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Miscellanea papirologica

The Journal of Juristic Papyrology 1, 13-40

1946

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MISCELLANEA PAPYROLOGICA

I

P. MICH. INV. 4703 AND DOTIS DICTIO IN ROMAN LAW

This Latin papyrus has been already twice edited and extensively commented on: first by Henry A. Sanders, *A Soldier's Marriage Certificate*, *Proc. Amer. Philos. Society*, vol. LXXXI, 1939, pp. 581ff., and two years later, in a revised edition by Robert O. Fink, *The Sponsalia of a Classarius, a Reinterpretation of P. Mich. Inv. 4703*, *Trans. Amer. Philol. Ass.*, vol. LXXII, 1941, pp. 109ff. Both authors dealt principally with the question what kind of contract is embodied in this mutilated papyrus, preserved only in its first half and even there with considerable gaps, but they arrived at very different results. While the first author saw in it a marriage contract, the latter qualified it as a betrothal agreement. Neither of them, however, approached the question what this papyrus, not unimportant in spite of its bad conditions, does contribute to our knowledge of the so-called *dotis dictio*, the Roman form of constitution of a dowry. In this regard the few lines of our papyrus can be exploited with profit, and therefore, some remarks on this point may not be superfluous, all the more so, that they will lead to another solution of the problem examined so thoroughly in the instructive articles mentioned heretofore.

The *dotis dictio*¹ was an oral promise of a dowry invested in *certa ac sollemnia verba*. It was doubtlessly older than the *promissio dotis* which was also an oral promise of a dowry,

¹ Since my study on the "*Dotis Dictio in Roman Law*," published 1910 in the Transactions (*Rozprawy*) of the storico-philosophical Class of the Polish Academy of Sciences in Krakow, v. LIII, pp. 71-204—an abstract from the Polish original appeared in the *Bulletin de l'Académie des Sciences de Cracovie*, April 1909, pp. 75-97—no monograph has been written on the subject. A study prepared by S. Riccobono (see *Mélanges Cornil* II, 1926, p. 308), has not yet appeared, if I am well informed. D. Daube's article in *Juridical Review* (Edinburgh) v. LI, 1939, p. 11ff. deals only with one particular species of the *dictio* and its origin.—For general information text-books of Roman law may suffice.

but in the form of a *stipulatio*. The *dictio* differed from the *stipulatio* in that it was a unilateral obligatory declaration by the person who established the dowry and was not preceded by a question of the person to whom the dowry had to be promised.

Direct sources referring to the *dictio* are very scarce since it was eliminated from Justinian's codification after having lost its actuality in consequence of a constitution by Theodosius II, C.Th. III, 13, 4 = C.Just. V, 11, 6 (a. 428 A.D.) which had stated that the validity of a dowry promise did no more depend upon the use of a solemn, prescribed oral formula. Therefore all classical mentions of the *dictio dotis* were cancelled by Justinian's compilers and substituted by *promissio* or *pollicitatio dotis*. Consequently genuine mentions of *dictio* are found only in some older legal sources beyond the Corpus Iuris, and in a few literary texts, as in Plautus, Terence, Cicero, Martial, Apuleius, and others.

In view of this scarcity of genuine and authentic references the discovery of a new, practical example of *dictio*, preserved in a written document, is a welcome enrichment of our sources and merits therefore our particular attention all the more so, that it is the only instance of *dictio* in the papyri.

We are quoting below only those parts of the text which refer directly to the *dictio* and omit other indications at present not important to our remarks, as the description of the persons involved, the sons' names, etc.

(1) *Demetria* — (3) *tutore auctore Glaucippo* — (5) *C(aio) Valerio mil(iti) classis Aug(ustae) Alexandrinae*— (6) *cui ante nupta erat, ex quo matrimonio filios pro-* (7) *creaverunt—eique dotis suae*—(8) *nomine dixit deditque in aestimio vestis et in numerato praesens* (9) (amount illegible) *d[racma]s, quam dotem dixit se is Valerius Ge-* (10) [*mellus accepisse . . .*].

