JUDICIAL REASONING IN *P.CATT—FRAUS LEGI*

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The interpretation of the first fully quoted decision in *PCatt* recto (i, 5–13)[1] has been the subject of controversy ever since its publication three quarters of a century ago. In re-examining the question we will first sketch the main lines of the controversy, then attempt to determine the literal meaning of the decision, and, finally, place the result into the historical context of legal thought in Rome.

The case was brought before the prefect of Egypt, M. Rutilius Lupus, in A.D. 117, by a woman who was suing for return of a deposit from the property of a deceased soldier. Lupus' verdict is, "We consider the deposits to be dowries. On these grounds I do not grant a juror (*kritês*, i.e., a *iudex pedaneus* to determine the questions of fact), for a solider may not marry."

Thus far the verdict is perfectly clear. The law forbidding soldiers to marry is well-attested, as is the fact that observance of the law was not perfect.[2] Just why the restriction on soldiers' marriages entailed the unactionability of the dowry provisions is not as certain. It is

[1] = *BGU* 1.114 = *ArchP* 3 (1906) 57 = Mitteis, *Chrestomathie* 372 = Meyer, *Juristische Papyri* 22 = *FIRA* III, 19 = David and van Groningen, *Papyrological Primer*[4] (1965) # 59. The most recent detailed studies of the decision are Albertina Menkman, "Het huwelijksverbod voor soldaten ten tijde van het Romeinsche principaat en zijn invloed op vorm et lot van de dos," *Tijdschrift voor Rechtsgeschiedenis* 17 (1941) 311–30, esp. 318–22, which contains an account of the controversy with different emphasis from that presented here; and Erwin Seidl, "Die Jurisprudenz der Staathalter Ägyptens in der Principatszeit," *Studi Paoli* (Naples 1956) 659–73, esp. 663–67.

I wish to express my thanks to Professor A. Arthur Schiller, under whose direction this study was undertaken.

[2] A recent review of the legal situation is given by E. Sander, *RhM* 101 (1958) 152–63. Evidence for the nonobservance in Egypt is collected in Raphael Taubenschlag, *The Law of Greco-Roman Egypt in the Light of the Papyri, 332 B.C.–A.D.640*[2] (Warsaw 1955) 109, note 21.

possible that the restriction on such marriages was made so strong that not only were the forbidden unions invalid, but also that all obligations connected with them were voided by the original restriction and that not even a *condictio sine causa* could be brought to recover the goods.[3] Alternatively, it could be that the soldiers' marriage was considered a *turpitudo* on both sides, and that therefore the provisions of the dowry, like those of a bribe, could not be the object of a law suit.[4] Whatever the juridical grounds for the invalidity, the prefect suspects that the couple in our case were married against the law, and that to protect themselves against the invalidity of the dowry wrote up the document of the dowry in the form of a general deposit without including in the document the reason for the deposit. This subterfuge would readily recommend itself even to Romans, such as the principals in our case are, since in Egypt dowries were often written up as loans or deposits, with the obligations stated very generally, and the *causa obligationis* subordinated.[5] A dowry is, after all, an arrangement whereby the husband receives money or goods at the time of the marriage on the understanding that it will be returned at the dissolution of the marriage by death or divorce.

The major difficulty arises in the final sentence of the verdict, "*Εἰ δὲ προῖκα ἀπαιτεῖς, κριτὴν δίδωμ[ι], / δόξω πεπεῖσθαι νόμιμον εἶναι τὸν γάμον*" (i, 12–13). The first clause is certainly a protasis, and the third clause an apodosis. To which of these the second clause belongs, however, is a puzzle. The controversy was opened when this, the first column of the papyrus, was published as *BGU* 1.114 in 1895. Since the early *BGU* volumes contained no commentary at all, the first interpretations were given in reviews of the first volume. Dareste, in the *Journal des Savants* of that year, reported the papyrus briefly, and from his report it is apparent that he took the second clause to be part

[3] Seidl (above, note 1) assumes that the deposit never took place either, and that the deposit was merely credited to the wife. This would explain why a *condictio sine causa* would not be applicable. However, there is no indication that the dowry was fictitious. In the case following this one in the papyrus (i, 14–iii, 10) the dowry-deposit was certainly not fictitious. The advocate of the husband admits that the wife gave the husband money (i, 24–25). Yet no *condictio* was allowed.

