

THE TEXT OF CHAPTER 30 OF THE LEX RHODIA NAUTICA \*

The Greek text of the second part of chapter 30 of the Lex Rhodia Nautica as edited by Ashburner<sup>1</sup> on the basis of a large number of manuscripts<sup>2</sup> collated by him, is not completely satisfactory. This chapter runs as follows:

λ' Ἐὰν ὁ ἔμπορος φορτώσας τὸ πλοῖον, χρυσίον δὲ  
 ἔσται μετ' αὐτοῦ, καὶ τι τῶν κατὰ θάλασσαν κινδύνων  
 συμβῆῖ παθεῖν τὸ πλοῖον καὶ ὁ φόρτος ἀπόληται καὶ  
 τὸ πλοῖον διαλυθῆῖ, τὰ ἐκ τοῦ πλοίου σωζόμενα καὶ τοῦ  
 φόρτου εἰς συμβολήν ἐρχέσθωσαν, τὸ δὲ χρυσίον τοῦ  
 5 ἔμπόρου ἐκκομιζέτω μεθ' ἑαυτοῦ, δεκάτας δὲ ἀποδιδότω.  
 ἐὰν δὲ μὴ τι τῶν σκευῶν τοῦ πλοίου κατασχῶν ἐσώθῃ,  
 τὰ ἡμίναυλα ἀπὸ τῶν ἐγγράφων παρεχέτω· εἰ δὲ τι  
 τῶν σκευῶν τοῦ πλοίου κατασχῶν ἐσώθῃ, πέμπτας  
 10 ἐπιφερέτω.

In the *apparatus criticus* of verses 5-10, to which special attention will be paid in this article, he notes<sup>3</sup>:

5 φορτίου Q συμβουλὴν C 6 ἐκκομιζέτω DJOPX] ἐγκομιζέτω A: ἐκκομιζέσθω  
 ELR ἐγκομιζέσθω M: ἐγκομιζεῖν CQ εἰ ἐκομίσατω BKS εἰ ἐκομήσατω G μεθ'  
 ἑαυτοῦ] μετ' αὐτοῦ E αὐτὸ G δεκάτας δὲ] δεκάτας BGS; δεκα -τίας supr ras. K ἀ-  
 ποδότω G 7 ἐὰν δὲ μὴ M ἐὰν δὲ μὴ] Principium novi cap. apud O (λα') et apud R  
 (λβ') ἐὰν] εἰ K δὲ] om P καὶ κατασχῶν S μετασχῶν P 8 τὰ ἡμίναυλα ... ἐσώ-  
 θῃ] om EMΥ ἡμίναυλα L ἐχέτω J παρεχέτωσαν X εἰ δὲ τι ... ἐπιφερέτω] om CQX

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1. W. Ashburner, *The Rhodian Sea-law*, Oxford 1909, p. 28-29.

2. *Ibid.*, p. xvi-xxxii.

3. A=Ambrosianus F 106 sup. B=Vat. gr. 2075=Basilianus 114. C=Vat. gr. 845. D=Vat. gr. 844. E=Vat. gr. 847. G=Palat. gr. 371. J=Laur. Plut. IX 8 and Lips. gr. 46. K=Laur. Plut. LXXX 8. L=Laud. gr. 39. M=Marc. gr. 172. O=Marc.

Ashburner<sup>1</sup> gives the following translation :

«30. If the merchant loads the ship and there is gold with him and the ship happens to suffer one of the maritime risks and the cargo is lost and the ship goes to pieces, let what is saved from the ship and the cargo come to contribution, but let the merchant take his gold with him on paying a tenth. If he was saved without clinging to any of the ship's spars, let him pay the half-fare in accordance with the contract; if he had to cling for safety to one of the spars, let him pay one-fifth».