To the *dictio* alludes the passage of vv. 7/8 *eique dotis suae nomine dixit*. The verb cannot be translated by "assigned"² since it is a juridical technical term and the expres-

² Fink, p. 113.

sion "assign" does not contain the element of a promise. An exact version should run: "promised through dictio."

The constitution of the dowry refers to the previous Demetria's marriage with Valerius Gemellus and was not the basic point of our document. The phrase *eique—dixit* is the continuation of the foregoing *cui—nupta erat*. *Eique* refers to *cui*, sc. *Gemello*, in spite of the interruption caused by the clause *ex quo matrimonio rel.* The construction is not perfect, it is true, but this is not amazing at all, since the document is written in a vulgar Latin³ and the text is a chain of not coordinated relative clauses.⁴ In my opinion, the promise of the dowry and its fulfilment as well, were juridical acts which had taken place in connection with the previous marriage, either before or at its conclusion. At any rate they were anterior to the transaction embodied in our papyrus. This interpretation differs fundamentally from those presented so far which join *eique dixit* with a non-preserved word *pacta est* (Sanders, Fink) or *sponsa est* (Fink) on the beginning of v. 1, thus attributing to the document the purpose of the constitution of a dowry. It could be said, of course, that according to our interpretation in v. 8 had to be expected: *dixerat dederatque*. Against this eventual objection it may be observed that the whole syntactical structure of the document is anything but correct, and that for the same reason *procreaverunt* is also incorrect. On the other hand the phrase *cui nupta erat* is perfectly corresponding to the phrase τῷ γενομένῳ αὐτῆς ἀνδρί which is so frequent in Greek papyri.⁵ Therefore its plusquamperfectum is not decisive for the tense of other verbs in the document. And fi-

³ Sanders, p. 587.

⁴ Here, too, the translation by Fink, l.c. should be corrected. The change of the relative clauses of the text into principal ones ("she was his wife previously. She has assigned and delivered," etc.) had to be avoided. This tendency towards separating the text into independent sentences goes so far that even the phrase *quam dotem dixit se accepisse* (v. 9/10) runs in Fink's version as follows: "the said V.G. acknowledges (sic) the receipt of the dowry" which is not correct.

⁵ Cfr. P.Oxy. II, 266, 5 (Mitteis, *Chr.* 292) and for further examples Preisigke, *Woerterbuch* s. v. γίγνομαι, nr. 12. From later publications cfr. P. Princ. II, 31.

nally, to people who violate different rules of grammar and syntax and use such uncommon expressions as *in aestimio* or *in numerato praesens*,⁶ inaccuracies in the use of tenses may be forgiven.

Analyzing the *dictio* case in our papyrus we state that the *dotem dicens* was Demetria, actually bride or wife of Gemelus. The text is therefore in accord with Roman rules which accorded the capacity for *dictio* to three persons only, and among them the wife or bride, cfr. Ulp. VI, 2; Gai Ep. II, 9, 3. The object of the *dictio* was in our case a sum of money and clothes, maybe a trousseau.⁷ A similar combination is in Roman legal sources unknown; as *dictio* objects there are mentioned only estates, slaves and money. It is, however, not contrary to Roman law, cfr. Gai Ep. l.c., where *res mobiles* are expressly admitted. We learn further from our papyrus that a part of Demetria's dowry (*dos dicta*) was estimated as indicated by the strange locution *in aestimio* which appears here for the first time in Latin language.⁸ The papyrus is also the first example of a *dos aestimata* within the frames of a *dictio*. It is worth while mentioning that the object of the *dos dicta aestimata* were dresses, a transaction against which the Roman jurist, Ulpian, warned the husbands, cfr. Dig. XXIII, 3, 10pr., because in such a case they were always obliged to pay back the fixed value even when the dresses at the restitution of the dowry were worn out.

