TAMÁS NÓTÁRÍ

Comments on the Origin of the Legis Actio Sacramento in Rem

Abstract. The legis actio sacramento in rem belongs to the most debated issues of specialised literature on Roman Law up to the present day. The literature on the subject would fill a whole library, only its approximative treatment would require a separate monography. When explaining the origins of the legis actio sacramento in rem one can distinguish several, more or less clearly isolated trends. The present study will regard the theory of oath and the theory of personal fight as the two most important. The fundamentally sacred character of the legis actio sacramento is emphasised by the theory of oath, according to which the principal aim of communal control could be the expiatio of the divinity retaliating the perjury, the sacramentum of the defeated party. This theory is also corroborated by the text of the vindicatio, appearing as the strictly formalised, religious-magical carmen. Although it is much older, the theory of personal fight is traced back to Jhering, and its essence is that in the beginning the parties actually fought against each other for the thing constituting the object of their controversy, but the community (the state), in order to preserve internal peace, brought the fight under its own control. Therefore, the fight, in the form of the legis actio sacramento in rem, as it is known today was enacted only symbolically, by employing the rod (festuca) instead of the spear (hasta). The aim of the present study is merely to highlight a possibility—based mainly on the primary sources and partly on the findings of the literature on the subject—which will not consider the motifs of sacrality and private fight contradictory in the structure of the legis actio sacramento in rem but will mingle them as organically complementing components.

Keywords: legis actio sacramento in rem, vindicatio, hasta, festuca, carmen

The present study wishes to highlight the following aspects of the description of Gaius.¹ The sacred character of the legis actio procedure is proved by the

almost neurotic adherence to the words to be recited, the same phenomenon is also exemplified by Pliny’s account of the dedicatio of Ops Opifera’s temple. (I) Traces of private fight and arbitrary action are shown by the origins of the expression of vindicatio as well as by the rod, used in the procedure instead of a spear. All the more so, as Gaius also explains this with the fact that the Romans considered truly their own the goods taken from the enemy, i.e. obtained by fight. Besides the connection between the iudicium centumvirale and the hasta, the close interconnection of the spear and the cult of Mars also deserves special attention, as the hasta was also carrying a very important semantic load (II) The structure of the ius fetiale, regulating the law of war and of peace in the archaic age, a typical example of the intertwining of peaceful and martial elements, and the rerum repetitio. as well as the clarigatio show remarkable parallel with the legis sacramento in rem. (III) In Plautus’s comedy, Casina, the right to dispose over the protagonist slave girl is decided by way of actual fight, followed by divine judgement. This procedure also shows remarkable similarities with the vindicatio mentioned by Gaius. (IV)

I. It is sufficiently well known that the legis actio sacramento is strongly text-centred because—as Gaius himself emphasizes—the one who had mispronounced even one word of the text, lost the case. In Roman thinking, the belief in the reality constituting character of the spoken word was of utmost importance. (It is also very important that for the Romans, the concept of Fate, the fatum, determining human life, originally meant the (divine) word, the declared divine decision, thus fate came into being by the expression in words of the decision of higher powers. “The reason is the firm belief of the Romans in the numinous power of the uttered word, their conviction that being was ultimately identical


1 Gai. inst. 4, 11. 30.


with uttered being, complete reality was only reality expressed in words. Let us consider an example from the sphere of religious law (the dedicatio was part of the ius publicum) for the case when the validity of the sacred-judicial act did not depend only on the precise order of the words to be uttered but also on the exact pronunciation of each sound.

Pliny Maior mentions that Ops Opifera’s temple was consecrated by the pontifex maximus Metellus, but because of his impediments of speech he had to struggle for several months until he was able to pronounce the words of the dedicatio. The historical background of the story is succinctly the following: Some time between 123 and 104 BC a new—the fourth—temple was erected for the goddess Ops Opifera,–it cannot be excluded but it seems scarcely probable that her temple on the Capitolium was renovated—and this had to be consecrated by the pontifex maximus L. Caecilius Metellus Delmaticus, about whose career it is only known that he occupied the office of pontifex maximus in 114 BC. Pliny’s text mentions Metellus’s articulatory difficulties, which do not seem to bear much relevance from a historical point of view, yet from the religious aspect it highlights a cardinal point in Roman religio, namely, the requirement “that the words to be spoken should follow a pre-determined, precisely ordered, accurate pattern.” Perfect physical integrity was an essential condition for the fulfilment of clerical office in Roman religion, just as in the case of several other religions as well, which does not seem striking, as this requirement was observed in the case of sacrificial animals, as well as the official participants of the sacrifices. The question may arise how it was possible for Metellus to act as pontifex maximus, as he is the only pontifex whose congenital disability is known. On the one hand, the increasing rationality of the age— as a result of

6 Köves-Zulauf: Reden und Schweigen. op. cit. 312; Köves-Zulauf: Bevezetés a római vallás és monda történetébe. op. cit. 207.
7 Plin. nat. 11, 174. Metellum pontificem adeo inexplanatae (sc. linguae) fuisse accipimus, ut multis mensibus tortus credatur, dum mediatur in dedicanda aede Opiferae dicere.
9 Köves-Zulauf: Bevezetés a római vallás és monda történetébe. op. cit. 71.
10 Wissowa: op. cit. 491.
11 Plat. leg. 6, 759c; Lev. 21, 17. sqq.
12 Sen. contr. 4, 2.
14 Cf. Köves-Zulauf: Reden und Schweigen. op. cit. 76.
which certain religious prescriptions were not taken so seriously, or were somehow evaded—might have played an important role in L. Caecilius Metellus Deldmaticus’s becoming pontifex, on the other hand, the other important reason might have been the fact that the texts that had to be recited by the Roman priesthood were previously-determined, thus even the pontifex afflicted with severe articulatory problems could memorize them with long and troublesome rehearsal. Naturally, this would not have been possible in the case of a religion based on spontaneous religious discourse, free preaching, and prophetic prayer.