[4] Leopold Wenger, *AnzWein* 82 (1945) 105–6.

[5] Paul Meyer, *ZSav* 18 (1897) 52; Walter Hellebrand, *RE* 18.3 (1949) 1199. A recent example is seen in *PYale* 64.

of the protasis. Accordingly the meaning of the sentence is, "If you ask for a dowry and I grant you a juror, one would think that I considered such a marriage as valid."[6] Mitteis, reviewing the volume in *Hermes* of that year, objected to Dareste's interpretation on the grounds that it let the grammatically difficult *κριτὴν δίδωμ[ι]* "fall under the table," and that it would make Lupus so anxious about his judicial calling that he would express his concern in the minutes of the court. Instead, Mitteis took the clause to be the apodosis of the sentence. According to him, the prefect is in fact accepting the woman's petition, and says, "If you ask for a dowry, I will grant you a juror, and will appear to think (that is, will act on the fiction) that the marriage is valid." Mitteis conceded, however, that "the fiction is clearer than the logic."[7] Logical or not, the decision understood in this way could be seen as part of Trajan's generally liberal policy,[8] or as part of a slow trend toward relaxation of the marriage restriction which culminated in its repeal by Septimius Severus.[9]

In the course of the next few years scholars supported one side or the other. Gradenwitz interpreted the passage as Dareste did, though he did not mention him, arguing that Mitteis' interpretation would require the Greek to read *δόξων* rather than *δόξω*.[10] On the other hand, the interpretation of Mitteis was endorsed by Meyer[11] and Wenger. The latter argued that the position of the *δὲ* in line 12 indicated that the antithesis is not between *κριτὴν οὐ δίδωμι* (11) and *κριτὴν δίδωμ[ι]* (12), but between asking for a dowry and asking for a deposit. Accordingly, the prefect is saying, "I cannot grant you an action on a deposit, but if you ask for one on the dowry I will grant it."[12]

A middle position was suggested by Partsch and urged by Krüger, who accepted Mitteis' translation on grammatical grounds. They avoided the logical difficulties by suggesting that in granting the juror the prefect was not instructing him to consider the marriage valid, but

[6] Dareste, *JSav* (1895) 21.

[7] Mitteis, *Hermes* 30 (1895) 580.

[8] Meyer (above, note 5).

[9] Sander (above, note 2) 157. Most recently, P. Garnsey, *California Studies in Classical Antiquity* 3 (1970) 45–53, has argued that Severus did not in fact repeal the ban.

[10] Otto Gradenwitz, *Einführung in die Papyruskunde* (Leipzig 1900) 10.

[11] Meyer (above, note 5).

[12] Leopold Wenger, *Zur Lehre von der Actio Iudicati* (Graz 1901) 156–57.

merely leaving the question of the validity of the marriage and the dowry to the juror, who might or might not find cause to consider the marriage valid.[13]

The picture changed in 1906 when Wilcken discovered that *BGU* 1.114 was in fact the first column of the Cattaoui papyrus, and published in the *Archiv für Papyrusforschung* a new edition of the whole by Grenfell and Hunt accompanied by an extensive commentary by Meyer.[14] It became apparent that in every one of the five cases which followed ours in the collection the verdict was based on the invalidity of soldiers' marriages. In fact, in two of the cases action for deposit is denied on the grounds that they are really invalid dowries, just as in our case according to Dareste's interpretation.[15] The probability thus became greater that in our case too the verdict was based on the invalidity of the marriage, and that the action requested was not granted. In his commentary Meyer abandoned Mitteis' interpretation and adopted that of Dareste and Gradenwitz.[16] Wenger soon followed suit[17] as did most subsequent writers. Mitteis himself, in his comments to the papyrus in 1912, admitted the possibility of Dareste's interpretation, because of the newly documented widespread practice of not recognizing soldiers' marriages. Nonetheless, he still did not abandon his interpretation entirely because of the indicative δίδωμ̣[ι] which he felt should have been optative according to Dareste's interpretation. The evidence of the other cases in the papyrus was not decisive, he wrote, since there could have been variations in practice.[18]

A third of a century later Wenger again raised the possibility of Mitteis' original interpretation.[19] This possibility was embraced by Seidl, who set out to explain the logic which Mitteis found wanting.

[13] Josef Partsch, *Die Schriftformel im römischen Provinzialprozesse* (Breslau 1905) 76–78; Paul Krüger, *ZSav* 28 (1907) 394–98.