He then correctly observes : «ἐάν δὲ μὴ κτλ. : This passage is obscurely worded, but the sense is fairly clear. Whether the merchant was saved by clinging to a spar or not, he must pay the half-freight; but if he was saved without clinging to one, he must pay ten per cent of the value of his gold. If he had to cling to one to be saved, he must pay twenty per cent.», and on page cclxiii : «the merchant who is allowed to get to shore on a spar pays just twice the proportion of the merchant who reaches the shore unaided». But this observation is neither supported by his text, nor by his translation of the second part of this chapter, where the contents appear rather confused. When we translate, as Ashburner does, «if he was saved without clinging to any of the ship's spars, let him pay the half-fare in accordance with the contract», we are not told, whether the amount of this half-fare is larger or smaller than one fifth of his gold, which he is obliged to pay if, in order to reach safety, he had clung to a part of the ship's equipment. If this amount is larger than the one fifth of his saved gold — which is possible — then it is not logical, that he should pay more in the first case and less in the second case, where by using the ship's equipment he had reached safety.

This confusion is due to incorrect punctuation and a difficult word order in the text quoted :

a) The full stop after δεκάτας δὲ ἀποδιδότω is misplaced, and its right position is, in our opinion, before it, that is after μεθ' ἑαυτοῦ. Now the δεκάτας δὲ ἀποδιδότω belongs to ἐάν δὲ μὴ τι τῶν σκευῶν τοῦ πλοίου κατασχῶν ἐσώθη. The δὲ after ἐάν is of course superfluous — Par. gr. 1367 omits it — but this is of no great importance, because in the whole text of the Lex Rhodia, as well as in other medieval Greek texts, not only δέ, but

gr. 181. P=Par. gr. 1367. Q=Par. gr. 1384. R=Roe 18. S=Ambr. Q 25 sup. X=Vind. iur. gr. 7. Y=Ambr. Q 50 sup.

1. Ashburner, *op. cit.*, p. 107.

many particles are not used in what we would regard as the correct way.

b) The sentence τὰ ἡμίναυλα ἀπὸ τῶν ἐγγράφων παρεχέτω seems out of place. The εἰ δέ τι τῶν σκευῶν τοῦ πλοίου κατασχὼν ἐσώθη ... must come immediately after ἐσώθη with a semi colon between them. Now the merchant pays one tenth when he does not use the ship's spars and one fifth when he does and therefore he pays less in the first case than in the second.

In order to find out whether these two difficulties have been solved satisfactory elsewhere, let us examine:

- a) Other Byzantine law dealing with maritime matters,
- b) The previous editions of the Lex Rhodia,
- c) The manuscripts containing this law.

Book LIII of the *Basilica* deals mainly with maritime law, some aspects of which are discussed in the Lex Rhodia. Chapter 30 of the Lex Rhodia is not present in this book of the *Basilica*<sup>1</sup>.

Some chapters of the Lex Rhodia are to be found in the *Synopsis Maior Basilicorum* under the letter N. Chapter 30 here corresponds to c. 35 of the Lex Rhodia, while c. 30 of the latter is missing.

In the *Synopsis Minor* under the letter N this chapter is missing as well.

Chapter 30 of the title XL of the *Ecloga ad Procheiron* corresponds to chapter 28 of the Lex Rhodia; chapter 30 of the Lex Rhodia here too is omitted.

We see thus, that in no other Byzantine maritime law can we find the solution for c. 30.

As we believe that the confusion in this chapter is partly a result of incorrect punctuation, we shall go through the editions of the Lex Rhodia to see where the various scholars have placed the full stop.

The Lex Rhodia was first published by Simon Schardius<sup>2</sup> in 1561.

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1. Some scholars have published the Lex Rhodia as title 8 of book LIII of the *Basilica*, but the question as to whether the Lex Rhodia was an original part of this book is still open.

2. De varia temporum in iure civili observatione, Eustathii ... libellus. Item Leges Rhodiorum navales, militares, et georgicae Iustiniani: quarum priore ambae nunc primum, georgicae autem multo emendatiores et auctiores quam antea, iuxta exemplar D. Antonii Augustini eduntur. Opera et studio Simonis Schardii, Basiliae (1561).