It is likely that the text of the dedicatio contained the name of the goddess Ops Opifera, which probably constituted double challenge for the pontifex’s cumbrous tongue (inexplanata lingua): the pronunciation of the alliterating name was most likely not an easy task for a person with speech impediments, who was possibly stuttering as well. In addition, the exact naming of the goddess was particularly important in the course of the dedicatio, given the fact that Ops Opifera was one of the deities of sowing. (The importance of the goddess Ops was never questionable for the Romans because—as her name also shows—was related to richness, more precisely to the richness of the harvest, Ops was the incarnation of the rich yield of land, the helpful feature of Mother Earth. Naturally, according to the minuious, hair splitting character of Roman religion, several different divine aspects of the earth’s were differentiated: it was generally venerated as Tellus, in its life augmenting aspect as Ceres, and in its harvest yielding effect as Ops. However, Roman religion distinguished even between different aspects of Ops, as it was usual to connect different so called Sondergottheiten to chronologically consecutive elements of different acts and events. On August 25 they celebrated Ops Consiva, the goddess who performed the gathering of the harvest, two days earlier, on August 23 they celebrated Ops Opifera, from which it can be clearly inferred that by the

---

15 Latte: op. cit. 276.
18 Ibid. 78.
21 Köves-Zulauf: *Bevezetés a római vallás és monda történetébe*. op. cit. 76.
22 Latte: op. cit. 51. sqq.; Radke: op. cit. 23. sqq.
23 Radke: op. cit. 239.
name Ops Opifera—its second particle being related to the verbum “ferre”—“the goddess bringing the richness of harvest” should be understood. The Volcanalia was also celebrated on August 23, and its logical connection with the celebration of Ops Opifera becomes clear if one considers that the grain not yet gathered in the granary is the most exposed to the danger of fire and thus it is the most in need of Ops Opifera’s help against Vulcanus. Today it is impossible to clarify in every detail why the Romans thought the naming of the deities of sowing to be particularly dangerous, but the importance of the goddess Ops becomes evident from the fact that during the research for Rome’s secret protective deities—the name was kept secret precisely to prevent the evocatio by the enemy—she was also a possible candidate to have fulfilled this function.

What conclusion can be drawn from all these regarding the present inquiry? The words of the vindicatio of the legis actio sacramento in rem, developed for real estates, are mentioned as carmen by Cicero as well. Inferring from the various meanings of the word carmen, the words of the legis actio sacramento in rem qualified as magical, numinous, legal texts.

II. The in rem actiones are called vindicationes by Gaius, which harmonizes with the terminology of the legis actio sacramento in rem, and the in iure cessio, as well as the adoptio, the vindicare in libertatem and the vindicare hereditatem. From the etymological attempts at defining the origin of the expressions

24 Köves-Zulauf: Bevezetés a római vallás és monda történetébe. op. cit. 77; Köves-Zulauf: Reden und Schweigen. op. cit. 79.
25 Latte: op. cit. 73. 129; Köves-Zulauf: Reden und Schweigen. op. cit. 79.
26 Macr. Sat. 3, 9, 3–4; Deum in cuius tutela urbs Roma est ... ignotum alii Iovem crediderunt, alii Lunam, sunt qui Ageronam, ... alii autem quorum fides mihi videtur firmior Opem Consivam esse dixerunt.
28 Szádeczky-Kardoss S.–Tegyey I.: Szöveggyűjtemény a régi római irodalomból (Textbook from the ancient Roman Literature). Debrecen, 1998. sqq. (Quoted among others Ov. trist. 4, 1, 1–14; Tib. 2, 6, 12–26; Porphyry. ad Hor. epist. 1, 1, 62; Hor. ars 417; Plaut. Trin. 349–352; Hor. epist. 2, 1, 134–155; Macr. Sat. 5, 20, 17–18; Gell. 4, 9, 1–2; Varro ling. 6, 21; Plin. nat. 27, 12, 131; Quint. inst. 1, 6, 40; Varro ling. 7, 27; Fest. 325; Cic. div. 1, 1, 114–115; Fest. 325; Cic. div. 1, 1, 114–115; Paul. Fest. 160; Cic. Brut. 19, 75; Liv. 1, 32, 5–14; 10, 38, 2–13.
29 Gai. inst. 4, 5.
“vindex”, “vindicatio”, “vindicta” the one proposed by Varro,\(^{31}\) emphasizing the characteristic of force, “vim dicere” and relating the verbum “dicere” to the core *deik* (see also deiknyó, deiknymi) seems the most plausible, even if this cannot be undoubtedly demonstrated with modern linguistic evidence.\(^{32}\) The word *diké* is traditionally derived from the root *deik* of the verb *deiknymi* (to show, to point at, to explain, to testify); its basic meaning of *direction, way, custom* is completed with the meanings *customary procedure, decision, resolution, trial, and law.*\(^{33}\) (These two meanings, traditionally derived from each other are approached from a new aspect by Palmer, according to whom the meaning of *signalling, custom, characteristic, particularity* and the meaning *decision, resolution*, of the word *diké*, originally the *borderline* drawn between two litigant parties derived from the root *deik*, developed parallelly, independently from each other, so neither of these can be considered secondary, derived from the other.\(^{34}\) When trying to understand the structure of *vindicatio*, Varro’s traditionally Roman etymology is of utmost importance, because it demonstrates the most clearly how the Romans themselves experienced and how they subsequently interpreted the most basic one of all the procedures termed as *vindicatio*, the *legis sacramento in rem.*\(^{35}\)

It can be rightly assumed that in the beginning—and probably later on as well—the spear as weapon was nothing else than a long, sharp rod made of hard wood, and hardened in fire.\(^{36}\) If the *hasta* was the weapon with which in the course of the fights they could win loot, recognition, and hence power, it is no wonder that shortly it became the symbol of power.\(^{37}\) This is also shown by Verrius Festus’s definition: “*hasta summa armorum et imperii est*”\(^{38}\) and mentioning the *imperium*, especially in connection with the spear, one must

