

‘Ancient Maritime Loans in their Contractual Context’, IIIrd International Seminar “Roman maritime law” 21.04.2021

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1. Vincenzo Arangio-Ruiz, *Lineamenti del sistema contrattuale nel diritto dei papiri* (Milan: Vita e pensiero, 1928), 85.

“...il paradigma di un secondo tipo di contratto, egualmente praticato fra i navigatori del bacino del Mediterraneo e ricevuto perciò, insieme col tipo più usuale, anche nello *ius gentium* dei romani. Se qualche fortunato ritrovamento egiziano, o - meglio ancora - della meravigliosa zona vesuviana nella quale concludo queste osservazioni, ci darà nuovo lume sul diritto marittimo degli antichi, potremo segnare in linee più precise e durevoli la struttura nel negozio di cui il papiro Alessandrino e il passo di Scevola ci danno qualche barlume.”

“...the paradigm of a second type of contract, practiced equally by the navigators of the Mediterranean basin and received, together with the more usual type, into the *ius gentium* of the Romans. If some fortunate Egyptian discovery, or – better yet – one made in the marvellous Vesuvian region... sheds new light on the maritime law of the ancients, we will be able to mark in more precise and lasting terms the structure of the business arrangements of which the Alexandrian papyrus and the passage authored by Scaevola give us some glimpses.”

[.]εντα από τῆς προκειμένης ἡμ[έ]ρ[ας - ca.27 -]δημος μὲν πρὸς χαλκὸ[ν -ca.?-]

[- ca.10 -]σι, Μηνοδώραι δὲ ὡσαύτως πρὸς ἀρ[γύριον - ca.14 -]ας πενήτηκοντα καὶ τῶν [-ca.?-]

[.]ε ὑπάρχων τῆς/ αὐτῆς ἡμέρας ἀγνευτικὰς [- ca.20 -] , καὶ οὐθενὸς αὐτῶν ἐλατ[τουμένου -ca.?-]

[.]υτου πάλιν παρ[α]διδόναι αὐτὴν ἀπὸ τῶν προκ[ειμένων - ca.14 - τοὺς] ἔσομένους τόκους. [-ca.?-]

5[.]ς ἐδάνεισεν Ἄρχιπ[π]ος Δη[μητρίω] - ca.15 -] vac. ? [-ca.?-]

[ἐδάνει]σεν Ἄρχιππος Εὐδή[μου - ca.9 -]τι [- ca.25 -] [.] α ὡς ἐ[τῶν -ca.?-]

[.]ς οὐλή μετώπῳ ἐ[ξ ἀρισ]τ[ε]ρ[α]ς [Δημητρίω] - ca.25 -] [.]ξεως ὡς ἐ[τῶν -ca.?-]

[. . . .]προ]σώπῳ οὐλή μετώπῳ μέσῳ καὶ Ἴππ[α]ρχῳ Ἴππ[α]ρχου - ca.27 -]ε .ρ . . . [-ca.?-]

[. . . .]ἀνα]φαλάντῳ μακροπροσώπῳ οὐλή με[τω]πῳ καὶ Δ[- ca.20 - τῆς] ἐπιγ[ον]ῆς ὡς ἐ[τῶν -ca.?-]

10[.]γ]ενειον καὶ Σ χῳ Λ[υ]σιμάχῳ [Λακε]δαίμονίῳ [.] ὡς ἐτῶν κον]τα πέντε μέσῳ [-ca.?-]

[οὐλή μετ]ώπῳ ἐ[κ] δεξιῶν καὶ Τρ ωι Τρε Μεσ]σαλιώτῃ [.]ουπ [.] .ε . [-ca.?-]

[.]κλαστῳ μακροπροσώπῳ οὐλή χ[ειρὶ ἀ]ριστερᾷ το[ῖς ε] τοῖς εἰς] τὴν Ἀρω[ματο]φ[όρον] συ]νπλοῖς διὰ Γναίου ἐξ[-ca.?-]

[.]κα εἰς ἐ[ν]ι[α]τ[ὸ]ν [ἀπὸ τοῦ] πρ[ο]κει[μένου] μηνός. [ἀποδότησαν δὲ] οἱ δεδα[νεισ]μέ[νοι τῶ]ι δεδανεικότη τ[ὸ δάνειον -ca.?-]

[.] τα. ἐὰν δ' ἐκπε[σ]ό[ν]τ[ε]ς τοῦ χρόν[ου] παραγένωνται ἀπὸ τῆς Ἀρ[ω]μα[το]φόρ[ου] [εἰς] τὴν χώραν, ὁμοίως . . . [-ca.?-]