According to Zachariä<sup>1</sup>, he probably used the manuscripts Laur. IX 8, Vat. gr. 847, 1168 and 1185. The text of c. 30 of Schardius (p. 252-253) runs as follows:

Ἐάν ὁ ἔμπορος φορτώσει τὸ πλοῖον, ἔχει δὲ χρυσίον μετ' αὐτοῦ, καί τι τῶν κατὰ θάλασσαν κινδύνων συμβῆ παθεῖν τὸ πλοῖον, καὶ ὁ φόρτος ἀπολεῖται, καὶ τὸ πλοῖον διαλυθῆ, τὰ ἐκ τοῦ πλοίου σωζόμενα καὶ τοῦ φόρτου εἰς συμβολὴν ἐρχέσθωσαν: τὸ δὲ χρυσίον τοῦ ἐμπόρου ὁ αὐτὸς ἐκκομιζέτω μεθ' αὐτοῦ, δεκάτας δὲ ἀποδιδότω. ἔάν δὲ μή τι τῶν σκευῶν τοῦ πλοίου κατασχῶν ἐσώθῃ, τὰ ἡμίναυλα ἀπὸ τῶν ἐγγράφων παρεχέτω. εἰ δὲ τι τῶν σκευῶν τοῦ πλοίου κατασχῶν ἐσώθῃ, πέμπτας ἐπιφερέτω.

Schardius gives the following Latin translation of the second part of this chapter: «... pecuniam autem quam apud se mercator retinuit, decimis solutis ipse auferto. Ac si nullis navigii armamentis apprehensus evaserit, dimidium vecturae in tabulis conventionis comprehensae, persolvito. Si vero apprehensione armamentorum evaserit, quintas dependito». In the first edition the full stop had already been placed after the δεκάτας δὲ ἀποδιδότω and connected the ἔάν δὲ μή τι τῶν σκευῶν τοῦ πλοίου κατασχῶν ἐσώθῃ to the τὰ ἡμίναυλα.

Leunclavius<sup>2</sup> was the next to publish the Lex Rhodia in 1569. Chapter 30 is given on page 274. There are a few slight differences in comparison to Schardius' text: S φορτώσει, L φορτώση; S ἔχει, L ἔχη; S μετ' αὐτοῦ, L μεθ' αὐτοῦ; S ὁ φόρτος ἀπολεῖται; L ὁ πόρτος ἀπολήται. The Latin translation of the second part runs: «... aurum vero suum mercator, solutis decimis, secum auferat. Ac si nullo navis instrumento praehenso salvus evaserit; nulum dimidium ex instrumentorum formula praestet. Sin evaserit arrepto quodam navis instrumento, quintas inferat».

Fabrotus<sup>3</sup> in 1647 inserts the Lex Rhodia as title 8 of the *Basilica* LIII. He gives the same text and translation of c. 30 (p. 665) as Leunclavius, correcting μεθ' αὐτοῦ to μετ' αὐτοῦ and ὁ πόρτος ἀπολήται to ὁ φόρτος ἀπόληται.

Vinnius<sup>4</sup> first edited the Lex Rhodia in 1647. His reading of c. 30

1. K. E. Zachariä von Lingenthal, *Geschichte des griechisch-römischen Rechts*, Berlin 1892, p. 314.

2. Iohannes Leunclavius, *Iuris Graeco-Romani tam canonici quam civilis* tomus duo, Francofurti 1596, Vol. II, p. 265-277.

3. C. A. Fabrotus, *Τῶν Βασιλικῶν τεύχος στ'. Βασιλικῶν Tomus VI*, Parisiis 1647, p. 651-671.

4. V. Cl. Petri Peckii In Titt. Dig. & Cod. ad Rem Nauticam Pertinentes, Com-

(p. 417) is the same as that of Fabrotus, but with  $\delta$  φόρτος ἀπόληται changed into  $\delta$  φόρτος ἀπίληται. The ἀπίληται was corrected to ἀπόληται when his work was republished in 1668<sup>1</sup> (p. 29-30). His Latin translation is the same in both editions, and differs from that of Fabrotus and Leunclavius in the following way: L-F Ac si nullo, V At si nullo; L-F salvus, V solus.

