

Taubenschlag, Rafał

"Arra in Sale in Justinian's Law", J. A. Thomas, "Tijdschr. v. Rechtsg.", XXIV, 1956, 3 : [recenzja]

The Journal of Juristic Papyrology 11-12, 323-324

1957-1958

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

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

E. Neufeld, *The Prohibitions against Loans at Interest in Ancient Hebrew Laws* (repr. from the *Hebrew Union College Annual* vol. XXVI [1955] 355—412).

In this essay the author discusses the nature of the prohibition, theories as to causes, the social background, the legal framework, the laws and economic standards reflected in the Book of the Covenant, the relationship between interest and commerce, the commercial standards and temple loans in Israel, the personal law, the *Nokrī*, the *Gēr* and the Canaanite, the kinship and the prohibition of the Book of the Covenant, the Deuteronomic prohibition, the date of the Deuteronomic prohibition and the concept of theocratic brotherhood; he makes also use of the papyri (cf. p. 411) and of the papyrological literature (cf. p. 379, 387). As to the latter, his remarks on pp. 411—12 deserve special attention.

E. Neufeld, *The Rate of Interest and the Text of Nehemiah 5, 11* (*Jew. Quart. Rev.* XLIV [1954] 194—204).

This essay deals with the biblical prohibitions against usury and its practice, and makes also use of the papyri (p. 196, 201, 202). Noteworthy are the remarks of the author on anatocismus p. 202.

A. Steinwenter, *Vis maior in griechischen und koptischen Papyri* (*Symbolae R. Taubenschlag dedicatae = Eos* 48, 1 [1956] 261—71).

The term $\theta\epsilon\omicron\upsilon\ \beta\acute{\iota}\alpha$ (D. 19, 2, 25, 6) occurs in Greek and Coptic papyri. In the *receptum nautarum* this term designates the *vis* of the Nile *cui resisti non potest*, and in the *locationes-conductiones*, damages on the fruits caused by accident, which gives to the lessee the right to request a *remissio mercedis*. The papyri show that the term *vis maior* i.e. $\theta\epsilon\omicron\upsilon\ \beta\acute{\iota}\alpha$ is not an invention of Tribonian, but was already applied before him in the vulgar law.

J. A. Thomas, *Arra in Sale in Justinian's Law* (*Tijdschr. v. Rechtsg.* = *Rev. d'Hist. du Droit* XXIV, 3 [1956] 253—278).

The question of *arra* in sale in Justinian's law raised by C. 4, 21, 17 and Inst. III, 23 pr. has long been the subject of controversy. The last few years have brought further contributions to the literature of the topic. The general picture is one

of the subjection of the Roman law of sale to the influence of hellenistic notions, or at least of a compromise between Roman principles and those of eastern practice. The author in his revision of this theory expresses the view that Justinian sought to reinvigorate the classical principles of Roman law of sale as against the hellenistic practice of his time, subject to the adoption of essentially hellenistic principles in respect of the written sale in C. 4, 21, 17. Such is the picture emerging from the Code and the Digest and Institutions III, 23 pr. merely summarizes it. The obscurity arising from the last mentioned passage is due to the compilers who combine in one sentence a legal principle and a factual situation as though they were in their nature identical.

C. B. Welles, *Dura Parchment 1* (*Arch. f. Pap.* XVI, 1 [1956] 1—12).

In this article the famous American papyrologist gives a restoration of Dura Pg. No. 1 and proposes a reconstruction of the transaction, contained in it, as follows: 1) (Year 117) Loan of 120 drachmae presumably by Antigonus, to Amynder for the account of Aristonax, by virtue of a contract drawn up in the Dura registry 2) Transfer of the sum to Philip by Aristonax, perhaps by an order on the bank concerned 3) Formal demand (*ἀπαιτήσεις*) upon Philip by Antigonus for repayment of the original sum of 120 drachmae, without interest — possibly because interest had been paid up to date 4) Redeemable sale of certain properties to Antigonus by Philip to extinguish the obligation, now consisting of the 120 drachmae of the original loan and 120 drachmae of additional penalty, for failure to make repayment on demand, plus *costa*, *ἀπαιτήσιν καὶ κηρύκειον*.

H. J. Wolff, *Neue juristische Urkunden: Mithosis — Pittakion* (ZSS 73 [1956] 326—335).

This study of P. Strasb. 318, gives interesting considerations on both the meaning of *μίσθωσις* and that of *πιττάκιον*. According to the author, *μίσθωσις* is not considered as an obligatory agreement upon a recompensed use or exploitation of a right or object belonging to another person, but as a disposition which effected a cession of a substantial object to be used, and established the respon-