15[.]ηε , ἀφ' ἧς ἂν ἡμέρας παραγένωνται [εἰς] τὴν χώραν [ἡμερῶν]ήκοντα. ἐὰν δὲ μὴ ἀποδῶσιν ἐν τ[ῶ]ι ὠρισμένῳ χρόνῳ, ἀποτεισάτωσαν παραχρῆμα τὸ δάνειον ἡμί[ο]-

[λιον καὶ] τοῦ ὑπ[ε]ρπεσόντος χρόνου τοὺς κατὰ τὸ διάγραμ[μα τόκους διδ]ράχμους τῆι μναῖ τὸν μῆνα ἕκασ[τον]. ἔγγυοι εἰς ἔκτεισιν -ca.?-]

[.]Θ]εσσαλονικεὺς ἡγεμῶν ἔξω τάξεων ὡς ἐτῶν [- ca.9 - ἐπ]τὰ μέσος, με[ε]λίχρως, τετανός, στρ[ογγυλο]πρόσωπος, οὐλή -ca.?- καὶ -ca.?-]

[.]του Ἐλεάτης τῶν μετὰ τοῦ βασιλέως καταπε [- ca.10 -δ(?)]ευτέρων ἐπιλέκτων ὡς ἐτῶν τεσσαράκοντα -ca.?-]

[.] δεξιᾷ καὶ Κίντος νιος Μεσσαλιώτῃ τῶν αὐ[τῶν ὡς ἐτῶν τ]εσσαράκοντα εὐμεγεθη μελίχρο[υς -ca.?-]

20[ἀριστε]ρὰν καὶ Δημήτριος Ἀπολλωνίου Καρ[χι]δόσιος [τῶν τὴν ἔξω θάλ(?)]ασσαν πλοῖζομένων ὡς ἐτῶν τρία[κοντα -ca.?-]

[.] σύνοφρυς ἡσυχῆ καὶ Κίντος Κιντο[.] [- ca.14 - τ]ακτόμισθος ὡς ἐτῶν τεσσαράκοντα -ca.?-]

[.]ση καὶ ἡ πρᾶξις ἔστω Ἀρχίππῳ ἐ[ξ αὐτῶν] τε τῶν δεδανεισμένων καὶ τῶν ἐγγύων/ καὶ ἐκ τῶν ὑπαρχόντ[ω]ν αὐτοῖς π[άντων] καθάπερ ἐκ δίκης. ἐπιθέτωσαν δὲ - ca.18 - ὁ]

[προγεγρ]αμμένος Δημήτριος καὶ Ἴππαρχος ἀπ[- ca.20 -] .ιώματα τῶν ἐκ τῆς π[ρογ]εγραμ[μένης -ca.?-]

[.], οὗ ἂν ἡ ἐξαίρεσις γένηται τῶν ἀρω[μάτων (?)] κατὰ τὰ ἐπιβάλλοντ' αὐτοῖς ἐκ τοῦ αὐτοῦ πλόου -ca.?-]

25[.] .ι τὰ παρασταθησόμενα ὑπὸ τοῦ Ἀρ[χί]ππου (?)- ca.15 -] .ς ὥστε ἀποκαταστήσαι εἰς τὴν χώρ[αν -ca.?-]

[.] ὀλκῆς τῶν ἀρωμάτων παραγενομ[εν - ca.19 -]ε. ἐὰν δὲ μὴ {ἐὰν δὲ μὴ} ἐπιθῶσιν, καθ[ὼς] πρόκειται -ca.?-]

[5]]6. Archippos gave a loan to Demetrios ...