In 1828 Pardessus<sup>2</sup> published the same c. 30 (p. 252) as Fabrotus and Vinnius had published. In his *apparatus criticus* he gives the readings of a certain manuscript of Nic. Heinsius and of Par. gr. 1356, 1367, 1391 and 1720<sup>3</sup>. The translation of the second part of this chapter is slightly different of that of the previous editors: «... aurum vero suum mercator, solutis decimis, secum auferat. Si nullo navis armamento arrepto solus evaserit, naulum dimidium ex instrumentorum formula praestet; sin evaserit arrepto quodam navis armamento, quintas adjiciat». He furthermore notes, that as concerns the second part of the chapter: «on fixe au dixième la contribution de l'or, qui, dans le droit romain, eût contribué en raison de sa valeur. On fait payer un demi-fret à celui que s'est sauvé sans le secours d'aucun des agrès du navire, et ce demi-fret augmente d'un cinquième s'il s'est servi de quelques agrès: ce qui paroît contraire au 56 du fr. 15 du titre II du livre XIV du Digest, Locati, conducti». In addition to the misunderstanding of the previous scholars concerning the full stop, he thinks that the πέμπτας belongs to the ἡμίναυλα. He lets the merchant pay the half-freight plus one fifth of it when he makes use of the ship's equipment. The δεκάτας, as well as the πέμπτας, belongs to the χρυσίον and not to the ἡμίναυλα. The half-freight — as we shall see and as Ashburner has already noted — will be paid by the merchant no matter how he was saved.

In 1850 Heimbach<sup>4</sup> published the Lex Rhodia as title 8 of the *Ba-*

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mentarii. Quibus nunc accedunt Notae cum ampla dote variarum circa rem Navalem observationum Beneficio Arnoldi Vinnii, J. C. Item Ius Navale Rhodiorum, Gr-Lat. Indexque geminus. Lugduni Batavorum, anno 1647, p. 407-423.

1. V. Cl. Pæckii ... Item Leges Navales & Jus Navale Rhodiorum Gr. Lat. Quod uberius quam antea, nova hac editione, Summariis & Notis illustrarum addidit & edidit Johannes Laurentius, J.C., Amstelodami 1668, p. 1-38.

2. J.M. Pardessus, *Collection de lois maritimes*, tome I, Paris 1828, p. 209-260.

3. Ashburner, *op. cit.* (note 1), p. xlii-xliv. The manuscript of Heinsius is possibly the codex Lipsiensis gr. 46.

4. Basilicorum Libri LX, Post Anibalidis Fabroti curas ope dodd. Mss. a G. E. Heimbachio aliisqui collatorum integriores cum scholiis edidit, editos denuo recen-

*silica* LIII. The text of c. 30 (p. 125) is that of Fabrotus and the translation that of Pardessus.

In 1865 Zachariä<sup>1</sup> published the Lex Rhodia as title 40 of the *Eclo-ga ad Procheiron*. According to Ashburner<sup>2</sup> he based his text on a late and bad manuscript (Par. gr. 1720). As we have already noted, c. 30 of the Lex Rhodia is omitted in this law.

In 1897 Ferrini and Mercati<sup>3</sup> edited the Lex Rhodia from the *textus inferior* of the codex Ambrosianus F 106 sup. written during the tenth century and consequently one of the oldest manuscripts containing this law. In 1906 Ashburner<sup>4</sup> was not able to read this codex and had to rely on the publication of Ferrini and Mercati. The text of c. 30 published by Ashburner and that of Ferrini and Mercati (p. 116-117) show a great similarity; there are only two differences: verse 3, A ὁ φόρτος, FM φορτώσας verse 6, A ἐκκομιζέτω, FM ἐγκομιζέτω.

The Latin translation of the second part of c. 30 of Ferrini and Mercati runs as follows: «... aurum vero emptoris ipse secum tollat, decimas autem solvat. quod si nihil ex navis mercibus retinens servatus sit, dimidium nauli praebeat secundum scripta: si vero quid ex mercibus retinens servatus sit, quintas partes contribuat».