All these new details show how elastic was the prescribed *dictio* formula: *doti tibi erit . . .* since it admitted even an *aestimatio dotis*. We learn furthermore something new from the linguistical point of view. The locution *dotis nomine dicere* (vv. 7-8) does not occur in legal sources. Where in some interpolated texts which originally dealt with *dictio*, we find *nomine*, it refers to the woman on behalf of whom the dowry was constituted, e.g. *filiae suae nomine doti promittere*, cfr. Dig. XXIII, 3, 44 pr.; 79, 1; XXIV, 3, 44, 1.

⁶ Cfr. infra n. 12, 13.

⁷ *Vestis* instead of *vestes*. Cfr. infra n. 29.

⁸ For *aestimium* = *aestimatio* see *Thes. L.L.*, I, 1096.

The normal locution is *dotem dicere* or *doti aliquid dicere*.⁹

The legal effect of a *dotis dictio* was the obligation of the person who *dotem dixit*, to give the promised dowry. Our papyrus shows that the fulfilment of a *dictio* obligation was the *datio dotis*. Following the classification by Ulpian, VI, 1: *dos aut datur aut dicitur aut promittitur*, we used to say that the classical Roman law had known three ways of establishing a dowry: *datio*, *dictio*, *promissio*. And, in fact, the sources distinguished between *datio* and *dictio*, when the dowry was partly given and partly promised through *dictio*, cfr. Fr. Vat. 100. Now we see that *datio dotis* was not only a particular form of establishing a dowry through its immediate real delivery to the husband or *sponsus*, but *datio* was called also the accomplishment of a previous promise of a dowry. The Michigan papyrus provides a further argument for the criticism of Ulpian's classification, not unknown in older authors,¹⁰ since but the *dictio* plus the following delivery of the objects promised (*datio*) are a full constitution of a dowry. This separation into two distinct acts: the solemn promise, *dictio*, and its realization, *datio*, had some legal consequences. From the moment of the *dictio* until the effective delivery of the *dos dicta* the legal bindings of the person involved were ruled by the principles concerning the *dictio*. After the fulfilment of the *dictio* obliga-

⁹ Gradenwitz, *Interpolationen in den Pandekten*, 1887, p. 23¹ emphasized that a classical jurist did never say *dotis nomine dicere*. In the Polish edition of my *Dotis Dictio* I observed, p. 93³, that *dotis nomine dicere aliquid* does not sound well because of the normal meaning of *dicere*. *Dotis nomine promittere aliquid*, however, is quite in order. Therefore I supposed that in Dig. XXIII, 5, 14, 2 (*si fundum . . . mulier dotis nomine promiserit*) the last three words had been interpolated for *doti dixerit*. Cfr. Index Interp. ad h.l. The P. Mich. requires a correction of that inference inasmuch as only *dixerit* had been replaced by *promiserit*. For the same reason I am today not so sure, as I was in 1910, when I defended the genuinity of the locution *dotis gratia promississet* in Dig. XXIV, 3, 31, 1 against Cujas. Cfr. Index Interp. ad h.l. If *dotis nomine dicere* was correct, *dotis gratia dicere* might be used, too.—By the way: in the *dictio* formula of Dig. L, 16, 125: *dotis filiae meae tibi erunt . . .* either *nomine* is missing after *dotis* or *dotis* is corrupt instead of *doti* as it is correctly said in two further examples of the same text.

¹⁰ Cfr. Bechmann, *Roem.Dotalrecht* II, 1867, p. 49. Czyhlarz, *Roem. Dotalrecht*, 1870, p. 92.

tion the dowry was considered as *dòs data* and treated under the rules of *dotis datio*. Exceptionally, the fact that the *dotis datio* had been preceded by a *dictio*, was not without influence on the later treatment of the matter, particularly when the dowry object was evicted, as we learn from C. Just. V, 12, 1 pr. ¹¹ and 1; c. 13 eod.