\(^{31}\) Varro ling. 6, 60.
\(^{32}\) Cf. Walde–Hofmann: *op. cit.* II. 793. sqq.
\(^{36}\) Cic. *Verr.* 4, 125; Plin. *nat.* 16, 65; Hdt. 7, 71; Tac. *ann.* 2, 14; Prop. 4, 1, 28; Amm. 31, 7, 12.
\(^{38}\) Fest. 55, 3.
COMMENTS ON THE ORIGIN OF THE LEGIS ACTIO SACRAMENTO IN REM

not forget about its magico-religious character, belonging to the sacred sphere.\textsuperscript{39} It is not by chance that the expression \textit{subhastatio} means—and this is also mentioned by Gaius\textsuperscript{40}—the selling of loot, especially the selling of captives,\textsuperscript{41} obtained from the enemy by way of armed fight, and later meaning any kind of auction in general.\textsuperscript{42} When presenting the institution of \textit{decemvri stlitibus iudicandis}, Pomponius uses the term \textit{hastae praeesse},\textsuperscript{43} which could not mean anything else but the leading of \textit{iudicium centumvirale}. However, the \textit{iudicium centumvirale} came into being only one hundred years after the date assumed by Pomponius (242-227 BC),\textsuperscript{44} thus the historical credibility of Pomponius’s report becomes doubtful, but it can be safely stated that only a \textit{magistratus cum imperio} was entitled to decide in the question of \textit{legitimum dominium}.\textsuperscript{45} The insignia of the \textit{iudicium centumvirale},\textsuperscript{46} founded in the 2\textsuperscript{nd} century BC was the so-called \textit{hasta centumviralis}. By the end of the republic the presidency of this court of law was fulfilled by a \textit{proquestor}, due to the engagement of \textit{praetors}.\textsuperscript{47} Augustus appointed again a \textit{praetor} as supervisor at the head of the \textit{iudicium centumvirale}.\textsuperscript{48} Novellius Torquatus Atticus was the first \textit{praetor hastarius} or \textit{praetor ad hastam} known by name. With this disposition, Augustus probably did not instaurate a new rule but revived an older one.\textsuperscript{49} If the court was sitting in different parts, the man, chosen by the \textit{praetor hastarius} from among the \textit{decemvirii} to preside the court \textit{ad hoc}, was using his own spear in the \textit{iudicium},\textsuperscript{50} this fact being corroborated by Quintilian’s report of \textit{duae


\textsuperscript{40} Gai. \textit{inst}. 4, 16. quod maxime sua esse credebant quae ex hostibus cepissent.

\textsuperscript{41} Fest. 55, 9. Et captivi sub eadem veneunt.; 90, 19. Hastae subicebant ea, quae publice venundabant, quia signum praecipuum est hasta.

\textsuperscript{42} C. 10, 3, 1. 2. 5. 6; Liv. 2, 14, 1–4; Dion. Hal. 5, 34, 4; Val. Max. 3, 2, 2; Cic. \textit{off}. 2, 27. 83; Phil. 2, 64. 103; Varro \textit{rust}. 2, 10, 4; Sen. \textit{suas}. 6, 3. Vö. Alföldi, A.: Hasta–Summa Imperii. The Spear as Embodiment of Sovereignty in Rome. \textit{American Journal of Archeology} 63 (1959) 3. 8; Waele: \textit{op. cit}. 172.

\textsuperscript{43} Pomp. D. 1, 2, 29.


\textsuperscript{45} Alföldi: \textit{op. cit}. 9.

\textsuperscript{46} Cf. Mommsen: \textit{op. cit}. II. 225.

\textsuperscript{47} Suet. \textit{Aug}. 36, 1; Stat. 4, 4, 41.

\textsuperscript{48} Mommsen: \textit{op. cit}. II. 225; Alföldi: \textit{op. cit}. 9.

\textsuperscript{49} CIL 6, 1365, 13; 8, 22721, 5; ILS 950; Mon. Ancyr. 8, 5.

\textsuperscript{50} Alföldi: \textit{op. cit}. 10.
hastae in the case when the _iudicium centumvirale_ was functioning divided into two parts. The _iudicium centumvirale_, judging cases of inheritance under the supervision of the _praetor hastarius_ was usually sitting in four sections in the _basilica Iulia_.

In Servius’s commentary of Vergil’s _Aeneid_ the description of the following ceremony can be found: “Is qui belli susceperat curam, sacrarium Martis ingressus primo ancilia commovebat, post hastam simulacri ipsius, dicens: ‘Mars vigila!’” The picture of the deity could not be too old, because the Romans did not represent the image of their gods in the beginning, and Servius’s explanation goes back to Varro, just as Plutarch’s similar remark: “en de té régia dory kathidrymenon Area prosagoeyen.” Seemingly, Varro gets into contradiction with the tradition, which has knowledge of several spears in Mars’s sacrarium. These must have been the spears of the salius priests, which were kept in the sacrarium Martis, together with the shields. The plural of shields is not surprising because—as it becomes evident from the Aitologian myth explaining the institution of the salii—Numa Pompilius ordered the manufacturing of another eleven copies of the ancile descending from the sky, in order to prevent the stealing of the original one. During their processions the salii were carrying the ancile in their left and were beating it with a spear-like rod. The form of these spears was not identical with the form of those that were generally known and actually used for fighting in the Classical Age but they preserved—just like the shields of the salii—their archaic shape: They were so-called hasta pura, made exclusively of wood without any iron, and their prodigium was shown by their movement without any human agency in the sacrarium.

---

51 Quint. _inst._ 5, 2, 1; 11, 1, 78.
52 Plin. _epist._ 5, 9, 1–2, 5; 6, 33, 2–5; Quint. _inst._ 12, 5, 6.
53 Serv. _ad Verg. Aen._ 8, 3.
54 August. _civ._ 4, 31; Plut. _Numa_ 8; Latte: _op. cit._ 150; Herter, H.: Zum bildlosen Kultus der Alten. _Rheinisches Museum für Philologie_ 74 (1925) 164. sqq.
56 Plut. _Rom._ 29, 1.
57 Gell. 4, 6, 1–2; Wissowa: _op. cit._ 556.
58 Plut. _Numa_ 13, 7; Dion. Hal. 2, 70.
59 Serv. _ad Verg. Aen._ 6, 760; Liv. 40, 19, 2. _pontifices hastas motas nuntiare_; Obseq. 6. (60.) _hastae Martis motae_; Obseq. 19. (78.) _vasto incendio Romae cum regia quoque uretetur sacrarium et ex duabus altera laurus ex mediis ignibus iniolatae steterunt_; Obseq. 36. (96.) _hastae Martis in regia motae_; Obseq. 44. (104.) _hastae Martiae in regia sua sponte motae_; Obseq. 50. (110.) _hastae Martis regia motae._
Nevertheless, the spears of the salii must be distinguished from Mars’s spear, which was—as they were venerating Mars’s presence in it—surrounded by a cult that was due to a deity, \(^{60}\) as the veneration of gods (e.g. Iuppiter, Lapis, Terminus) in some material form was usual for the Romans, which can be explained by the concept of the unity of person-authority.\(^ {62}\) (The Person-Bereichdenken, the person-authority way of thinking was a special way of experiencing the world for the man of antiquity, in the course of which he experienced the material reality, object, process, or state as such, and, at the same time, he experienced it as divinity as well. The thing and the divinity is often designated with the same word, and sometimes it is considerably difficult to decide whether in a particular case \textit{themis} or \textit{Themis}, \textit{fortuna} or \textit{Fortuna}, \textit{terminus} or \textit{Terminus} should be written. Naturally, either solution is chosen, the other component is tacitly part of the concept and should be taken into account as well.\(^ {63}\) Designation with the same word seems to suggest juxtaposition but in fact it means the unity of the person and his/her function, the sphere of authority represented by him/her, in which alternatively one or the other aspect comes to the fore.\(^ {64}\) Iustinius in his \textit{Epitoma Historiarum Pompei Trogi} mentions that, in the beginning, the spear was surrounded by a divine cult.\(^ {65}\) Servius, based on Varro, reports that at the beginning of war, after the moving of the ancilia, the celebrating priest also moved the hasta, as the image of the deity (\textit{simulacrum ipsius}) and in the course of this he awoke Mars with the appeal “Mars vigilia!” and by this, if we conceive Mars as a unity of person-authority, he awoke War itself.\(^ {66}\) There is no need of further explication to see the manaistic, numinous aspect recognized by Wagenvoort in this religious act.\(^ {67}\) The derivation of Quirinus’s name, meaning “spear” from the word of