In 1905 Dareste<sup>5</sup> published the Lex Rhodia from the codex Ambrosianus M68 sup. The text of c. 30 reads (p. 20):

Ἐὰν ὁ φορτώσας τὸ πλοῖον ἔμπορος ἔχη μετ' αὐτοῦ χρυσίον καὶ τι τῶν κατὰ θάλασσαν κινδύων συμβῆ παθεῖν τὸ πλοῖον καὶ ὁ φόρτος ἀπόληται καὶ τὸ πλοῖον διαλυθῆ, τὰ ἐκ τοῦ πλοίου σωζόμενα καὶ τοῦ φόρτουεῖς συμβολὴν ἐρχέσθωσαν, τὸ δὲ χρυσίον τοῦ ἐμπόρου αὐτὸς ἐκκομιζέσθω. ἐὰν δὲ μή τι τῶν σκευῶν τοῦ πλοίου κατασχὼν ἐσώθῃ, τὰ ἡμίναυλα ἀπαιτῶν ἐγγράφων προσελθόντων πέμπτας ἐπιφερέτω.

He gives the following translation of the second part of this chapter: «... Quant à l'or, le marchand l'emportera sur lui. S'il a été sauvé sans le secours de quelque agrès du navire, il payera la moitié du molis porté

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suit, perditos restituit, translationem latinam et adnotationem criticam adiecit D.C.G.E. Heimbach, Tom. V. Lib. XLIX-LX continens, Lipsiae 1850, p. 119-127.

1. K. E. Zachariä, *Jus Graeco-Romanum*, Pars IV, Lipsiae 1865, p. 162-170.

2. Ashburner, *op. cit.* (note 1), p. xliv.

3. *Basilicorum libri LX*, vol. VIII, Editionis Basilicorum Heimbachianae Supplementum alterum, reliquias librorum ineditorum ex libro rescripto Ambrosiano, ediderunt E.C. Ferrini, J. Mercati, Lipsiae 1897, p. 108-120.

4. Ashburner, *op. cit.* (note 1), p. xvii.

5. M. R. Dareste, «La Lex Rhodia», *Revue de Philologie de littérature et d'histoire anciennes*, N.S., 29, 1905, 1-29.

au contrat. Si au contraire, il s'est aidé de quelque agrès du navire, il payera le cinquième». On this chapter he notes: «Si le merchant s'est sauvé avec de l'or sur lui, dans un cas de perte générale il paiera 1/10, plus une moitié ou un cinquième du fret, suivant qu'il s'est ou non servi des agrès pour se sauver».

His comment that in the case of general loss the merchant will pay a tenth of his gold plus the half of the freight if he is saved using the ship's equipment, or a fifth of the freight if he is saved without using them, does not correspond to his translation, in which the opposite actually happens. In addition, the one tenth is neither mentioned in his text nor in his translation.

Ashburner published his edition in 1909. Perugi<sup>1</sup>, in his edition of 1923, gives for c. 30 (p. 76) the same text as Ashburner but he places a comma instead of a full stop after δεκάτας δὲ ἀποδιδότω.

The Lex Rhodia as part of the *Basílica* LIII edited by H. J. Scheltema en N. van der Wal<sup>2</sup> is now being published.

From this examination of the previous editions we learn, that Schardius was the first editor to misplace the full stop after the δεκάτας δὲ ἀποδιδότω. All other scholars followed his example, which resulted in the various illogical translations and interpretations of this chapter.

As to the position of τὰ ἡμίναυλα ἀπὸ τῶν ἐγγράφων παρεχέτω, we found that all editors had put this sentence in the same place, viz. after the first ἐσώθη. Furthermore, the manuscripts EMΥ used by Ashburner, as well as Vossianus gr. F 19 of the Leiden University—the latter is not used by Ashburner—omit the τὰ ἡμίναυλα ... ἐσώθη. This is obviously due to negligence on the part of the scribes, who placed the πέμπτας ἐπιφερέτω after the first ἐσώθη instead of placing it after the second ἐσώθη.

The manuscripts CQX omit εἰ δέ τι ... ἐπιφερέτω. By this the chapter remains unfinished and does not inform us what the merchant must pay if saved by clinging to the ship's equipment.