The connection of the *dictio* as a promise and the *datio* as the payment of a dowry promised finds a precious illustration in our papyrus. The parties seemingly attached importance to the fact that the dowry had been established through *dictio* and a subsequent *datio*. For the future restitution of the dowry it sufficed that the dowry had factually been given and its receipt acknowledged by the husband, as it really happened, vv. 9/10. The mention of the *dictio* could therefore easily be omitted, all the more so that the document stressed that the dowry had been delivered immediately (*praesens* = on the spot) and the sum of money had been paid in cash, *in numerato*. Both these expressions belong to the Roman juristic language and are not unknown in legal sources, cfr. for the first Heumann-Seckel's *Handlexikon* s.v., ¹² for the latter e.g. Dig. XXVII, 9, 5, 9; XXX, 96 pr.; XXXIX, 5, 35 pr. In the language of the Greek papyri the corresponding expression for *praesens* is *παραχρήμα*, ¹³ for *in numerato* *διὰ χειρός*. ¹⁴ Both these expressions appear even side by side, cfr. SB. I 5231 = Meyer, *Jur. Pap.*, nr. 28, v. 17 (a. 11 A.D.), Princ. II 31 (79/80 A.D.); CPR. 24, 5 (136 A.D.); Ryl. I, 161, 19 (159 A.D.), as in our Latin papyrus.

¹¹ *Evicta re quae fuerit in dotem data, si pollicitatio vel promissio fuerit interposita rel.* Both here and in c. 13 eod. *pollicitatio* was interpolated for *dictio* with regard to Cod. Theod. III, 13, 4, mentioned before. Cfr. Berger, *Bull.* cit. p. 78.—As in our papyrus the fulfilment of a *dotis dictio* was here called *datio*.

¹² *Praesens dos*: Dig. XLII, 8, 17, 2. Very instructive are Dig. XLII, 8, 10, 12 and XLV, 1, 76, 1. The Latin antonym is *ex die* or *in diem*.

¹³ See Berger, *Strafklauseln in den Papyrusurkunden*, p. 78 f.—In late Byzantine sources *praesens* in the foregoing sense is translated by *παραχρήμα*, cfr. Dig. XXXVI, 2, 21 pr. = Bas. XLIV; 20, 18 (Hb. IV 455) = Syn. Bas., 1, 127; Dig. XLV, 146 pr. = Bas. XLIII, 1, 43 (Tip., Hb., IV, 302).

¹⁴ See P. M. Meyer, *Juristische Papyri*, p. 47, n. 8, normally with the addition *ἐξ οἴκου*.

It seems that the author of P. Mich. was versed not only in Roman law but also in Latin juristic language in spite of his lacking knowledge of Latin syntax.

* * *

As it has been already stated before,¹⁵ both editors of our document assumed that it embodied an establishment of a dowry. Sanders' interpretation to the effect that it embodied a marriage contract¹⁶ with the purpose to secure Roman citizenship for Demetria and her children after honorable discharge of Gemellus and to protect Demetria's dowry rights as well, has been successfully contradicted by Fink. A renewed examination of this problem seems superfluous. But even the latter author observes that the "mention of the dowry produces a certain resemblance in form to the *homologia*-marriages of the Greek population of Egypt."¹⁷ However, as the papyrus terminates apparently at about the middle of the document¹⁸ and its beginning is also missing,¹⁹ furthermore in view of the lack of any datation and the decisive Latin equivalent to an introductory *ὁμολογεῖ* or *ὁμολογοῦσι*, there is no base at all for any resemblance to marriage contracts. The mention of the dowry alone is not a sufficient criterium to determine the nature of the document, not only because of its ambiguous construction, but also because it can be found in documents where no conclusion of a marriage is involved. On the other hand, the document has a merely Roman character²⁰ and, what is more important, *dotis dictio* was a sheer Roman institution which had no counterpart in Greek law.²¹

¹⁵ Cfr. supra p. 15.

