1-1-1963

'Apochatum Pro Uncis Duabus'

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«Apochatum pro uncis duabus»

by Alan Watson (*Oxford*).

Two of the Transylvanian sale triptychs contain the clause *apochatum pro uncis duabus*. The beginning of each reads :

> Dasius Breucus emit mancipioque accepit puerum Apalaustum, sive is quo alio nomine est, n(atione) Grecum, apocatum pro uncis duabus, ⊀ DC de Bellico Alexandri, f(ide) r(ogato) M. Vibio Longo (1).
>
> Cl. Iulianus mil. leg. XIII g(eminae) Ↄ (2) Cl. Mari, emit mancipioque accepit mulierem nomine Theudotem, sive ea quo alio nomine est, n(atione) Creticam, apochatam pro uncis duabus, ⊀ quadringentis viginti de Cl(audio) Phileto f(ide) a(ccepto) Alexandro Antipatri (3).

The first document dates from 142 A.D., the second from 160 A.D. What meaning is to be attributed to *apocatum* (or *apochatam*) *pro uncis duabus*, literally "receipted for two ounces" ? Mommsen conjectured (4) that it meant that the seller gave the buyer the receipt which was given to him by the person who had sold to him, and that two ounces of gold was the actual price which he had paid. This suggestion was shown to be very improbable by Bruns (5) who pointed out that it would mean that two slaves of very different value (600 and 420 *denarii*) had by a strange coincidence previously been sold for exactly the same amount. Bruns' line of criticism was followed by

(1) Bruns, *Fontes Iuris Romani Antiqui*, 7th edit. (Tübingen, 1909), no. 130.

(2) *I.e., centuria.*

(3) Bruns, *op. cit.*, no. 132.

(4) *Corpus Inscriptionum Latinarum* III (Berlin, 1873), p. 941 nn. 2, 3.

(5) *Fontes cit.* 3rd edit. (Tübingen, 1876), p. 185 n. 5 at p. 186.

Appleton (6) who also made the point that there was no reason at that time and place for sales to have been made for an actual weight of gold rather than for a sum of coined money, and that it would be intolerable for commerce if the seller gave the buyer the receipt for his own purchase, thus showing not only what he had paid but also the amount of his profit. Bruns suggested (7) that since the word *apochare* is concerned with the estimation of tax in *C.Th.* 11.2.1.2, it should be understood here as meaning something similar. But there seems no reason why one should restrict the use of the very rare word *apochare* to situations concerned with the collection of taxes (8). Appleton suggested that *unciae* should be understood as ounces of copper and that, therefore, two *unciae* was four *as* ; that this minimal sum had a connexion with *mancipatio uno nummo* ; that *apochatum* referred to a receipt for a previous transaction ; and that the clause was used to show that the seller had acquired title by purchase. Not, he goes on, that in fact the previous sale had been carried through by a *mancipatio uno nummo,* but this fictitious sum is used so that the buyer will remain unaware of the seller's profit (9). This very ingenious solution, however, will just not do. Firstly, it is unlikely that such information — although the buyer might well want to know how the seller got hold of the slave — would be recorded in the written document of sale, and certainly not in such a prominent place. Secondly, if such information were to be recorded, it would be more to the point to state who the transferor to the seller was, rather than the purely fictitious price paid by the seller. Thirdly, what would the value to the buyer of the receipt for the fictitious price be, assuming that the receipt were given him ? If it were intended to enable him to sue as a sort of *procurator in rem*

(6) " La clause '*apochatum pro uncis duabus*' et l'histoire de l'*as* sextantaire ", *Studi Scialoja* II (Milan, 1905), p. 503ff.

(7) *Loc. cit.*

(8) Cf. APPLETON, *op. cit.*, p. 511.

(9) Followed by KÜBLER, XXVI *ZSS* (1905), p. 536ff ; ARANGIO-RUIZ, *Fontes Iuris Romani Antejustiniani III Negotia* (Florence, 1943), p. 285 n. 2 : cf. MEYLAN, XXI-XXII *Revue des Etudes latines* (1943-44), p. 34f.

suam the transferor to the seller, it would appear to allow him to recover four *unciae* by the *actio auctoritatis*. Fourthly, if the point is that the buyer should know that the seller had an *auctor*, this does not need a receipt — especially one which virtually does away with all the value of *auctoritas*. Fifthly, so far as we can tell, there is no implication in *apochatum* of a *mancipatio*, so the clause would not have any value as showing that the seller stated that he had received the slave by *mancipatio*. In general, Appleton's suggestion makes it appear that the parties to the sale resorted to an unnecessarily complicated manœuvre when a simple statement that the seller had bought the slave and that he had been mancipated to him by Maevius would have been more satisfactory. However, in favour of Appleton's explanation of *unciae* as referring to copper there is the fact that from an early time *unciae* had the transferred meaning of a 'trifle', something of very little value (10).