Yet the presence of the τὰ ἡμίναυλα ἀπὸ τῶν ἐγγράφων παρεχέτω in this chapter is not surprising. From c. 27 we learn that the captain retains the half-freight, if evidence is given that the ship was lost in a

1. G.L. Perugi, «La legge navale dei Rodi», in: Collegium codicibus rescriptis evulgandis. Instituto Ferrini de palimpsesti, *Memorie*, vol. I, Roma 1923.

2. *Basílicorum libri LX*, Series A, Textus, ed. H.J. Scheltema et N. van der Wal, Groningen—'s-Gravenhage 1955.

storm. In c. 32 we see that the merchant does not have the right to demand the return of the half-freight, if a sea disaster takes place while the ship is on her way to the loading port. Similarly in c. 30, the merchant must pay the half-freight whether saved by the ship's equipment or not.

We may therefore believe, that this sentence has always existed in this chapter. But its original place was possibly either before the δεκάτας δὲ ἐπιφερέτω or at the end after πέμπτας ἐπιφερέτω. We regard the latter as the more probable of the two cases. In the former case the δεκάτας would be placed closer to the ἡμίναυλα than to the χρυσίον and it would not be clear whether it belongs to the ἡμίναυλα or to the χρυσίον. We have already seen that Pardessus and Dareste wrongly assign the πέμπτας to the ἡμίναυλα and not to the χρυσίον because this word is closer to the ἡμίναυλα. Placing the sentence in question at the end of the chapter we avoid this problem and the δεκάτας as well the πέμπτας belong to the χρυσίον as they should.

On the other hand, we prefer to respect the tradition of the manuscripts, which actually does not support the suggestion to move the sentence τὰ ἡμίναυλα ... παρεχέτω. All manuscripts if they include the whole c. 30, place this sentence between the first ἐσώθη and εἰ δέ τι.

We have seen that up to the present day the only critic, who sensed the real meaning of the second part of this chapter was Ashburner, but he did not correct his text and translation (see the first page of this article).

We, for our part, propose the following solutions to the problems at issue:

- a) A full stop should be placed after μεθ' ἑαυτοῦ instead of after ἀποδιδότω.
- b) A semicolon should be placed after the first ἐσώθη, and
- c) The sentence τὰ ἡμίναυλα ... παρεχέτω should be placed in parentheses.

Thus, chapter 30 would run:

λ' Ἐὰν ὁ ἔμπορος φορτώσας τὸ πλοῖον χρυσίον  
 ἔχη μετ' αὐτοῦ<sup>1</sup> καὶ τι τῶν κατὰ θάλασσαν κινδύνων  
 συμβῆ παθεῖν τὸ πλοῖον καὶ ὁ φόρτος ἀπόληται καὶ  
 τὸ πλοῖον διαλυθῆ, τὰ ἐκ τοῦ πλοίου σωζόμενα καὶ τοῦ  
 φόρτου εἰς συμβολὴν ἐρχέσθωσαν, τὸ δὲ χρυσίον τοῦ

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1. χρυσίον ἔχει μετ' αὐτοῦ: J. The beginning of this chapter is a problem in itself, but the sense of it is clear.



ἐμπόρου ἐκκομιζέτω μεθ' ἑαυτοῦ. Δεκάτας δὲ ἀποδιδότω,  
 ἐὰν [δὲ] μή τι τῶν σκευῶν τοῦ πλοίου κατασχὼν ἐσώθῃ·  
 — τὰ ἡμίναυλα ἀπὸ τῶν ἐγγράφων παρεχέτω — εἰ δέ τι  
 τῶν σκευῶν τοῦ πλοίου κατασχὼν ἐσώθῃ, πέμπτας ἐπιφερέτω.

the translation of which would then read: «30. If the merchant who loads the ship has gold with him and the ship happens to suffer one of the maritime risks and the cargo is lost and the ship is broken into pieces, let what is saved from the ship and the cargo come to contribution, but let the merchant take his gold with him. Let him pay a tenth if he was saved without clinging to any of the ship's equipment;—let him pay the half-freight according to the contract—but if he was saved by clinging to any of the ship's equipment, let him pay a fifth».

Leiden

I. SPATHARAKIS