not till since Justinian they are under obligation to apply the law in force cf. Matthias, *Fest. Windscheid* p. 188 f.; Steinwenter l. c. 108 f.

¹⁵⁴ On the juristic force of judgement in Greco-Roman law see Taubenschlag, *Law I*, 399 and the lit. cited note 16; from the later literature is to be added: Berneker, *Παλινδύχ.*, in *RE XVIII 3* (1949), 126 ff.; *I dem, Das wiederholte Prozessieren in antiken Rechten*, *Journ. Jur. Pap.* l. c. 253 ff.

¹⁵⁵ Such cases are to be found in Jena Inv. 75 (Ptol. period) cf. Berneker, *Sondergerichtsbarkeit* 185; BGU 1818 (60—59 B. C.) (cf. the comment. of the ed.); see also Cair.-Zen. IV 59.651 (III cent. B. C.).

¹⁵⁶ Penal clauses of this kind appear already in the Ptolemaic period as we see in Tebt. III 821 (209 B. C.) (cf. Berneker, *RE XVIII 3*, 119 with refe-

an end when Justinian made the compromise and the arbiter's decision, confirmed by oath, subject to execution¹⁵⁷; however, after ten years he rescinded the respective provisions and forbade to take such an oath in Nov. 82 cap. 11. (539 A. D.)¹⁵⁸. But from antejustinian papyrus documents¹⁵⁹ we can see that as a means of guaranteeing the arbiter's decision the oath was used in provincial practice before official legislation was introduced¹⁶⁰, while on the other hand it persisted even after the introduction of the said Novel¹⁶¹, which makes us suppose that in the practice of Byzantine Egypt the provisions of this Novel were ignored¹⁶².

There are frequent cases in which the parties, after the proceedings in arbitration have ended, conclude a *διάλυσις*-agreement¹⁶³ in which they outline the story of their dispute, accept expressly the arbiter's decision¹⁶⁴ and provide the agreement with the formula

rence to P. Meyer, *Jur. Pap.* p. 82 and the lit. cited there). In the Byzantine period they are to be found in: Giss. 104 (399 A. D.) v. 10 ff.; Lond. III 992 p. 253 (507 A. D.) v. 21; Jand. III 41 (V — VI cent. A. D.) v. 18; BGU I 315 (Byz. ep.) v. 17 ff.; P. Klein.-Form. 402 (VI cent. A. D.) v. 4 ff. (cf. Wilcken, *Arch. f. Pap.* V 295); SB 4847 (Byz. ep.) and also in the post-Justinian epoch: SB 5681 (623 A. D.) v. 34 ff.; Wess. Stud. XX (1921) N^o 243 (VII cent. A. D.) v. 22 f.; SB 4672 (Arab time) v. 9 f.: *κομπρόμ(ισσον) || μετὰ προστίμου.*

¹⁵⁷ Cf. C. Iust. II 55 [56] 4, 5 (529 A. D.) cf. Wengert l. c. 367.

¹⁵⁸ Cf. Wengert l. c.

¹⁵⁹ Giss 104 (399 A. D.) v. 13 f.; Lond. III 992 p. 253 = M. Chr. 465 (507 A. D.) v. 15 ff. (cf. Seidl, *Eid II*, 101); cf. also CIL IX 2827 (I cent. A. D.) v. 6 f. *iuratus sententiam || dixit* (cf. Wengert l. c. 360).

¹⁶⁰ It is characteristic that also the prescription that the oath must be proved by attestation of a notary public (C. Iust. II 55 [56] 4 § 1 *vel per publicas personas scripserint . . .*) is preceded by the provincial practice, see: Giss. 104 (399 A. D.) v. 17 and Lond. III 992 p. 253 (507 A. D.) v. 26 (cf. Arangio-Ruiz, *Fontes III*, p. 574). The same holds good for the signature of the parties (C. Iust. *ibid.*), see Giss. 104 (399 A. D.) v. 13 — 16.

¹⁶¹ Cf. Lond. V. 1707 (566 A. D.) v. 6 f. see Seidl, *Eid II*, 102; especially Taubenschlag, *Studi Bonfante I*, 432; *Byzantion XV*, 293; *Law I*, 304 f. See also the Coptic document Lond. V 1709 (570 A. D.) „they have requested me with an oath jointly to listen to their case etc.” (see Wengert, *Aus Novel-lenindex* 45 ff.).

