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The Social Determination of Lease Relations and the Social Problems Arising from that in the Ancient Rome

1. Investigating into the matter, we only point at the most important principles, tendencies by which a judgment may be formed anambiguously and fundamentally, in relation to the social connections, presenting themselves at the institution of lease. We speak in short of the social problems, presenting themselves necessarily together with the lease. At any rate, the Roman ruling circles themselves paid never any attention to these and, as a result of this, these social problems were never regulated in Rome.[1]

The elaboration of the question in detail would need a separte monograph.

Investigating into the subject, it is advisable to start from the fact that lease relations have fundamentally been created by requirements, presenting themselves in Italy at the end of the Third Century b.o.e. The wars at the end of the Third Century and at the beginning of the Second Century b.o.e. for the most part ruined the small-holder peasantry in Italy. Thus, this stratum had no option but to rent a farm resp. to lease their working capacity. Besides, they had to emulate with the cheap manpower of the slaves of considerable number.[2] In this situation, they could only require the equivalent necessary to their self-preservation.[3] These conditions fundamentally

[1] It iis written by F. Schulz: Classical Roman law (Oxford 1951), p. 545 that the jurists themselves wrote in the interest of the class of beati possidentes, to which they themselves also belonged and, therefore, their social acumen has not developed. According to St. Brassloff: Sozialpolitische Motive in der römischen Rechtsentwicklung (Wien, 1933), p. 15, we cannot speak about social law in case of Romans.

[2] According to H. Dernburg: Pandekten II[3] (Berlin, 1889) p. 301, in Rome, where slave-work prevailed, the contract concerning wages had but a subordinate importance. — I. V. Shereshevsky: Pravovoe regulirovanie "nayomnogo truda" v Rime (Legal regulation of wage-work in Rome), VDI. 1955 considers as a principle of No. 1 that, apart from the generality of slave-work, the wage-work was rare in Rome. — Cf. Pólay: A dáciai viaszostáblák szerződései (Contracts on waxen tablets in Dacia) Budapest, 1972, p. 160; J.A.C. Thomas: Locatio and Operae. DIDR 64 (1961) p. 255.

[3] M. Rostovtzeff: Gesellschaft und Wirtschaft im römischen Kaiserrech, Bände 1-2 (Leipzig, 1929) expounds on page 7 of vol. II that, in addition to the nomerous slaves, those belonging to the poor free strata, whose number was similarly high, could set up a claim only to such a compensation like the cost of the supply, feeding of slaves. That is to say, it was only enough for their cost of living. Vol. II, p. 178 expounds, further on, that in century I resp. II b.o.e., the wage of the unskilled workman was so low that it could hardly cover the feeding of the family. Cf. in this relation: Pólay: Op. cit, pp. 181ff.

changed but a very little in the course of the entire Roman history.[4] Thus, the lessee was always at the mercy of the rich.[5]

The imperialist Rome did not bother about the pauper. It became a principle that "the rich: purchase, the poor; lease". Owing to this, the social estimation of tenants was always unfavourable.[6] According to the ideology developed by the imperialistic conquests the fundamental means of acquiring goods was seen by the Romans not in work but in pillaging the goods of their enemies.[7] Gaius expressed this in the way: "Maxima sua esse credebant, quae ex hostibus cepissent" (4.16). The opinion about every kind of locatio conductio was, of course, not uniform. The estimation of an enterpriser working with his own means may have been much higher than of those performing a wage-work by the day.[8] The tenant of land was also held in higher esteem than he who could not help but offer to sale alone his working capacity.[9] Without wishing to establish any pattern, we may set down as a fact that the worker was on the lowest degree of the social ladder, the leaseholder stood somewhere higher and, from time to time, the enterpriser had the advantage of a more favourable social apprecation. And even, the social appreciation of the more opulent enterprisers was different from that of the persons of locatio conductio rei and l.c. operarum.[10]

2. The question arises, why the Roman public opinion assumed so negative standpoint in connection with the tenantship resp. why it despised those performing a work for somebody else. In connection with this question it also arose whether the Romans considered every work as humiliating. Our answer to the latter question is a definite no. In the consciousness of the

[4] Beginning from Century III b.o.e., the economical life of Rome lied on the production of slaves. Thus, the importance of free tenants always fell into the background, apart from certain fluctuation.