The real explanation, I suggest, is that *apochatum pro uncis duabus*, 'receipted for two *unciae*', refers to the present *mancipatio*, not to a previous one, and that the point of the clause is to limit the *actio auctoritatis* to four *unciae*, a negligible sum.

Although the point is not always made in the textbooks (11), it would, I imagine be generally accepted that since the *actio auctoritatis* was inherent in the *mancipatio*, then, considering the formal nature of that institution, it could not be excluded by agreement between the parties (12). That, of course, is why

(10) Cf. PLAUTUS, *Rudens* l. 913. Appleton and Meylan also point out that the use of the word *unciae* rather than the denomination of a coin suggests that the clause has a long history. Copper, too, is especially appropriate if the clause is referring to *mancipatio*.

(11) It is, however, by GIRARD, *Mélanges de droit romain* II (Paris, 1923), p. 22ff : cf. BUCKLAND, *Textbook of Roman Law* 2nd edit. (Cambridge, 1932), p. 489 n. 6 ; BONFANTE, *Corso di diritto romano* II *La propricta*, 2 (Rome, 1928), p. 144 ; DE ZULUETA, *The Roman Law of Sale* (Oxford, 1945), p. 43 ; DONATUTI, *Lo Statulibero* (Milan, 1940), p. 120.

(12) Thus, when VARRO (*de re rust.* 2.10.5) discusses the purchase of a slave it is only in cases where there is no *mancipatio* that he says the buyer should take a *stipulatio duplae* or, if it is so agreed, a *stipulatio*

the parties, when they wished to exclude the transferor's liability to the *actio auctoritatis*, had recourse to *mancipatio uno nummo*, thus restricting the operation of the *actio auctoritatis* to *duo nummi*. Similarly, some device had to be found to limit the effectiveness of the *actio auctoritatis* when the buyer insisted on *mancipatio* but the seller wished to restrict his liability to simple damages. Such a device was, I submit, indeed found and consisted of *mancipatio* being made *uno nummo* (or *duabus uncis*) followed by the seller giving a stipulation promising single damages if the buyer were evicted from whole or part of the slave. This device, I suggest, is shown in full operation in the document of sale of a female slave the relevant part of which is quoted above. It tells us that the female slave was bought and mancipated at a figure stated to be two *unciae*, the price paid being 420 *denarii*. The document then goes on to say that if the buyer is evicted from whole or part of the slave the seller has stipulated to pay him his interest (13). The seller also acknowledges receipt of the 420 *denarii*. This explanation accounts not only for the inclusion of *apochatam pro uncis duabus* in the document but also for its prominent position. *Apochatam* is used rather loosely to mean " stated to have been received for... ", *i.e.*, it refers to an oral, not a written statement of receipt. There may well also be a written receipt given by the buyer to the seller showing that the *mancipatio* was for the minimal sum.

Support for this explanation may be found in a comparison with the opening clauses of a document attesting a *mancipatio fiduciae causa* dating from 61 A.D. and which was found at Pompeii (14).

> Poppaea Prisci liberta Note iuravit pueros Simplicem et Petrinum, sive ea mancipia alis nominib[*us*] sunt, sua esse

simplae. The implication is that where there was a *mancipatio*, the seller's liability is automatic and cannot be changed or excluded by agreement. *P.S.* 2.17.1-3 suggests that this was still the position when that work was written.

(13) The clause is quoted *infra* p. 252.

(14) BRUNS, *op. cit.* 7th edit., no. 134 ; ARANGIO-RUIZ, *op. cit.*, p. 291ff.

seque possidere, neque ea mancipia ... ali ulli obligata esse neque sibi cum ulo com[*munia*] esse, eaque mancipia singula sestertis nu[*mmis sin*]gulis Dicidia Margaris emit ob seste[*rtios ... et*] mancipio accepit de Poppea Prisc[*i liberta Note*].

Line 34 of the document enables us to fill in the gap after *seste*[*rtios* as *LD*. These clauses say that the transferee bought the slaves *sestertis nummis singulis* on account of 450 sesterces and received them in *mancipatio* — the same order as in the Transylvanian triptych is preserved ; first the statement of the fictitious price mentioned in the *mancipatio*, then the actual consideration.

The other triptych quoted, that for the *mancipatio* of the slave boy, also accords with this explanation of *apochatum pro uncis duabus*. It must, of course, be pointed out that here the stipulation against eviction is giving a warranty for double damages, but in the interior part of the triptych, *duplam* is written in above the line (15). The original omission of *duplam* is better explained as the result of following a style for a document giving a warranty for simple damages, than simply as a scribal omission of the word. The original form of the clause, *t(antam) p(ecuniam) p(robam) r(ecte) d(ari) f(ide) r(ogavit) Dasius Breucus*, is the same as that in the other two Transylvanian triptychs for *mancipationes* with stipulations for single damages : *tantam pecuniam probam recte dari f(ide) r(ogavit) Cl. Iulianus* in the sale of a female slave dealt with above ; *t(antam) p(ecuniam) r(ecte) d(ari) f(ide) r(ogavit) Anducia Batonis* in the sale of half of a house (16). But even with the insertion of *duplam* it is significantly different from that of the slave girl (17) in which a warranty for double damages is given : *<tan>tam pecuni<a>m et alterum tantum dari, fide rogavit Maximus Batonis*. Thus, either *duplam* was omitted accidentally

(15) Mommsen, *op. cit.*, p. 940f ; Bruns, *op. cit.*, p. 329 n. 5 and p. 429 : not shown by Arangio-Ruiz in his edition of the text.