\(^{61}\) Arnob. 6, 11. (coluisse) pro Marte Romanos hastam, Varronis ut indicant Musae.


\(^{65}\) Iustin. 43, 3. 3. \textit{Nam ab origine rerum pro diis immortalibus veteres hastas coluere.}


\(^{67}\) Wagenvoort: 352. sqq.
Sabin origin *quiris-curis* can be found in several *auctores*,\(^6\) and Iuno’s name, Quiritis is also explained this way.\(^6\) It is not by chance that Thormann appositely translates the name “Quirites” of the Roman citizens with the expression “Speermänner”.\(^7\)

Hence it becomes clear that Roman thinking connected somehow the concept of the force inherent in the spear, the *numen* both with Mars and with Quirinus, but the exact definition of this connection is encumbered by the fact that the existing sources expound on this numinuous force only in the case of *hasta Martis*.\(^7\) The question arises why they were using a rod, the *festuca* instead of the spear meaning the *iustum dominium*, in the course of the symbolic fight of the *legis actio sacramento in rem*. According to Van der Brink the *festuca* and the *hasta* are parts of two completely different symbolic systems.\(^7\) He considers the spear to be an Indo-European symbol of power,\(^7\) whereas he regards the rod as part of the Mediterranean culture.\(^7\) At the same time, he disregards the fact that at the time when these symbols were formed, the differences between the spear and the rod most probably had not occurred yet, as both were made of wood, the only minor differences could appear in size or as the result of the fact that the rod used as a weapon had been hardened in fire.\(^7\) The fact that in the ceremony of the *vindicatio* the *festuca* stood for, i.e. represented the *hasta* can be explained by the disposition which from the beginning attempted to restrict the use of the spear within the *pomerium* and to confine it to the sphere of the most necessary rites.\(^7\)

III. Comparing the *ius fetiale* and the *ius privatum* several valuable parallels can be drawn with regard to the structure of the *clarigatio*, the *rerum repetitio*,

---


\(^6\) Fest. 43, 5. Curitim Iunonem appellabant, quia eandem ferre hasta putabant.; 55, 6. Iunonis Curitis ... quae ita appellabatur a ferenda hasta, quae lingua Sabinorum curis dicitur.


\(^7\) Brink: *op. cit.* 19.

\(^7\) Brink, H. v. d.: Staff laying. In: *The Charm of Legal History.* Amsterdam, 1974. 68.


\(^7\) Brink: *op. cit.* 70. sqq.; 77.

\(^7\) Waele: *op. cit.* 172.

\(^7\) Alföldi: *op. cit.* 4.
and the *legis actio sacramento*. The norms with a powerfully religious character of the *ius fetiale* show close connection with several other Roman legal institutions, all the more so because for the man of the age it is difficult to imagine a bond with more binding power than the oath, including self malediction as well. (According to Dahlheim, due to its strong superstitious-religious determination the *ius fetiale* lacks any kind of moral background. However, his view can be contested because legal formalism and legal ethics are not mutually exclusive components.) In the archaic age, the interstatal relationships of Rome were governed by a body of twenty priests, called the *fetiales*. Their tasks included the contracting of alliances, the *foedus*, the establishment of the conditions of armistices, and the declaration of war, given the fact that the war could only qualify as *bellum pium ac iustum* if it was declared and started according to the rules of the *ius fetiale*. (It is interesting that for the Romans the basic principle of the invulnerability of the envoys was indisputable. Whereas in the case of the Greeks the division of the institution of the *keryx*, enjoying sacred protection and the *presbeis*, invulnerable as a result of a political agreement took place very early, in Rome the *fetialis* and later the other envoys—even if they did not belong to the *fetiales*—enjoyed sacred protection, even in time of war.)

The *foedus*, etymologically related to the expression *fides*—the Roman statal contract implemented observing the required formalities, as opposed to

---

80 Ziegler: *op. cit.* 79.
82 Cic. *leg.* 2, 21; Dion. Hal. 2. 72, 4; Cic. *off.* 1. 36; rep. 2, 21; 3, 35; Varro *ling.* 5, 86. Ziegler: *op. cit.* 100. sqq.
83 Cf. Marci. D. 1, 8, 8. 1. Sanctum autem dictum est a sagminibus: sunt autem sagmina quaedam herba, quas legati populi Romani ferre solent, ne quis eos violaret, sicut legati Graecorum ferunt ea quae vocantur cerycia.
84 Liv. 38, 42, 7; Pomp. D. 50, 7, 18.
85 Walde–Hofmann: *op. cit.* I. 494; Latte: *op. cit.* 126. sqq.
the hospitium, the amicitia, the societas, and the pax does not signify the content of the contract but its form, and its most important element is the ceremonial oath made by the representative of the populus Romanus. The ceremony of the foedus is presented by Livy. According to him the priest, chosen from among the fetiales, who is consecrated pater patratus by reciting the texts selected for the occasion and being touched with a bunch of sacred grass (sagmina) takes the oath after reading out the text of the contract. In the oath he calls Juppiter, the pater patratus of the people making contract with him, and the people themselves to witness that the contract that has been read does not contain any falsity, and that the Roman people will not deviate from this first, and if they did—and here follows the self malediction—then he asks Juppiter to come down on the Roman people the way he is just knocking down the sacrificial pig. Moreover, he should strike even more severely, as he is more powerful than the priest. Then he stabbed the sacrificial animal. Festus recounts a somewhat different formula, according to which the pater patratus, after knocking down the pig with a stone, asks Juppiter to throw him out of his wealth as he is throwing away the stone if he proceeded falsely, but he entreats the god to spare his city. Polybos calls Rome’s first contract with Carthago an agreement per Iovem lapidem, Cicero ranks the per Iovem lapidem oath formula to the ius civile.