¹⁶² About the application of Justinian Legislation in Roman provinces see E. Levy, *West Roman Vulgar Law*. 14 with reference to San-Nicolò, *Atti Congr. Roma I*, 271 ff., 279.

¹⁶³ On the *transactio* in the papyri see Taubenschlag, *Law I*, 305 ff. and the lit. cited there.

¹⁶⁴ SB 7033 + Princ. II 82 (= P. Princ. Inv. 55) (481 A. D.) cf. H. B. Dewing, *Trans. Proc. Amer. Philol. Assoc. LIII*, 113 ff.; W. Ensslin, *Rhein.*

of Aquilian stipulation¹⁶⁵. This manner of guaranteeing the arbiter's decision conforms in principle to the letter of Justinian law¹⁶⁶ but it is a superfluity characteristic of the Byzantine legal style, the written or even tacit acceptance of the decision bringing just the same legal consequences¹⁶⁷. In the papyri there is also to be found the suretyship¹⁶⁸ as means of securing the arbiter's decision, namely in Grenf. II 99 a (VI cent. A. D.)¹⁶⁹ and Lond. V 1732 (586 A. D. ?)¹⁷⁰.

In the Byzantine epoch, the idea of settling disputes by way of arbitration obtained a special importance in Roman provinces. This is attested not only by the frequent proceedings in Egyptian arbitration courts, which we have already discussed, but also by many papyri containing renouncement clauses which forbid to bring the

Museum 75, 422 ff.; Wilcken, *Arch. f. Pap.* VIII, 314 f.; P. Meyer, *Sav. Z.* 48, 629. From this document we learn that the parties, having begun proceedings *per libellum* (see on this questions Taubenschlag, *Law I*, 384 f. and the lit. cited there (n. 40), to which may be added: Steinwenter, *Festschrift Wenger* I, 180 ff.) make in the course of these proceedings (cf. Taubenschlag l. c., 390 n. 12) a *compromissum*-agreement (v. 22 ff.) and designate *advocati fori Thebaidis* (cf. above n. 100) as arbitrators two who give their decision (v. 33 ἐδωκίωσεν κτλ.) accepted by the parties and strengthened by a dialysis. A similar situation is to be found also in: Mon. I (574 A. D.) (cf. Wenger, *RE I A.*, 371); Mon. 7 (583 A. D.) (cf. the introd. of the ed.); Mon. 14 (594 A. D.) (cf. the comment. p. 163 ad. v. 31 ff. and Wenger l. c.); Lond. I 113 p. 199 ff. (VI cent. A. D.) (cf. Mitteis, *Hermes* 30, 616; see however Wenger l. c.).

¹⁶⁵Cf. SB 7033 + Princ. 82 (481 A. D.) v. 61 ff.; Mon. I (574 A. D.) v. 32 ff.; Mon. 7 (583 A. D.) v. 47 ff.; Mon. 14 (594 A. D.) v. 64 ff.; Lond. I 113 (VI cent. A. D.) v. 78 ff., 86 ff. — see Taubenschlag, *Studi Bonfante I*, 433 f.; La Pira, *Atti IV Congr. intern.* 479; Taubenschlag, *Law I*, 306 f.

¹⁶⁶C. Iust. II 55 [56], 4, pr., 2 cf. Windscheid, *Pandektenrecht*⁹ II, 845; Schulz, *Einführung* 120; Wenger, *RE I A.*, 367.

¹⁶⁷C. Iust. h. t. 4, 6; 5, 1 — the defendant could then make use of an *exceptio veluti pacti* and the plaintiff — of an *actio in factum* cf. Wenger, l. c.

¹⁶⁸On suretyship see Taubenschlag, *Law I*, 311 ff.

¹⁶⁹Cf. Wilcken, *Arch. f. Pap.* III, 126; Wenger l. c. 370 f. puts this text before the Nov. 82 — but it is also possible, in respect of the ignorance of this Novel in Egypt and the below cited parallels, that this document belongs to a later period i. e. 539 — 566 A. D. (on the final date cf. Mitteis, *Grundz.* p. 32₂, 276₃).