¹⁶ See also C. G. Starr, Jr., *Roman Imperial Navy*, 1941, p. 104 n. 100.

¹⁷ L.c. p. 114.

¹⁸ Sanders, p. 581.

¹⁹ "Probably one line lost" notes Fink, p. 112. But, maybe, another line is missing.

²⁰ All persons are Roman citizens with good Roman names except, perhaps, Demetria. But she is daughter of a [L]uci(us), cfr. Fink, p. 110 ad v. 1. Even if this reading be not ascertained, her Greek origin is not quite sure.

²¹ Cfr. Berger, *Bull. cit.* p. 83; Barilleau, *Nouv. Rev. Hist. de dr. fr. et étranger*, VII, 1883, 176. Beauchet, *Hist. du droit privé de la Rép. Athén.* I, 1897, p. 278.

Mr. Fink looked for the solution of the problem from the following viewpoint:²² since the papyrus must obviously concern marital relationships in some way or other (this is certainly true), since it is neither a contract of marriage nor—in his opinion—a divorce agreement because this possibility is excluded by the certification of the payment of the dowry,²³ the papyrus must be—by a process of elimination—a contract of betrothal. But, generally speaking, is this hypothesis not too risky in front of the fact that among the thousands and thousands of papyri published so far, there is not one contract of betrothal preserved, either in Greek or in Latin? And just a papyrus the decisive parts of which are missing and the remnants do not allude by any word to a betrothal should be the first example of this type? The author tries to save his solution by the arbitrary insertion of the words *sponsa est* or *pacta est* into the lacuna at the beginning of v. 1, but this support can hardly be estimated as sufficient, since none of these expressions is based on earlier examples nor are they known in legal sources in similar connection. In view of this doubtful reconstruction and the former statements one must be *a priori* sceptical against Fink's interpretation of the document.

The explanation of the fact that there are no betrothal agreements among the papyri is very simple: according to Roman law betrothal was by no means binding, although it was not deprived of some legal consequences to which Fink attached too much importance and which, however, were of minor effect because betrothal never obliged the parties to marriage. And this is the fundamental point. A classical text, Paul. Dig. XXIII, 1, 7, states expressly that it is irrelevant whether the betrothal agreement was written or not. This statement leaves not much hope for a betrothal document in the papyri, particularly when Roman parties are involved. Fink, on the contrary, sees in Paulus' text "a proof that *sponsalia* were in fact reduced in writing."²⁴

²² L.c. p. 116.

²³ This is wrong, cfr. supra p. 18. Moreover, the clause refers to the previously contracted marriage, cfr. supra p. 15 and infra p. 23f.

²⁴ P. 121.

Maybe, that *sponsalia* sometimes were embodied in a written document, although the Romans did not write when it was not necessary. It is, however, not admissible to establish the first example of that legally useless deed just in a mutilated document where not a syllable speaks of betrothal.

These general objections against the betrothal hypothesis may seem nevertheless insufficient since its author tried to justify it by a series of arguments drawn from the particular factual circumstances of the case. We must therefore take them into consideration although the basic divergence as to the question whether the papyrus embodies an establishment of a dowry or not, excludes any conciliation between the different opinions. But even if we assumed—*posito sed non concesso*—that the document served for the constitution of a dowry, the betrothal theory would appear deprived of any foundation. In Fink's opinion the document should be, since the previous marriage Demetria-Gemellus was broken off in consequence of the husband's later enlistment, "both an agreement to resume the marriage when circumstances permitted and a substitute for it which would to some extent protect their interests in each other during the interim."²⁵ First of all, however, such an agreement would have been without any value because neither of the parties was bound to "resume the marriage," and especially Gemellus was not prevented from marrying another woman after his release from the military service.²⁶ The advantage which Fink sees in the fact that the parties were permitted "to call the dowry by its name instead of attempting to cloak it as a loan or deposit,"²⁷ was at least unimportant and problematic. What an advantage is it that a dowry is called a dowry if actually marriage was prohibited and betrothal not binding at all? Such an "advance payment in anticipation of a marriage which would not take place until marriage was legally possible" was simply imprudent on the part of Demetria for, if Gemellus at the end of his service made up his mind, Deme-

²⁵ P. 122.