Discussing the ius fetiale it should be pointed out that the Romans were the first to interpret war as a legal fact and they created the concept of bellum.
*ius*um*, influential up to the present day.\(^96\) Not all armed conflicts counted as war, *bellum* could only take place between peoples (*populi*), only the enemy possessing an organized state counted as *hostis*. In accordance with this, Cicero can state that only the oath given to the enemy obliges, the one given to robbers does not.\(^97\) We can depart from Livy’s description in the case of the declaration of war as well. On the border of that people’s land from which he demands satisfaction (*rerum repetitio*, or *clarigatio\(^98\)*) the *pater patratus* declares that he presents his demands as an envoy of the Roman people, observing the divine law, and he calls Iuppiter, the borders (*fines*) and the divine law (*fas*) to witness that if he demanded the delivery of the mentioned people or things unrightfully, then Jupiter should not allow him to return to his country. He recites this at the crossing of the border, and with slight alterations to the first person he encounters, and again, when he enters the town, and finally on the main square.\(^99\) If they do not deliver the things asked by him within thirty-three days—Dionysius Halicarnassensis mentions an interval of thirty days\(^100\)—, after calling Iuppiter, Ianus Quirinius, and all the gods witness, he declares that he did not receive what he demanded, and that on returning to Rome, he wishes to deliberate about how they could take revenge. This means that he declares the possibility of war (*testatio*, or *denuntiatio belli*).\(^101\) Arriving in Rome, the envoy presented the case to the Fathers and if the majority decided for *purum piumque duellum*, the *pater patratus* took an iron tipped or fire-hardened spear (*hastam ferratam aut praestam sanguineam*) to the enemy’s border, and there, making reference to the unrightfulness of the refusal of his demand, he declared war and threw the spear onto the enemy’s territory.\(^102\) (Thus the direct *causa* of the war was the enemy people’s unlawful behaviour, the fact that they did not

---


\(^{99}\) Liv. 1, 32, 6–8.

\(^{100}\) Dion. Hal. 2, 72, 8.


\(^{102}\) Liv. 1, 32, 11–14.
deliver the things or people demanded by the Romans. Naturally, there was no need of such declaration of war if the enemy invaded Roman territory, in this case they could immediately and unconditionally begin the counter attack, so the declaration of war implemented by the fetiales had any significance only in the case of offensive warfare, initiated by the Romans. The archaic age certainly knew the institution of personal revenge, but the official declaration of war was only employed if the war was waged by the entire community, the populus, against another people, which was clearly distinguished from armed conflict between different groups of the aristocracy. In the course of its expansion Rome did not always have the opportunity to keep this ritual, therefore, the characteristically Roman formal conservativism chose the following fiction: The pater patratus threw the spear onto a plot of land declared enemy territory near Bellona’s temple and the entire ceremony was performed with relation to this, but the demands towards the enemy were presented by the legati of the senatus, and they were the ones to declare war. (Sometimes they sent the spear to the people on whom they wanted to declare war.) However, the fetiales’s ritual of the declaration of war considerably contributed to the observation of the requirement that the war had to possess some kind of iusta causa, and it is not by chance that Cicero, formulating the theory of the just war under the influence of Stoic philosophy, connects the aequitas belli with the ius fetiale.

The hasta ferrata aut praestuta sanguinea, meaning iron tipped or fire hardened spear, mentioned by Livy, also deserves attention. At the same time, it is not known when the iron-tipped spear was substituted for, or when it accompanied the wooden spear hardened in fire, as The Iron Age goes back to the turn of the 8th and 9th century BC. in Italy. It can be assumed though, that in ritual usage the iron-tipped spear could only take the place of the wooden one when it came to be exclusively used in everyday life. The expression sanguinea

---

104 Ziegler: op. cit. 103.
106 Cf. Fest. 90. Carthasinienses cum bellum vellent, Romam hastam miserunt.
108 Liv. 1, 32, 12.
109 Waele: op. cit. 173. sq.
is particularly problematic: The word itself can be translated as *consecrated in blood* or *coloured with blood*. However, if it is taken for the denomination of the wooden material, it can mean the branch of the cornel tree, the *sanguineae virgae*, which, being hard wood, constituted a perfectly suitable raw material for the spear.\textsuperscript{110} Ammianus Marcellinus mentions in connection with the *fetiales’s* spear that besmearing it with blood played an important role in the course of its manufacturing.\textsuperscript{111} The spear of the *ius sacrum* made of cornel wood counted as *arbor felix*,\textsuperscript{112} but the spear used for the declaration of war was *hasta impura*, i.e. *arbor infelix*, dedicated to the forces of the underworld.\textsuperscript{113} Thus, whether the *fetiales’s* spear was coloured with real blood, or made of blood coloured cornel wood, the original *hasta praeusta sanguinea* was later changed for *hasta ferrata sanguine infecta*.\textsuperscript{114} The *fetialis* ritually predicts the outcome of war at its very beginning because by symbolically taking the enemy territory into possession with the *hasta impura*, dedicated to the gods of the underworld, he delivers the enemy, the *hostis impius*, bereft of the reason for its existence, to the forces of destruction.\textsuperscript{115} (In the light of this, the role of the *evocatio*, performed by the Romans before the attack, by which they intended to lure to Rome the gods of the enemy doomed to destruction becomes perfectly clear.\textsuperscript{116})

