

EVIDENCE IN ATHENIAN COURTS

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Evidence in Athenian Courts by Robert J. Bonner

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ROBERT J. BONNER

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ATHENIAN COURTS**

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EVIDENCE
IN
ATHENIAN COURTS

BY
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PREFACE

No complete work on the subject of Evidence in Athenian courts has appeared since the admirable treatise of Meier and Schoemann, *Der attische Process*. Monographs, dissertations, and articles have been written on special points, such as oaths, slaves' evidence, perjury, and arbitrators; but these for the most part have been considered by Lipsius in his careful revision of Meier and Schoemann's work. Aristotle's *Constitution of Athens* has added something to our knowledge of the subject.¹ But neither the new material found in Aristotle nor that furnished by recently discovered epigraphical sources would be sufficient justification for a new discussion of a subject on which the labors of such competent scholars as Heffter, Platner, Meier, Schoemann, and Lipsius have been lavished. A few years ago, M. Beauchet,² while expressing admiration for *Der attische Process*, signified his intention of treating in a future work the subject of procedure, including evidence, and the constitution of the courts. Beauchet's reason for wishing to undertake the work appears to be his desire to round out his history of Athenian private law. And doubtless his method of treatment and his thorough knowledge of the science of law would enable him to do for these branches of Attic law what his own labors and those of Thonissen have already done for civil and criminal law.³

It was with no thought of attempting to anticipate M. Beauchet⁴ that I undertook this work, for I doubt not that my point of view will be as fundamentally different from his as it is from that of the German writers on the subject. I have endeavored in the following pages to deal with the whole subject of evidence from the standpoint of English law, which, though it differs so widely at almost every point from the Athenian system, is yet admirably suited for the purpose, as it is the most perfectly rational system of rules ever devised for ascertaining the truth about matters in dispute. By the use of its divisions and categories I have been able to observe and classify considerable evidentiary matter in the speeches of the

¹ This material has, with one trifling exception (p. 44), already been noticed in its proper connection in these special treatises.

² Beauchet, *Histoire du droit privé des Athéniens* p. I.

³ Cf. Dareste, *Nouvelles études d'histoire du droit*, pp. 58 f.

⁴ It was not until I had almost completed my work that I became aware of M. Beauchet's intention.

Attic Orators which has been passed over in the purely philological works. I am well aware that many of the classifications employed were entirely unknown to the Athenian Orators, who concerned themselves but little about the real character of the evidence they produced. I need mention only Real and Expert Evidence, and the several subdivisions under Hearsay Evidence, as examples in point.

This plan has naturally involved the use of English legal terminology to translate the technical terms of Attic law—a practice which has the sanction of Charles R. Kennedy, a competent English lawyer, and of Dr. Sandys, an equally competent philologist. It is true that these equivalents are not always exact. Indeed, exact parallels are extremely rare. But the gain in vividness of conception seems to outweigh any possible loss of accuracy. A demurrer is not the same as a *παρεγραφή*, but it occupies practically the same place in our legal system as *παρεγραφή* occupied in the Athenian. And, in the same way, a prosecution for perjury differs as widely as possible from a *δίκη ψευδομαρτυρίας*, but both are intended to achieve the same object, the prevention of false evidence. Frequent comparisons with the provisions of English law have been introduced for the purposes of illustration. It is hoped, too, that this feature will help the reader to appreciate more clearly both the excellencies and the shortcomings of the Athenian system.

The subject suggested itself in a course on the Attic Orators given by Professor Paul Shorey, head of the Greek Department of the University of Chicago; and throughout the preparation of the work I have constantly availed myself of his guidance and assistance, which, owing to his practical knowledge of Anglo-American law, have proved extremely valuable in ways too numerous to mention. To Professor Whittier, of the Law School of the University of Chicago, I am indebted for a number of suggestions. I wish to express my appreciation of the assistance rendered me by Professor Edward Capps, of the Greek Department of the University of Chicago. I subjoin a list of the books and monographs from which I have derived assistance. But to no single work do I owe so much as to Lipsius' revised edition of Meier and Schoemann's *Attische Process*, of which I have made constant use. And my debt has perhaps been greatest in those instances in which I have been unable to accept their conclusions.

R. J. BONNER.

THE UNIVERSITY OF CHICAGO,
April, 1905.

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TABLE OF CONTENTS

	PAGE
CHAPTER I. INTRODUCTION	11
CHAPTER II. IRRELEVANT EVIDENCE	14
Meaning of irrelevancy—Reasons for exclusion—How excluded—Exceptions—When necessary to prove motive or malice—In cases of <i>παρορκία</i> and in perjury trials where the whole case is discussed—Proof that the speaker is not a sycophant—Character evidence—Oracles and signs from the gods.	
CHAPTER III. HEARSAY EVIDENCE (<i>ἀεὶς παρρησίας</i>)	20
The reason for prohibition—Inadequate means for excluding—General exceptions in the case of the death of the original witness.	
<i>Ante-mortem statements or dying declarations</i> —Oral and written—The dying slave in Antiphon's first Tetralogy.	
<i>Declarations about pedigree or matters relating to family history</i> —The person making the declaration need not be a competent witness—Inscriptions on tombstones, place of burial, and family conduct as hearsay evidence.	
<i>Entries in account-books, or any papers left by a deceased person.</i>	
<i>Statements of poets and other illustrious men.</i>	
Exceptions where the original witness was still alive.	
<i>Admissions of parties and others.</i>	
CHAPTER IV. EXTRAJUDICIAL DEPOSITIONS (<i>ἐπαγορεύματα</i>)	25
Accepted when the witness was ill or abroad—Both deposing and attesting witnesses liable for perjury—Usually written—Differentiated from hearsay.	
CHAPTER V. COMPETENCY OF WITNESSES	27
Who were competent witnesses—English parallels—Special rule of competency before the Areopagus.	
<i>Incompetent witnesses</i> —	
Parties interested in the suit—Did interest in a suit render one incompetent?	
—A party could make a <i>ἐπαγορεύματα</i> in his own behalf—Confessions of parties—A party in criminal actions might become informer—Classification of evidentiary matter found in speeches—Matters that might be proved by torture of slaves, if the challenge had been accepted—Events that happened subsequently to arbitration—Appeals to knowledge of jurors when nothing was known to them—An exceptional case.	
Women—In arbitrations—Her representatives could take a <i>ἐπαγορεύματα</i> —Her evidentiary oath was received—Her declarations were received after her decease—As an informer—Appearance in court to arouse sympathy.	
Children—Might take evidentiary oath.	
Slaves—Might become informers—Freedman could give evidence—Could slaves be witnesses in murder trials?	