(16) Bruns, *op. cit.*, no. 133.

(17) Bruns, *op. cit.*, no. 131.

— and against the intention of the parties — by a scribe who slavishly followed a style for a document containing a warranty for single damages in the event of eviction, or the document was deliberately drafted in this way by a seller who was then forced by the buyer to give a warranty for double damages. In either event, the document was modelled on a style which gave a warranty in the case of eviction for single damages only and it is suggested that *apocatum pro uncis duabus* owes its existence here to that fact ([18]). This also explains why here, as in those for single damages, the unit of damages chosen is the *interesse* unlike that for double where the unit is the p r i c e.

Against this interpretation of *apochatum pro uncis duabus* may be urged the use of *empta sportellaria* in the mancipatory document of the little slave girl which has been already mentioned ([19]). The opening clauses run :

> Maximus Batonis puellam nomine Passiam, sive ea quo alio nomine est, annorum circiter p(lus) m(inus) sex, empta sportellaria, emit mancipioque accepit de Dasio Verzonis, Pirusta ex Kavieretio, ✠ ducentis quinque.

There have been a number of interpretations of *empta sportellaria* — *sportellaria* being a word otherwise unknown — but the only one which may affect us adversely is that of Mommsen ([20]) which has had a considerable following ([21]). Mommsen says that perhaps the girl had been sold to the vendor with her mother and that no price had been reckoned for her but she was included in the sale of the mother as a sort of accessory. It should be noted that Mommsen offered this suggestion because he thought the phrase corresponded to *apochatum pro uncis*

(18) That styles were used in the drawing up of the Transylvanian triptychs is evident from *partemve quam ex eo* in l. 9 of Bruns, *op. cit.*, no. 131 instead of *partemve quam ex ea*. The error is found in both the interior and exterior writing of the triptych and results from the use of a style which gave the masculine : cf. Mommsen, *op. cit.*, p. 923 ; Bruns, *op. cit.*, p. 330 n. 7.

(19) Bruns, *op. cit.*, no. 131.

(20) *Op. cit.*, p. 937 n. 2.

(21) *E.g.*, Arangio-Ruiz, *op. cit.*, p. 284 n. 1.

duabus (22) and it is also for this reason that it was accepted by others (23). Thus, if on other grounds the idea that *apochatum pro uncis duabus* refers to a receipt for a previous transaction is regarded as being very improbable, Mommsen's interpretation of *empta sportellaria* can hardly be used to bolster it. There are, moreover, very strong arguments against Mommsen's interpretation of *empta sportellaria*. First, as he himself says, there is no evidence that the word *sportella* was ever used to mean an accesory. Secondly, even a baby slave is potentially too valuable to be treated as a mere accessory. Even if the main object wanted were the mother slave and only one price in consideration of the whole transaction were mentionned there would still have to be *mancipatio* both of her and of the little girl and any mancipatory document would refer to both the mother and the daughter as having been bought and mancipated in return for the price. Thirdly, so far as I am aware, of the deminutives of *sporta* (a plaited basket) only *sportula,* not also *sportella,* was used in the transferred sense of 'a gift'. Fourthly, even assuming *sportella* might be used to mean a gift, *empta sportellaria,* " bought as a gift " is rather a contradiction in terms.

Mention should also be made here of the Transylvanian triptych for the sale and *mancipatio* of half of a house (24), which contains a warranty for simple damages but has nothing corresponding to *apochatum pro uncis duabus*. This would be against our interpretation of that clause only if it could lead one to think that the parties could directly exclude liability to the *actio auctoritatis*. There is no evidence elsewhere that they could — and all the indications lead to the contrary opinion (25) — and this document can hardly be relied upon for this purpose since the *mancipatio* is in connexion with provincial land which did not have the *ius Italici* (26). Thus, the *mancipatio* was invalid

(22) *Loc. cit.*
(23) Cf. ARANGIO-RUIZ, *loc. cit.*
(24) BRUNS, *op. cit.*, no. 133.
(25) Cf. *supra*, p. 250.
(26) ARANGIO-RUIZ, *op. cit.*, p. 289.

and so in any event there could be no possibility of the *actio auctoritatis*. Doubt could arise only if the document followed exactly and without the change of any clause a style relating to Italic land and there is nothing to lead us to that conclusion. Even if it did so derive from such a style there could be grave doubt as to the legal accurary of the original.