Archippos son of Eudemos ... aged ... with a scar on the left-hand side of his forehead, gave a loan to Demetrios ... aged ... with a scar on his face in the middle of his forehead and to Hipparchos son of Hipparchos ... half-bald, long-faced, with a scar on his forehead and to D ... son of [?] of the *epigone* (i.e., descendants of foreign military settlers), aged ... [10] chin (beardless? -Wilcken) and to S...chos son of Lysimachos of Lacedaemonia ... aged ... -five, with a scar on the right-hand side of his face and to Tr...os son of Tre... of Massalia ... trim, long-faced, with a scar on his left hand to the aforementioned five associates (*synploi*) through Gnaeus ... [‘without interest’ – Wilcken] for the duration of one year from the present month. Those who have taken the loan will repay the debt to the lender ... If they then return to the Egyptian territory from the Aromatophoros land after the time limit has elapsed, in the same way ... [15] from that day in which they will arrive in the territory, within [50, 70, 80 or 90 – De Romanis] days ... If instead they do not repay within the time-limit they will pay at the same time the debt with a penalty of half (*hemiolion*) and interest of two drachmas per mina each month beyond the expiration of the time-limit according to the royal decree (*diagramma*). Guarantors for payment ... of Thessalonica, leader of the foreign military company, aged ... -seven, with an olive complexion, slim, with curly hair and a scar ... and ... son of ...]tos of Elea, of the royal guards ... of second choice, forty years of age ... on the right [hand?] and Kintos ... son of]nis of Massalia of those ..., forty, very large, with an olive complexion, ... [20] on the left [hand?] and Demetrios son of Apollonios of Carthage, of those who sail on the outer sea, thirty ... with a monobrow, taciturn, and Kintos son of Kintos ... *taktomisthos* (i.e., a member of a class of soldiers in the Ptolemaic army of uncertain type), forty ... and Archippos shall have a right of execution against the borrowers and the guarantors from all their assets (present and future) exactly as if judgment had been passed. It is imposed upon... the above-written Demetrios and Hipparchos ... the aforementioned *aromata* ... where eventually the unloading of the *aromata* takes place ... for the things that belong to those from the same voyage ... [25] the articles of Archippos that will be transported (? – Wilhelm) ... so as to be restored in the Egyptian territory ... of the weight of the unloaded *aromata* (?) ... under penalty of a fine if they do not expose it ...

3. D.22.2.5 (Scaev. 6 resp.):

[pr.] Periculi pretium est et si condicione quamvis poenali non existente recepturus sis quod dederis et insuper aliquid praeter pecuniam, si modo in <aleae> speciem non cadat: veluti ea, ex quibus <condictiones> nasci solent, ut "si <non> manumittas", "si non illud facias", "si non convaluero" et cetera. nec dubitabis, si piscatori erogaturo in apparatus plurimum pecuniae dederim, ut, si cepisset, redderet, et athletae, unde se exhiberet exerceretque, ut, si vicisset, redderet.

[1] In his autem omnibus et pactum sine stipulatione ad augendam obligationem prodest.

[pr.] In exchange for bearing a risk (*periculi pretium est*) and even if a penal condition is not realised (*non existente*) you may recover what you gave and moreover something besides the money, provided that [the arrangement] does not fall into the category of a game of chance (*aleae*): such as those out of which *condictiones* usually arise, like "if you do <not> manumit," "if you do not do so-and-so," "if I do not get well," and so forth. No doubt also if I give a large sum of money to a fisherman to purchase tackle on terms that if he makes a catch, he returns (*redderet*) or to an athlete to enable him to train and compete on terms that if he wins, he returns.

[1] In all these [cases] a pact is capable of increasing the obligation without a stipulation.

4. D.18.1.8 (Pomp. 9 ad Sab.):

[pr.] Nec emptio nec venditio sine re quae veneat potest intellegi. et tamen fructus et partus futuri recte ementur, ut, cum editus esset partus, iam tunc, cum contractum esset negotium, venditio facta intellegatur: sed si id egerit venditor, ne nascatur aut fiant, ex empto agi posse.

[1] Aliquando tamen et sine re venditio intellegitur, veluti cum quasi alea emitur. quod fit, cum captum piscium vel avium vel missilium emitur: emptio enim contrahitur etiam si nihil inciderit, quia spei emptio est: et quod missilium nomine eo casu captum est si evictum fuerit, nulla eo nomine ex empto obligatio contrahitur, quia id actum intellegitur.

[pr.] There can be no sale without a thing to be sold. Nevertheless, future produce and offspring are validly purchased so that when the offspring is born, the sale is regarded as having been complete from the time of agreement. But if the vendor takes steps to prevent the birth or the growing of produce, he will be liable to the action on purchase.

[1] Sometimes, indeed, there is held to be a sale even without a thing, as where something like a chance is bought (*quasi alea emitur*), which happens when a catch of fish or birds or presents thrown as largesse is purchased. The contract is valid even if nothing results, because it is a purchase of an expectancy (*spei emptio*) and, in the case of largesse, if there is eviction from what is caught, no purchase proceedings will lie, because the parties are deemed to have contracted on that basis. (trans. Watson, adapted.)

5. D.19.1.12 (Cels. 27 dig.):

Si iactum retis emero et iactare retem piscator noluit, incertum eius rei aestimandum est: si quod extraxit piscium reddere mihi noluit, id aestimari debet quod extraxit.

If I purchased the haul of a net and the fisherman then refused to cast his net, the indefinite value of this *res* should be estimated; but if he refused to hand over (*reddere*) to me the fish he landed, then the value of that which he caught ought to be estimated. (trans. Watson, adapted.)