¹⁷⁰V. 2 ff.: ὁμολογῶ... ἐγγυᾶσθαι καὶ ἀναδεδέχθαι τὸν Ψανὸ καὶ Σαμνῶου ὥστε... στέρεξαι καὶ ἐμμεῖναι τὰ ὀρισθησόμενα (see the introd. to this pap.); cf. also Oxy. 1164 (VI — VII cent. A. D.) v. 10 f. παντὶ γὰρ τρόπῳ παρασκευάζω τοῦ(ς) ἐμοῦς ἐμμεῖναι τῇ διδομένῃ αὐτοῖς κρίσει.

specified case before State court as well as arbitration court¹⁷¹. The development of the ecclesiastic arbitration is another proof of it¹⁷². Some light on the popularity enjoyed by arbitration also in other provinces is thrown by an interesting document from Palestine P. Nessana Inv. N^o 14 (690 A. D.)¹⁷³, where in divorce proceedings a husband suggests to his wife an arbitration; the wife, however, refuses declaring that her sole wish is to get rid of her importunate husband. This document proves that in local law the idea of arbitration, as the simplest means of settling disputes, had thrust deep roots into the people's mind.

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¹⁷¹ The clause: μήτε ἐγκαλεῖν ἢ διαίταν κινῆσαι in the contracts of sale: Lond. V 1724 (578 — 582 A. D.) v. 57 f.; Mon. 11 (586 A. D.) v. 55; Lond. V 1734 (VI cent. A. D.) v. 9; Lond. Inv. N^o 2018 (Zilliacus, *Griech. Papyrusurkunden* „Eranos” XXXVIII [1941]) (644 — 5 A. D.) v. 36; in the acts of the *divisio parentis*: Lond. V 1727 = *Select Pap.* N^o 86 (583 — 4 A. D.) v. 50; Lond. V 1729 (584 A. D.) v. 37; in the abandonment of claims: Lond. V 1731 (585 A. D.) v. 25.

¹⁷² It is not the purpose of this article to discuss this question; from the papyrological sources see: Lips. 43 = M. Chr. 93 (IV cent. A. D.) (cf. Wilcken, *Arch. f. Pap.* III, 565; Mitteis, *P. Lips* p. 147 ff.; Seidl, *Eid.* II, 99); Oxy VI 903 (IV cent. A. D.) (cf. Wenger, *Wiener Eranos* [1909], 274 ff.; Seidl l. c. 100); SB 7449 = Lond. Inv. 2217 (V cent. A. D.) (cf. Bell, *Byzantion* I, 139 ff.; P. Meyer, *Sav. Z.* 46, 346; Wilcken, *Arch. f. Pap.* VIII, 101); Cair.-Masp. III 67.295 III v. 1 — 19 (VI cent. A. D.) (cf. Gradenwitz, *Festschrift Gierke* [1911], 1096 ff.). From the most important literature see: Matthias, *Festschrift Windscheid* 132 ff.; Taubenschlag, *Organizacja sądowa Egiptu w ep. rzym. i bizant.* 79 ff.; Mitteis, *Grundz.* 32; de Francisci, *Per la storia dell'Episcopalis Audientia* (Estr. dagli Annali d. Fac. Giur. Univ. Perugia XXX [1915] Serie III vol. XIII) and the lit. cited there p. 3 n. 1; Wenger, *Institutionen* 332 ff.; Steinwenter, *Byzant. Ztschr.* 30 = *Festschr. Heisenberg* 660 ff.; Lammayer, *Aegyptus* 13, 193 ff.; Steinwenter, *Sav. Z. (Kanon. Abt.)* 54, 1 ff.; Bossowski, *Acta Congr. Intern.* I, 359 ff.; Bušek, *ibid.* 411 ff.; Vismara, *Episcopalis Audientia* (1937); Taubenschlag, *Law.* I, 377 n. 88.

¹⁷³ Cf. Kraemer-Lewis, *Trans. Proc. Amer. Philol. Assoc.* 49, 117 f. (cf. Taubenschlag, *Journ. Jur. Pap.* III, 52 and the lit. cited there).