The strongly text-centered nature of the *ius fetiale* and the *legis actio sacramento* is sufficiently well-known, we know that whoever missed even one word of the text, lost the case.\textsuperscript{117} Although in the case of the *ius fetiale* we have no *expressis verbis* knowledge of such consequences, it can be rightly assumed that the Romans did not tolerate even the slightest deviation from the text because this would have destroyed the effect of the *carmen*, hence it would have endangered the result of the *bellum iustum*, fought with divine help.\textsuperscript{118} The oath is an indispensable part of the *ius fetiale*. On the one hand the self malediction of the *pater patratus* on the occasion that he presented unrightful demands in the name of the Roman people, on the other hand the calling the gods to witness the lawful procedure of the Romans and the unlawful

\textsuperscript{111} Amm. 19, 2, 6.
\textsuperscript{112} Macr. *Sat.* 3, 20, 2.
\textsuperscript{113} Scholz: *op. cit.* 32.
\textsuperscript{114} Scholz: *op. cit.* 32.
\textsuperscript{115} Latte: *op. cit.* 122; Scholz: *op. cit.* 32.
\textsuperscript{117} Gai. *inst.* 4, 11. 30.
\textsuperscript{118} Albert: *op. cit.* 220.
procedure of the enemy. In the case of the *legis actio* the sacramentum corresponds to this oath.\textsuperscript{119} The oath-like character of the sacramentum is clearly shown by the original meaning of the word itself,\textsuperscript{120} at the same time, it also incorporates the circumstance that the statement of the party taking the oath—e.g. the plaintiff—is true, and accordingly, the statement of his opponent is false. However, if in the end it were proved that the claim of the plaintiff does not stand, then it becomes evident that he committed perjury, i.e. he was performed his own devotio.\textsuperscript{121} (Kaser also suspects that in the beginning the sacramentum was connected to the divine judgement, but in his view this cannot be sufficiently documented for the period from which written sources exist.\textsuperscript{122} It is still a fact that the character of divine judgement can be traced—by way of analogy—also in this part of the *legis actio sacramento*. References to the role played by the oath in the trial can be found not only in literary sources, but in traces, in later legal documents as well.\textsuperscript{123}) It seems a further parallel that both the rerum repetitio and the *legis actio sacramento* is originally aimed at regaining the things unlawfully possessed by the opposing party in a peaceful manner, placing arbitrariness and fight under the control of the state, thus limiting their scope and intensity.\textsuperscript{124} At the same time it is a clear difference that whereas in the case of the *legis actio sacramento* the parties accept the control and decision of a judge recognized by both of them, in the case of the *ius fetiale*, this institution is absent. This is demonstrated by the fact that in the so-called international affairs they could not agree on the competence of legal court—this might be the cause of the absence of the apud iudicem stage of the *ius fetiale* procedure—, it can be rightly assumed though that the Romans found the instance entitled to decide in the conflict of two nations exactly in the higher powers, who were so often called to witness.\textsuperscript{125}

The *ius fetiale* is a clearly religious system of norms and procedures, as this is shown by the constant mentioning of the persons and gods acting in it. Nevertheless, the *legis actio sacramento*, considered to be an institution of the *ius privatum* shows close connection with the *ius sacrum*: In the beginning the *legis actio* was performed in front of the rex, who was present, both in his

\begin{itemize}
\item \textsuperscript{119} Kaser: *Das altrömische ius*. op. cit. 21.
\item \textsuperscript{120} Walde–Hofmann: *op. cit. II*. 459. sqq.; Kaser: *Das altrömische ius*. op. cit. 18.
\item \textsuperscript{121} Albert: *op. cit.* 220.
\item \textsuperscript{122} Kaser, M.: *Das römische Zivilprozeßrecht*. München, 1966. 62.
\item \textsuperscript{124} Kaser: *Das altrömische ius*. *op. cit.* 22.
\item \textsuperscript{125} Albert: *op. cit.* 222.
\end{itemize}
person and his legitimacy, as a representative of the sphere of the sacred. Then the in iure stage of the trial took place in front of the magistratus; then, in concreto, it took place in front of the praetor, who from the point of his jurisdictional responsibilities, was an inheritor of the rex.\textsuperscript{126} The oath, strictly observing the words of the text, was also addressed to the gods, which substantiates the assumption that the legis actio was closely connected to the ius sacrum.\textsuperscript{127} Certain parallels can be detected between the ius fetiale and the Twelve Table Law,\textsuperscript{128} for example the debtor had thirty days to satisfy the demand of the creditor if he admitted his indebtedness, or if the case was settled by legal decision, just like the pater patratus had to wait with the denuntiatio belli for thirty days after he had announced his demands, according to Dionyssius Halicarnassenses.\textsuperscript{129} The reason of both decrees was to facilitate the finding of a peaceful solution of the conflict within this interval. Just like the relevant loci of the Twelve Table Law order the giving into noxa of the person causing damage,\textsuperscript{130} the demands of the ius fetiale also contain the extradition of the person committing a deed injurious to Rome.\textsuperscript{131} The same intention, meant to restrict the uncontrollable arbitrary enforcement of private demands between the citizens of a state, or between different nations and states, trying to prevent the state of bellum omnium contra omnes by placing the solving of the conflict under some kind of commonly accepted higher instance, might have stood at the origins of both the ius fetiale and the legis actio sacramentum.\textsuperscript{132}

IV. It is sufficiently well known that in Homer Zeus decides certain armed conflicts with the help of his scales\textsuperscript{133} by way of the so-called psykhostasia,
and *kerostasia*—this scene can be found with minor modifications in Virgil as well—and it is also known that in certain cases the combatants decide by lot who should start the fight, thus asking for the help of the gods. Naturally, the drawing of lots by *oraculum* was known by the Romans as well. Most often they practiced the version in which the wooden tickets of the persons taking part in the draw were placed in an urn, filled with water, the *sitella*, which was bellied but had a narrow neck, and after reciting certain magic words and shaking the urn, they drew conclusions regarding the divine will from the sinking or the floating on the surface of the *sortes*, of which only one could remain above due to the narrow neck of the urn. A similar procedure can be found in Plautus’s comedy, entitled *Casina*, this being all the more significant as Plautus, though he often worked with Greek samples, had to adapt the scenes of his comedies to Roman thinking and everyday life, otherwise he could not have expected to be succesful. In *Casina* not merely a common *oraculum* is presented but the decision by single combat—leading to the employment of actual violence—of a legal conflict with the help of *oraculum*. This procedure shows a special mixture of the *oraculum* based on divine decision and the archaic *vindicatio*, requiring the employment of *vis*, in that it makes steps towards the repression of violence by way of the *oraculum*, based on the decision of divine forces.