[5] Schulz: Op. cit. p. 545. Tha parties connected their contracts according to their choice. This, however, meant that, in every case, the interests of the capitalist prevailed.

[6] F. Oertmann (Die Volskwirtschaftslehre des Corpus Juris Civilis (Berlin, 1895), p. 77 says: according to "veteres" an honest person did not deal with such a low activity as locatio conductio. The situation did not change much in the imperial period, either. And even, particularly from Century III b.o.e., it continued growing worse, when the various subjugated layers of coloni took shape. Cf. Brósz R.: Nem teljesjogú polgárok a római jogforrásokban (Citizens with not-full powers in the Roman sources of law). Budapest, 1964, pp. 180ff.

[7] According to Oertmann: Op. cit. p. 77, in case of Romans, the role of work and acquiring activity consisted of rapere, occupare. The so-called "Raubsystem" was legally possible.

[8] Thomas BIDR 54 (1961) p. 237. The enterprising work was more respectable in the eyes of Romans.

[9] De Robertis, F.: Lavoro e lavoratori nel mondo romano (Bari, 1963) pp. 132ff. expounds that the occupation with wage-work was so much despised in the eyes of society that the wage-worker almost sank down to the level of slaves. Visky deals in his thesis for candidate's degree entitled "Intellectual work and ars liberalis in the sources of Roman law" (pp. 11ff) with the appreciation of physical work. He is pointing at that the wage-worker was almost treated like the slave. This is referred to by Seneca's (De beneficiis 3, 22) term that "Servus perpetuus mercennarius", i.e. the slave is a perpetual wage-worker.

[10] Visky: Festők, szobrászok és alkotásaik a római jog tükrében (Painters, sculptors and their products in the mirror of Roman law). Budapest, 1968 (Separate reprint from "Antik Tanulmányok", 1968, vol. XV, No. 2), p. 191. He admits that e.g. painters, sculptors also belonged to the occupations of lower rank, i.e. they were enterprisers. Nevertheless, it refers to a certain appreciation that the artisans were released from bearing diverse burdens. — Cf. Pólay: Op. cit., p. 181.

leading strata of the Rome, having outgrown from a patriarchal peasant State,[11] the peasant work survived as the true, the noblest occupation. Cato wrote in the introduction of his work De agr.: "Et virum bonumque laudabant, ita laudabant: bonum agricolam bonumque colonum" (Praef. 2). The meaning of the word colonus was, namely, in that time, still "farmer", "peasant holder".[12] Cato was speaking in the further part of the introduction of the work, as well, about the farmer (of course, of the peasant, cultivating his own land) as about the best soldier, a man of common sense. After about at least a hundred years, a similar opinion was also represented about the peasant work by T. Varro: "Viri magni nostri maiores non sine causa praeponebant rusticos romanos urbanis" (De r.r.2.1). This sentence contains, of course, also Varro's detestation towards the parasite townsmen. They were, at any rate, not averse to such a work, either, the purpose of which was to have a large homestead cultivated by slaves and get a great profit in this way (Cicero, De off. 1.151). To work or let work in his own, was not at all "inhonestum". But anybody, doing this for money, to anybody else in the frame of 1.c., was censured.[13] According to the official standpoint, reflected by the works of certain authors in the end of the republican age and at the beginning of Principate, the acquisition by wage-work is unworthy of a free man. The mental work of free people is no "subject of purchase" but it is remunerated by a fee (Cic. de off. 1.150-151).

The origion of the social public opinion is that poor people could not help but always lease (a land, premises) or — what is even worse — to hire themselves resp. their work. Thus leasing became the concomitant of poverty. In the eyes of the Roman society, prepared for conquest, property met with recognition, even if it was robbed. Those having no property, had to get anyhow into a kind of tenantship for the sake of their subsistence. These were considered as almost similar to slaves or they stood not more than one step higher on the social ladder than those.[14] De Robertis tried to prove that the opinion of the ruling circles about work was different from that of subjected people performing the work.[15] We think it is possible to agree with this but this had no legal importance. The slave did not despise his companion because of being a slave himself, as well, and a poor man has not contempted his co-tenant, with whom he lived in a common tenement house. But even the tenant considered the slave as inferior to himself. The decisive social value judgment always originated from the most moneyed people, from the ruling class, and had a profound effect on the whole society. That is to say, the tenant did not despise himself or his co-tenant but he who stood a degree higher, did this. All this followed from the ideology of the ruling strata of Rome, according to which the plunderer, the robber were appreciated in Rome, but the physical worker was not. This

[11] Kaser M.: Römische Rechtsgeschichte[2] (Göttingen 1967) pp. 26ff.