[14] *ArchP* 3 (1906) 55 ff.

[15] iii, 2–4 and vi, 22–23, dating from A.D. 134 and 136 respectively. In the fragment of the case preceding ours (i, 1–4) a juror is in fact granted, but since no details of the case are preserved the circumstances may well have been such that invalidity of the marriage would entail granting an action.

[16] He credited only Gradenwitz.

[17] *Die Stellvertretung im Rechte der Papyri* (Leipzig 1906) 152 note 2, and *BPW* 27 (1907) 143.

[18] Mitteis, *Grundzüge* 284.

[19] Wenger (above, note 4) 106–7.

Seidl rejects the interpretation by which the prefect denies the action because of the asyndeton between the first and second clauses of the last sentence, and because it would require an optative in the second clause. He approaches the decision from the standpoint of the *ratio legis*. Two motives operate in the laws pertaining to soldiers. First, soldiers were forbidden to marry in order to preserve their courage from waning out of concern for their family, and in order to prevent their resistance to being transferred to a remote province. On the other hand, impediments were removed from the ability of soldiers to dispose of their property as they wished. In the case of provisions made by soldiers for the care of their widows, the two motives came into conflict, especially in Egypt where such provisions mark the difference between marriage and concubinage. Normally, the first motive outweighed the second. Here, however, the judge allowed the second motive to have full force. The prefect went about putting into practice his assessment of the legal priorities by applying the method of "conversion," whereby a valid transaction is substituted by the judge or jurist for an invalid one to achieve the same effect. Thus, in our case the prefect, who wanted to grant the dowry, considered the dowry as that of a validly married woman. What is particularly remarkable about this is that the use of "conversion" is documented in the legal literature for only a small number of cases. A new instance of the use of the technique in the classical period of Roman law would thus be added.[20]

However, it seems that the logic of the decision according to Mitteis' interpretation remains difficult despite the attempts to fix it up. To say that Lupus does not grant the request as a deposit but does grant it as a dowry flies in the face of Lupus' explicit statement that he cannot grant the request "on these grounds," namely, on the grounds of dowry. That this is the prefect's intent is made clear by his immediate explanation, "for soldiers may not marry." The notion of "conversion" does not save the situation either. Indeed, the process whereby the judge grants the dowry as if it derived from a valid marriage, in Seidl's interpretation, is not strictly speaking "conversion." The latter term is used when a transaction was performed which was invalid for some

[20] Seidl (above, note 1).

reason but whose intended effects could have been achieved in the same circumstances by the performance of a different transaction. The judge or jurist is said to "convert" the former transaction into the latter when he applies the effects of the valid transaction instead of the invalid one.[21] For example, a *Senatusconsultum Neronianum* laid down that a legacy which failed because of having been put in an inappropriate form should be treated as if it had been put in the most favorable form. Thus, if a testator left by *legatum per vindicationem* a thing which was never in his ownership, the legacy was invalid. The senatusconsult declared that the legacy should be treated as if it had been left *per damnationem*, which would have been valid in those circumstances.[22]

Now the prefect in our papyrus, according to the Mitteis interpretation, is not substituting for the invalid dowry a different transaction valid in the given circumstances. He is rather using the fiction that the circumstances differ from what they in fact are. The proper application of "conversion" would be present if the prefect, faced with a dowry he could not enforce because of the restrictions on soldiers' marriages, would "convert" the dowry document into a deposit. Herein lies the crucial weakness of Seidl's argument. If the prefect were minded to allow the widow to collect, he had the perfect opportunity to do so by simply granting the action on the deposit. This he could have done without resorting to any sophisticated legal techniques. With this opportunity available to him, it is difficult to accept the notion that in order to validate the woman's claim he turned the deposit into a dowry, and her invalid marriage into a valid one, in clear violation of military law, in order to give effect to the invalid dowry he constructed.

Moreover, the grammatical grounds for rejecting Dareste's interpretation are insufficient. Meyer reports this as Wilcken's opinion,[23] and though his reasons are not given, they are not difficult to imagine. The lack of the optative in the second clause of the last sentence is not significant since the optative was falling out of use altogether in this

[21] Max Kaser, *Römische Privatrecht* 1 (1955) 216. For a full recent discussion see Vincenzo Giuffrè, *L'utilizzazione degli atti giuridici mediante "conversione" in diritto romano* (Naples 1965).