The situation in *Casina* is the following: The Athenian Cleostrata, wife of Lysidamus acquired and brought up the slave girl Casina out of her own fortune. Contradiction arises in connection with the right to dispose over Casina. On the one hand, Lysidamus wants to aquire her for himself and his slave, Olympio, on the other hand, Cleostrata also claims the girl for herself and her slave, Chalinus. On behalf of the husband the *vilicus*, Olympio, on behalf of the wife, the *armiger* Chalinus take part in the actual dispute.

---


135 *Verg.* Aen. 12, 725–727.


137 Cf. *Cic.* *inv.* 1, 18.

138 Cf. *Cic.* *nat.* 1, 106; *Corn.* fr. 1, 13; 14; *Liv.* 25, 3, 1. sqq.


140 Plaut. *Cas.* 47. sqq.
the course of the dispute physical violence takes place between the slaves representing the opposing husband and wife, at the same time, the *oraculum* preceding actual fight also begins. The two *sortes* are placed into the *sitella* and the actual fight is simultaneous with the ceremony. Chalinus is defeated in the *oraculum*, Olympio and his master are the winners, and the dispute is decided in favour of Cleostrata by the employment of a trick only in the second part of the play.\(^{141}\)

At the beginning of the procedure Cleostrata complains that her husband restricts her in her freedom to dispose over her slave, constituting her own property,\(^{142}\) to which her neighbour, Myrrhina reminds her of the rule of Roman matrimonial law, according to which the husband has the right to dispose over his wife’s entire property.\(^{143}\) In the dispute Lysidamus tries to convince his wife to yield to him, but Cleostrata sticks to her claim that she is entitled to provide for and dispose over her slave.\(^{144}\) The married couple agree to entrust two slaves with the fight over Casina, but both do this, hoping in secret that they can force each other’s slaves to renounce at Casina.\(^{145}\) The two slaves appear, and Lysidamus tells Chalinus that he promised Cassina to his slave, Olympio, to which Chalinus responds that Cleostrata promised the girl to him.\(^{146}\) Lysidamus offers to liberate Chalinus if he renounces at Casina, but the slave does not accept.\(^{147}\) Lysidamus calls his wife and orders Chalinus to bring a *sitella* full of water and the sortes belonging to it, and announces that if the negotiations do not yield any result he will entrust the *oraculum* with the decision.\(^{148}\) Meanwhile Cleostrata tries to dissuade Olympio from clinging to Cassina, but he says that he would not change his mind even at Iuppiter’s request.\(^{149}\) There is nothing left to do but turning to the *sortio*, but the *oraculum*, in which the will of the gods concerning the issue is manifested cannot dispense with vis, the actual fight.\(^{150}\) When Chalinus appears with the *sitella* and the sortes, Lysidamus announces that the fight must be fought observing the formal requirements of

---

\(^{141}\) Düll: *op. cit.* 20. sq.

\(^{142}\) Plaut. *Cas.* 149. 189. sq. 193. sqq.

\(^{143}\) Cf. Földi–Hamza: *op. cit.* 256. sqq.

\(^{144}\) Plaut. *Cas.* 248. sqq. 260. sq.

\(^{145}\) Plaut. *Cas.* 269. sqq.

\(^{146}\) Plaut. *Cas.* 288. 289.

\(^{147}\) Plaut. *Cas.* 289. sqq. 293. sqq.

\(^{148}\) Plaut. *Cas.* 295. 298.

\(^{149}\) Plaut. *Cas.* 323.

\(^{150}\) Plaut. *Cas.* 342. sqq. 346.
the procedure, and that he himself, wants to supervise it. However, he makes a final attempt at persuading Cleostrata, but she categorically refuses. So the ceremony begins, and the fact that everything is performed strictly in accordance with the rules receives special emphasis. The sortes are marked with inscriptions and they check that there is no other sors already in the urn, as well as the fact that the two balls are made of the same wood, as the winner of the oraculum will be the one whose sors will remain above in the urn. Then the urn is placed in front of Cleostrata, her task being to shake it and to draw out the sors. The two participants of the oraculum, Olympio and Chalinus pray to the gods to help their case and they accuse the adversary. After the prayers Lysidamus calls on the parties to begin the actual combat, he wishes Olympio good luck, and so does his wife to Chalinus. Olympio asks Lysidamus whether he should hit Chalinus with his fist or with his open palm, to which his master replies that he should proceed the way he wants. Then Olympio, calling in help Iuppiter slaps Chalinus in the face, while Chalinus, calling in help Iuno, hits Olympio with his fist. After the outright violence, Cleostrata has to draw the sors remaining above in the urn, and the parties are asked to cease fighting. Cleostrata draws out Olympio’s sors because that one was above, and announces that Chalinus is the loser, and Lysidamus announces

---

151 Plaut. Cas. 352. 357. 363.
152 Plaut. Cas. 364. sq. 370. sqq. 373.
153 Plaut. Cas. 375. (Lys.) Optumum atque aequissimum istud esse iure iudico.
155 Plaut. Cas. 387. 395.
156 Plaut. Cas. 389. sqq. (Ol.) Taceo: deos quaeso–(Chal.) Ut quidem tu hodie canem et furcam feras. / (Ol.) Mihi ut sortio eveniat–(Chal.) Ut quidem hercle pedibus pendes. / (Ol.) At tu ut oculos emangare ex capite per nasum tuos. (Chal.) Quid times? Paratum oportet esse iam laqueum tibi. / (Ol.) Periisti. 396. (Chal.) Deos quaeso, ut tua sors ex sitella effigerit.
157 Plaut. Cas. 401. sqq. (Lys.) Hoc age sis, Olympio. (Ol.) Si hic litteratus me sinat. / (Lys.) Quod bonum atque fortunatum mihi sit. (Ol.) Ita vero, et mihi. / (Chal.) non. (Ol.) Immo hercle. (Chal.) Immo me hercle. (Cleost.) Hic. vincet, tu vives miser. / (Lys.) Percide os tu illi hodie. Age, ecquid fit? Ne obiexis manum. / (Ol.) Compressan palma an porrecta fero? (Lys.) Age at vis. (Ol.) Em tibi. / (Cleost.) Quid tibi istunc tactio est? (Ol.) Quia Iuppiter iussit meus. / (Cleost.) Feri palma, ut ille, rursum. (Ol.) Perii, pugnis caedor, Iuppiter. / (Lys.) Quid tibi tactio hunc fuit? (Chal.) Quia iussit haec Iuno mea. / (Lys.) Patiundum est, siquidem me vivo mea uxor imperium exhibit. / (Cleost.) Tam haec loqui licere oportet quam isti. (Ol.) Cur omen mihi / viuperat? (Lys.) Malo, Chaline, tibi cavendum censeo. / (Chal.) Temperi, postquam oppugnatum est os.
158 Plaut. Cas. 412.
that the gods supported Olympio, fighting on his behalf. Olympio considers his victory to be a reward for his own, and for his ancestors’ *pietas*. Thus the case was settled with Casina having to marry Olympio, while Cleostrata has to make preparations for the ceremonial feast, which she begins, having accepted the decision of the *oraculum*.