[12] Cf. Brósz: Op. cit., p. 169.

[13] H. Kreller: Römisches Recht. Wien, 1950, vol. II, p. 359. — D. Nörr: Zur sozialen und rechtlichen Bewertung der freien Arbeit in Rom. SZ 82 (1965), pp. 74ff.

[14] According to De Robertis (Lavoro, pp. 132ff), the free well-to-do people disdained the wage-worker very much. They considered him as an individual who sank down to the level of slaves. In connection with this, cf. Pólay: Op. cit. pp. 162ff. — Thomas, BIDR 64 (1961) pp. 235ff.

[15] De Robertis: Lavoro, pp. 21-90.

attitude was reflected in law-making itself, as well, because the jurists also belonged to the ruling class.[16] It is said with reason by Brósz that lease was an expressly exploiting contract in Rome.[17]

3. It can be proved on the basis of sources in the following way that lease in Rome had an antisocial exploiting character. The tenant is no possessor but only a holder (detainer, detentor):[18] "Possidere autem videtur quisque non solum si ipse possideat sed et si eius nomine aliquis in possessione sit, licet is eius urbi subiectus non sit, qualis est colonus et inquilinus" (Inst.4.15.5). I.e., the owner was only protected from different external impacts, the tenant was not. The tenant could freely be thrown, chased out of the landed property. And even the owner himself could do this and, therefore, the tenant was entirely defenceless (D. 43. 16. 12. 2. 60. 1. — 41. 2. 10. 1). It is closely connected with this principle, as well, that if the lessor sold the subject of lease during the tenure of land or house, the new owner could eject the tenant, who could only appeal to the lessor for compensation. And the situation was the same if the owner permitted somebody usufructuary right on his thing or the registration of mortgage.[19] According to an edict of Alexander Severus (C. 4. 65. 9: "Emptori quidem fundi necesse non est stare colonum, cui prior dominus locavit", and according to that in D. 7. 1. 59, "potest usufructuarius conductorem repellere". We may find similar opinions in the following sources, as well: D. 19. 2. 25. 1. — 19. 1. 13. 30. — 43. 16. 22. — 19. 2. 32.

The owner could always abrogate the contract, expel the tenant and this could do nothing more than giving rise to an action for damages from the lessor. This is referred to by the following expressions: "locatio precariive rogatio ita facta, quoas is qui eam locasset dedissetve, fellet" (D. 19. 2. 4) or: "si dominus istum colonum fundi eiectum . . ." (D. 19. 2. 61. pr.). Roman law did not know, otherwise, any notice period, as a favour, granted in the interest of the tenant.

The sources speak unambiguously about that, in order to assure the collection of rent, the owner was due to a mortgage on the invecta, illata of the tenant, as well as on the fruit, by the tenant.[20] This meant the most severe subjection of the tenant (D. 19. 2. 13. 11. — 19. 2. 24. 1. — C. 4. 65. 5. — 4. 65. 16. — D. 13. 7. 11. 5.). According to Cato (150. 2: "Conductor , , , donec domino satisfecerit aut solveriti pignori esto", i.e., this legal institution already existed in Century II b.o.e., as well.

The rules of bearing the danger of rent put, too, a very heavy burden on the tenant and, from time to time, they departed, too, from the general rule, to the account of the workman[21] (D. 19. 2. 15. 21. — 38. — 1. 15. — 19. 2. 62), and even remissio mercedis meant from the time a burden,

[16] Schulz: Op. cit. p. 545 — Kaser: Das römische Rivatrecht I.[2] (München 1971), pp. 262 ff.

[17] Brósz, R.—Pólay, E.: Római jog (Roman law). Budapest, 1974, p. 438.