[22] F. De Zulueta, *The Institutes of Gaius* 2 (Oxford 1953) 112.

[23] *ArchP* 3 (1906) 73.

period.[24] In any case, the prefect, M. Rutilius Lupus, was probably not a native speaker of Greek.[25] There is, as Seidl says, an asyndeton in the protasis according to Dareste's interpretation. However, according to Mitteis' interpretation there is an asyndeton in the apodosis. Though it is not as harsh the difference between the two is not great enough to require the latter interpretation.

The objection mentioned above by Wenger is not strong either. If the protasis is taken to have two clauses, the main contrast between that sentence and the previous thought can still lie in the second clause. The δὲ is placed in the first clause only because that is at the beginning of the sentence.

Mitteis' early objection to the seemingly anxious apologies of the judge in Dareste's interpretation has been well answered by Humbert, who observes that the apology of the judge is for the harshness and apparent inhumanity of his decision.[26] Furthermore, as I will presently attempt to show, the prefect is using a judicial technique that was still relatively fresh in his time.

Mitteis' later dismissal of the evidence of the rest of the cases in *PCatt* recto as being only varying practice is not convincing either. Granted, it would not be surprising to find that over a period of time the practice of enforcing the ban on soldiers' marriages varied. It would, however, be more difficult to explain why a collection including five decisions voiding the effects of such unions would also contain one in which the very opposite is done.

The most important grammatical support of Dareste's interpretation seems to have gone unnoticed. The verbs in the first two clauses are in the present tense; the verb in the last is in the future. Thus it is more natural to group the first two verbs as a single protasis, than to connect the present δίδωμ̣[ι] and future δόξω as a single apodosis.[27]

If, then, it is established that the prefect denied the motion of the

[24] Albert Debrunner, *Geschichte der Griechischen Sprache* (Berlin 1954) 2. 123 ff.

[25] He was an Italian manufacturer, and served in A.D. 111 as *praefectus annonae*. Arthur Stein, *Die Präfekten von Ägypten in der Römischen Kaiserzeit* (Bern 1950) 58.

[26] Michel Humbert in Burdeaux, Charbonnel and Humbert, *Aspects de l'empire romaine* (Paris 1964) 122–23. The difficulties in the interpretation of Partsch and Krüger and set forth well by Menkman (above, note 1).

[27] I am indebted for this point to Professor Gilbert Highet, who read the manuscript of this paper in an earlier version.

plaintiff in this case, we can turn to the question of where such a decision fits in the legal thought of the period. Examining the case again we see that what happened was that a couple, faced with the law forbidding soldiers' marriages and nullifying their dowry agreements, tried to evade it by setting up a deposit agreement rather than a dowry. However, the prefect judging the case spotted the evasion and stopped it. The trouble to which the prefect went to insist on the illegality of the transaction and on its being a dowry makes it clear that the case was not covered directly by the regulations the prefect had. The prefect, then, was interpreting the law broadly or extending it to cover a case not originally covered by the regulation, but which he construed as an attempted evasion of the law. This kind of case is what the Roman jurists of his time referred to as *fraus legi facta*.[28] To place the decision of the prefect into its historical context a brief review of the development of the notion is required.[29]

Fraus legi was defined by Paul, "*Contra legem facit qui id facit quod lex prohibet; in fraudem vero qui salvis verbis legis sententiam eius circumvenit*" (*D.* 1.3.29), and in similar terms by Ulpian (*D.* 1.3.30). Now, modern scholarship has established, first of all, that in the classical period *fraus legi* was not viewed as a separate general category equated by legislation with *contra legem* in legal effect, as it was since the time of Justinian.[30] Rather the term was used only in specific circumstances to refer to transactions which the jurists felt were violating the law even though they did not violate the letter of the law—a sort of sub-group of transactions *contra legem*.[31] Secondly, whereas the post-classical law considered the intention of the party to evade the law as the touchstone of *fraus legi*, the classical jurists took little notice of the intention and looked rather to the operational results of the transaction. In other words, it did not matter to the classical jurists whether the party intended to evade the law; they considered what was done to be a

[28] Josef Partsch, *Nachgelassenen Schriften* (Berlin 1931) 130.