As it becomes evident from the prologue of the play, Plautus modelled his comedy on Diphilus’s play, Kleroumenoi, and—as it is clearly shown by its title—the Greek play is also centred around a kind of sortio, a drawing or casting of lots, which is not in the least surprising taking into account that the oracula involving drawing of lots constituted an integral part of Greek religious thinking and religious practice. Plautus is anyway a master of intermingling Greek elements with Roman everyday life, customs, religion and law, and he explains in the prologue those elements of his play which could be strange for the Roman audience. So he does with the motif of the slaves’ “marriage”, yet he does not consider it necessary to add any explanations to the settling the contradiction arising about the right to dispose over a slave by oraculum and fight, he is content to mention the perfect righteousness and legality of the procedure. (The typically Roman character is corroborated by the reference to the decree of the Twelve Table Law, the repudium.) The fight of the Horatii and the Curiatii, described by Livy can be mentioned as a parallel to the single combat fought under ceremonial circumstances, as well as the form of the interstatal contracts, in the course of which they call Juppiter in help and also as witness, the actual fight being signified by the expression manum conserere. The act of manum conserere can also be encountered in Cicero’s and Gellius’s descriptions of the vindicatio of plots of land. From the comparison of these sources it becomes evident that the employment of the vis,
The actual–later symbolic–violence constituted a substantial part of the legis actio sacramento.  

The ritual described by Plautus must have constituted a certain intermediary stage between the personal fight and the *vindicatio*, as it is known today because in this case the parties agree on the rules of the settlement of the conflict, and they accept the control of a third person. The rules to be observed are mainly religious in character, and seem to be suitable to impede boundless and unrestricted violence. Nevertheless, the *vis* is unquestionably part of the procedure, but the winner in the actual fight is decided by a higher, transcendent power, thus the fight receives the character of ordeal.  

The conditions of the *vindicatio* in *Casina* are given: The right to dispose over the slave girl can be regarded as a kind of property issue, yet the opposing parties—as taking into account the rules of comedy it would not be advisable to put on stage the man and wife, Lysidamus and Cleostrata using violence against each other—are substituted by their slaves in the procedure. However, the fight is always concerning the rights and interests of their owners. First the husband announces his claim for the right to dispose over Casina, then, in response the wife does the same. Then—after trying in vain to persuade the opponent’s slave to renounce at their plans concerning Casina—the couple agree that the decision in the dispute over the right of disposal should be reached in a procedure acceptable for both of them, and they agree to accept the decision as obligatory even if it happened to be unfavourable for them. The accepted procedure is the *oraculum*, calling in help the *sortio* as well, which also included actual fight, as it is clearly shown by the expressions "*necessumst vorsis gladiis*", "*conlatis signis depugnarier*", and "*ire obviam*". To this extent the procedure is analogous with the *vindicatio* described by Gaius, as the employment of *vis*—in the beginning actual, later symbolic—played an important role in this procedure as well. The command...

---

167 Düll: *op. cit.* 29.
168 Düll: *op. cit.* 30.
170 Plaut. *Cas.* 269. sqq.
171 Plaut. *Cas.* 344.
172 Plaut. *Cas.* 352.
173 Plaut. *Cas.* 357.
174 Düll: *op. cit.* 31.
“age” calls for the beginning of the fight,\textsuperscript{175} which ends with the victory of one of the parties, the defeated one is regarded \textit{victus}, or even \textit{mortuus}.\textsuperscript{176} The actual fight--armed, as mentioned by the sources but bare handed in practice\textsuperscript{177}--is an essential part of the \textit{vindicatio}, but the dispute is not decided by the fight itself, but by the divine judgement, the \textit{oraculum}, serving as the frame or background of the fight, somehow involving it into the mechanism of decision. Numerous parallels can be observed between the \textit{vindicatio} in Plautus and the \textit{legis actio sacramento in rem}, known from Gaius’s \textit{Institutiones}. The parties fight with the same weapons, and they recite the \textit{verba sollemnia} which calls the divinity in help including an oath as well, together with the symbolic enactment of violence with the help of the \textit{festuca}.\textsuperscript{178}

At the end of this--considering the significance of the issue--brief study, not intended to be exhaustive, only wishing to highlight some aspects and associations, the following conclusions can be drawn: In our view, the opposing theories searching for the origin of the \textit{legis actio sacramento in rem} either in personal fight or in the religious sphere can be made to augment each other concluding in the same direction, thus being integrated into unified theory. The sacred element (by which not only the religious world picture naming divinities is understood, but also the magic thinking operating with numinuous forces) can be clearly traced both in the requirement of the verbatim recital of the oath, the \textit{sacramentum} and the \textit{carmen}. The motif of the fight appears both in the etymology of the word \textit{vindicatio} and in the employment of the spear. However, it is precisely the \textit{hasta} that carries an religious extra semantic load in Roman imagination, (this becomes evident both from its role played in Mars’s cult as well as in the declaration of war constituting part of the \textit{ius sacrum}) which cannot be disregarded in the case of archaic civil law trial. Adapting to the rules of the genre, Plautus presents a quasi-property trial, the result of which is decided by restricted and controlled personal fight, employing the drawing of lots, thus calling for divine judgement. Based on all these it can be rightly assumed that originally the \textit{ordalium}, fought with weapons, conducted the \textit{legis actio sacramento in rem} to its form known today.

\textsuperscript{175} Plaut. \textit{Cas.} 401. 405. 412.
\textsuperscript{176} Plaut. \textit{Cas.} 407. 427.
\textsuperscript{177} Plaut. \textit{Cas.} 344. 352. 405.
\textsuperscript{178} Düll: \textit{op. cit.} 33. sq.