[18] Kaser: RPR I[2], p. 563. — Brósz: Op. cit., p. 165.

[19] Cf. Brósz: Op. cit., p. 165. — Kaser: RPR I[2], p. 567, — Brósz—Pólay: Op. cit., p. 438.

[20] Professor Brósz (Op. cit., p. 166) convincingly presents the class character of the law of mortgage, taking shape in the relation between the powerful lessor and the poor leaseholder, afflicting the handicapped leaseholder.

[21] Brósz—Pólay: Op. cit., p. 439.

beacause the cancelling of rent would only have been really favourable if it had been of definitive character.[22]

The colonus, the condutor operis and the locator operarum were touched very severely by the leability of custodia, as well.[23] These liable persons could only exculpate themselves by referring to vis maior if the things in their custody are lost. This rule was particularly disadvantageous in case of a jobbing tailor and a dry-cleaner (D. 19. 2. 25. 8.).

We can read an interesting rule from Iavolenus (D. 19. 2. 21.). If somebody buys a piece of ground and does not pay the whole of purchase price, he is obliged also to pay rent, as long as his debt is not discharged. The disadvantage presents itself therein that this could just be paid from the fuit of the land but, in this way, he is obliged to fulfil his commitments in two different forms: to pay the arrears of the purchase price and the rent, as well. As a result of this, the income from the land is burdened twofold.[24] Compulsory measures against workers and enterprisers are to be found in Cato's works, as well (144, 145). If workers and labourers do not comply wit the instructions given by the owner, they are not due to any wage for that work-day. In the preclassical period, taking of an oath was also required concerning performing the work. And if somebody refused this, he did not obtain the work carried out that day. We can establish from Cato's text that enterprisers and workers were punished by losing the fee resp. wage immediately if they did not perform the work according to the wishes of the owner. These measures refer to the despotic measures, as well, originating from Locatio conductio.

Reading attentively the rules of l.c., we meet several more such provisions which clearly show the class character of lease.[25] The further discussion of these rules does not seem to be necessary. On the basis of those told over, it is namely unambiguously evident that the equality of contracting parties before the law is missing. We offer our remarks on the disadvantageous legal consequences devolving from l.c. on the economically weaker party in the concrete places later, in the course of inivestigating into the sourcees.

4. In the foregoing, we have surveyed the sorces and literary standpoints from which the class character of locatio conductio is to be seen. The objectivity of these is caused by the very fact that even the most eminent

[22] Investigating into the problem of remissio mercedis, we have, at any rate, to take into consideration the standpoint of C. Alzon, expounded on pp. 317ff of his paper "Les risques dans la locatio-conductio, LABEO 12(1966), according to which in case of a poor crop the tenant had to pay the rent according to the general rule, thus the payment from the crop of the succeeding years was after all, to the advantage of the renter.

[23] Correspondigly Brósz: Op. cit., pp. 164ff.

[24] By this rule, too the economically stronger person was always protected. It could namely occur that the leaseholder scraped up a part of the purchase on the piece of ground, leased by him, and tried to buy the ground. As, however, he had not enough money, he could only pay a part of price of the ground but, in addition to this, he was obliged to pay the high rent, as well. This was a double drawback.

[25] Brósz: Op. cit., pp. 164ff convincingly presents the rules which reflect the disadvantageous situation of the leaseholder. Thus he points out that the leaseholder acquires the ownership of the crop only by a quasi tradition with the allowance of the owner. The hostility between the landholder and the neighbour was regarded as the result of the culpa of the leaseholder. It is particularly realistic to apply the regula "omne quod inaedificiatur solo cedit" tenancy.

bourgeois scholars, dealing with the history of Roman law, almost without any exception, pointed out the miserable situation of the tenant resp. the wage-earner. This picture, connected with lease, can at any rate only be complete if we refer in a few sentences to the conditions of livelihood existing in the territory of the Empire, as well. In the material of writers, jurists and non-jurists, there are hardly any data available which could show us the way defnitely in this question. Thus, we shall rely on the provisions of Diocletian, fixing the maximum prices and rents (CIL III. 824–841, as well as on the documents, containing data concerning the living conditions. Literature has often dealt with this question, as well. Here, however, we must be content with the most essential establishments.