[29] A bibliography on *fraus legi facta* is given by Kaser (above note 21) 1 (1955) 217 and 2 (1959) 62, to which may now be added Franco Casavola, "*Lex Cincia*": *Contributo alla storia delle origini della donazio romana* (Naples 1960) 118–19, note 3; and Lucio Bove, "Frode, Diritto Romano," *Noviss. Dig. Ital.* 7 (1961) 630–31. The fundamental work remains G. Rotondi, *Gli atti in frode alla lege* (Turin 1911).

[30] Perhaps since the medieval period. This was the subject of considerable controversy but need not concern us here.

[31] The formulation is that of Casavola (above, note 29).

violation if the result accomplished seemed to be what the law wished to prevent. Third, the Roman jurists had not always taken the liberty to interpret statutes broadly and to declare illegal and void transactions which satisfied the letter of the law. During the republic and even in the early empire jurists seem to have felt bound by the letter.

I would further suggest tentatively that although the distinction between the *verba* and the *sententia legis* was long a commonplace of forensic rhetoric (e.g. *Rhet. Her.* 1.11.19), the preference among the jurists for broad interpretation of statutes according to their *sententia* in cases of this type seems to have really taken hold only in the second century A.D. Evidence for this comes, on the one hand, from the fact that as late as the first century A.D. evasions usually had to be stopped by new legislation, and, on the other hand, from the fact that with one exception juristic use of the notion can be traced only as far back as the second century.

As to the first point, senatusconsulta were required to void evasions of the *lex Fufia Caninia* prohibiting excessive manumissions by will even though the statute itself contained a clause voiding things done in fraud of it (Gai. *Inst.* 1.46). A senatusconsult under Tiberius removed the immunity from women who became procuresses or actresses in order to avoid the sanctions of the *lex Julia* on adultery (*D.* 48.5.11[10].2; Suet. *Tib.* 35.2). A senatusconsult in 62 A.D. declared that the requirements of the *lex Papia Poppaea*, which put political disabilities on childless men, could not be met by adopting children for this purpose (Tac. *Ann.* 15.19). The *SC Pegasianum*, at about A.D. 73, was required to bring *fideicommissa* under the rules of the *leges Julia* and *Papia* forbidding unmarried and childless men from receiving under a will (Gai. *Inst.* 2.286a). The jurists clearly had not invoked a principle of *fraus legi* to close these loopholes in the statutes.[32]

On the other hand, the earliest recorded decision which is explicitly based on the notion of *fraus legi* is reported to be by the mid-first century jurist Proculus.[33] The *lex Aelia Sentia* had voided manumissions by masters under twenty years of age, except under certain limited conditions. A young man tried to evade the statute by giving the slave as a gift on the understanding that the recipient would manumit

[32] Rotondi (above, note 29) 47–59, 62, 70, 74.
[33] Rotondi (above, note 29) 88.

him. According to Julian, Proculus declared the manumission void, "*quoniam fraus legi facta esset*" (*D.* 40.9.7.1). The first recorded explicit statement of the principle is by the early second century jurist Celsus in a context concerning stipulations,[34] "*Scire leges non hoc est verba earum tenere, sed vim ac potestatem*" (*D.* 1.3.17).[35] Neratius, also in the early second century, held that in case of a legacy of slaves on the understanding that the legatary manumit them the manumissions would violate the *lex Fufia Caninia* (*D.* 35.1.37).[36] Of course, Neratius' statement is not very radical, since the statute itself, as we have seen, gave a mandate to jurists to stop evasions of it.

It is only when we get to Julian, whose brilliant career as a jurist fell especially during the principates of Hadrian and Antoninus Pius, that we find such decisions with any frequency. An instructive instance appears in connection with the *SC Macedonianum*, which declared loans made to *filiifamilias* uncollectible. What if the *filiusfamilias* did not contract for the loan himself but went surety for someone else who could in turn pass the money along to him? Celsus, notwithstanding the emphasis he placed on the *vis* of the law in another context, did not consider this transaction as falling under the prohibitions of the senatusconsult. In this he was followed by his successor as leader of the Proculians, Neratius. Julian, however, recognized in the transaction an evasion of the senatusconsult, "*fraus senatusconsulto facta.*" He says the same in the case of a *filiusfamilias* who joined another person as co-debtor. Subsequently Julian's opinion prevailed (*D.* 14.6.7.pr., 1).