János Szilágyi[26] is investigating in his paper into the conditions of earnings in Acquincum, in the period of the Empire. There are analysed in a similar way the conditions of earnings in the adjacent Dacia on the basis of labour contracts concluded with mine-workers in the Alburnus farmstead.[27] Blümner elaborated the provisions of the emperor Diocletian, fixing maximum prices and rents. This work shows us the way satisfyingly in more than one relation.[28]

We should like to emphasize only a few examples in order to illustrate these. Szilágyi[29] informs us that in the First Century the day-wages of free workmen ranged from 0,25 to 1 denarius, dependinig on the demand and supply in the various provinces. On the other hand, the price of a gala dress was 75 den., the same was the price of a porker. The annual rent of a smaller dwelling-house was 400 denarii. It is to be seen from these prices that a worker had to work for three resp. four months if he wanted to buy a suit of clothes or a pig. And he could never rent a house because he did not earn so much. Whereas a corn-merchant closed the year with a profit of 2000 denarii.[30] The disproportion is striking, particularly taking into consideration that the maximum of a lawyer's fee was fixed on ten thousand sest. in the time of Claudius (Suetonius Claud. 15. — Tacitus Ann. 11.6), corresponding to 2500 denarii[31]. In the second century, however, taking into consideration the conditions in Dacia, a worker could buy e.g. 52 white loaves from his semiannual income of 105 denarii (CIL III. p. 953) which covered not more than his bread-needs for a year.[32]

The situation has not changed after the price-reform of Diocletian, either. The daily wage of a farm labourer, driver if animals is 25 new denarii, that of a lime-burner 50, of a house-painter 75, of a picture-painter

[26] Szilágyi, J.: Aquincum. Budapest, 1956.
[27] Pólay: Op. cit., pp. 190ff.
[28] H. Blümner: Der Maximaltarif des Diokletian (Berlin 1894).
[29] Szilágyi: Op. cit., p. 74.
[30] Szilágyi: Op. cit., p. 74.
[31] Bernhart: Handbuch zur Münzkunde. Festband (Halle, 1926). pp. 18-26 expounds that, in the days of Augustus, 1 aureus = 25 denarius = 100 sestertius = 400 as. Cf. Blümner: Op. cit., p. 120.
[32] Pólay: Op. cit., p. 191, foot-note 47. — Cf. S. Mrozek: Die Arbeitsverhältnisse in den Goldbergwerken Daziens. Gesellschaft und Recht im griechisch-römischen Altertum. II (Berlin, 1969) pp. 147ff. — G. Popa: Tabele cerate Transilvania (Bucharest, 1890) pp. 132ff. — Rostovtzeff (Op. cit., vol. II, p. 178). He carefully studies the question concerning the different Eastern Provinces of the Empire and establishes that the daily wage of an unskilled worker was only enough for the minimum of subsistence.

150 den. On the other hand, 1 kg (about 3 pounds) pork cost 36, a pair of men's sandal 120 new denarii.[33]

The simple, unskilled workman could not buy 1 kg pork from his one-day earning. Thus, he could at most procure his own food from his income. The other family-members had to work, as well, if they wanted to survive.[34]

The situation of the lease-holder (tenant of land) was somewhat better. He produced, after all, the goods for himself in the land, taken for lease. Nevertheless, from the provisions in the period of the empire, which began to prescribe the binding of the colonus to the soil, owing to the escapes, we may draw the conclusion that their situation may have been not much better than that of day-wage men.[35]

This social picture is reflected by a sentence of Ulpian (D. 7. 8. 4. pr.): "Sed et cum his, quos loco servorum in operis habet habitabit, licet liberi sint vel servi alieni".

[33] Szilágyi: Op. cit., p. 75. — Blümner (Op. cit., pp. 177ff) expounds that the value of denarius, taking place in the price regulation issued by Diocletian was not identical with the value of denarius in circulation. This was only a unit of calculation, the so-called denarius communis, a part 1/50000 of 33 g gold.

[34] Pólay: Op. cit., p. 191.

[35] Brassloff: Op. cit., p. 77. — Brósz: Op. cit., p. 179. — Mayer—Maly, Th.: Locatio-conductio (Wien—München, 1956), p. 225.