In the cases mentioned so far the evasions involved an *interposita persona*, "front man."[37] Associated with Julian are also a cluster of decisions which block evasions of other types—where a party does some normally permissible action with the ulterior motive of removing himself from the class of persons to which some restrictive statute applies, or where the parties substitute for an illegal transaction some other transaction which will most nearly approximate the desired result. An example of the former type is Julian's opinion in connection with the rule of the *lex Papia Poppaea* which gave the patron of a freedman a

[34] Otto Lenel, *Palingenesia* I, 161.

[35] H. J. Scheltema, *Rechtsgeleerd Magazijn* 55 (1936) 68.

[36] Rotondi (above, note 29) 90.

[37] For the distinction see David Daube, "Dodges and Rackets in Roman Law", *PCA* 61 (1964) 28–30.

share in the estate of the freedman equal to that of a child, if the freedman did not have three children and the entire estate was worth at least 100,000 HS. Julian often wrote that if the freedman alienated property to get below the limit, *in fraudem legis*, the alienations do not avail him (*D.* 37.14.16.pr.).[38] In an example of the latter type, Julian declared that privately drawn *cautiones* and *chirographa* which constituted tacit *fideicommissa* in favor of persons who were not allowed to benefit under wills were *fraus legi* and thus void (*D.* 30.103).[39] Professor Daube has recently shown, by means of a palingenetic reconstruction, that Julian blocked an attempt to make a dowry out of a gift and counter-gift.[40]

From the period of Julian on decisions of this kind become increasingly frequent until the principle was turned by Justinian's compilers into a general, if not invariably applied, rule of law. Given the nature of our sources it is of course impossible to assert that the kind of legal technique shown in the cases referred to above did not occur earlier nor that the decisions recorded did not reflect what was already established practice. Nonetheless, the clustering of the earliest decisions based on *fraus legi* in the first generations of the second century does seem to signify that some ferment along these lines was taking place in Rome at that time.

Turning back to the decision of Rutilius Lupus in our papyrus, we can see, first of all, that the prefect does in fact block this attempted evasion of the law. Secondly, just as the classical jurists, he considers

[38] An attempted evasion of this type was indeed foiled much earlier, perhaps as early as the first century B.C., but on entirely different grounds. To circumvent the rule which nullified gifts between husband and wife a husband might divorce his wife, give her the gift, and promptly remarry her. A string of jurists including Trebatius, Labeo, and Proculus are cited to support the notion that this will not work (*D.* 24.1.64). Though details are disputed, there is agreement that when the dodge fails it is because the divorce is not a *divortium verum*. See Rotondi (above, note 29) 83. In other words, the juristic technique is not a broad interpretation of the law being evaded, but a striking down of the transaction within the narrow rules regularly applicable to it. On the other hand, in each of the cases we are discussing, as in the papyrus, the transaction used as a dodge is in its own terms faultless, and is struck down because its effect violates the spirit of some other law. For other cases like the above and bibliography see Kaser (above, note 21) i (1955) 211–12.

[39] The considerations raised by Rotondi (above, note 29) 75 and Kaser, *ZSav* 63 (1946) 144 do not affect the argument here.

[40] David Daube, *Roman Law; Linguistic, Social and Philosophical Aspects* (Edinburgh 1969) 109–11.

the evasion to be a violation of the law itself rather than a case for the application of a general rule on evasions—"We consider the deposits to be dowries. On such grounds I do not grant a juror, for a soldier may not marry" (i, 9–12). Thirdly, like the classical jurists, he shows no interest in the motives of the couple. He does not say that the couple tried to evade the law, but is concerned solely with the operational results of the transaction and of a decision enforcing it—"One would think that I considered such a marriage as valid" (i, 12–13). Finally, the type of evasion which the prefect identified and blocked, a permissible transaction used to achieve the effect of a prohibited one, was the kind of case which comes to the fore in the Roman legal sources as identified and blocked in the period immediately following the date of the decision.

Whether Lupus was the first to make this decision in the case of a deposit serving as a dowry we do not know. Neither do we know whether the reasoning is his own or that of his legal advisors whom he consulted in two other cases included in the collection in this papyrus (iii, 18; iv, 12).[41] However, the reasoning does accord with what has been reconstructed as the legal thinking in Rome in his time, and the papyrus, indeed, supports that reconstruction.

[41] Perhaps the plurals "we" and "deposits" in the first sentence of the verdict indicate the latter of each of these alternatives.