²⁶ Thus Fink, p. 123.

²⁷ Cfr. Taubenschlag, *Law of the Greco-Roman Egypt*, 1944, p. 26 n.6.

tria had no means to enforce the marriage. It is hardly to realize what sense should have had the establishment and even the payment of the dowry when Gemellus was in active service as a sailor. He needed neither the large sum of money,²⁸ nor clothing,²⁹ and on Demetria's part it would have been simply stupid to give him money in order to bind him only morally to a future matrimony. Demetria's situation was different from that of a normal bride. Since Gemellus served in the navy—he was *miles classis Augustae Alexandrinae* on the warship (*liburna*) *Dracon*³⁰—she could not marry him as long as he was in duty. Betrothal and payment of a dowry under these conditions did not make any sense, since it was not known when Gemellus would be discharged.³¹ Normally the service lasted 26 years;³² the perspective was not very beautiful for Demetria who actually was 39 years old. That the dowry was immediately recoverable by Demetria “at any time until the actual marriage took place,”³³ might have been a poor consolation to her. She would have done better not giving Gemellus a dowry at all. A simple promise would have had the same moral effect, if any. Demetria, instead, delivered the dowry immediately. The same objection must be made against Fink's inference that the wife's dowry was protected, if Gemellus died in service. I think, it would have been a better protection not to give him the dowry at all during his service. According to Fink, furthermore, the legitimacy of the two sons born before their father's enlistment, was documented by the betrothal agreement. I do not realize why such a strange form of legitimacy of the children, born in a *iustum matrimonium* before their father's enlistment, through a new betrothal with the father, during his military

²⁸ The sum is not readable; but there is place for some hundreds of drachmae, see Fink, p. 110 ad v. 9.

²⁹ Normally the dowry contained women's dresses, *ἱμάτια γυναικεία*.

³⁰ For the legal position of the sailors cfr. Ulpian Dig. XXXVIII, 13, 1, 1: *in classibus omnes remiges et nautae milites sunt*.

³¹ We do not examine here the question whether a formal conclusion of a new marriage with her ex-husband was necessary or not.

³² Fink, p. 123.

³³ Fink, *ibid*.

service,³⁴ should have been necessary. The *professiones liberorum natorum* about which we are pretty well informed,³⁵ were sufficient for this purpose.

The foregoing remarks have shown that there cannot be question of any protection of the parties' reciprocal interests through a betrothal. They have revealed, moreover, the complete failure of any attempt to explain our document as an agreement connected with the constitution of a dowry, for neither marriage nor betrothal of the ex-spouses come into consideration. Consequently it must be supposed that the dowry mentioned in vv. 6-9 had been constituted before the transaction embodied in P. Mich. was concluded since in no event the constitution of a dowry in our document had any reasonable ground.

This result confirms perfectly the conclusion we have drawn before from the text itself.

* * *

What was then the real purpose of P. Mich.? It is obvious that in view of its defective conditions every supposition must remain hypothetical. Should we, however not propose a third solution, if two had proven a failure? It is beyond any doubt that the key for the solution lies in the mention of the dowry and as it is to be referred not to an actual, but a previous constitution of a dowry, our document may be brought perhaps in connection with the restitution of the same. The following alternatives come into question: either the restitution of the dowry within a contract of divorce or independently from a divorce agreement. In the latter case the document would be simply an acknowledgment of the receipt of the dowry in the form of the well-known *apocha*. For both types we have several models in the papyri and there is no need to characterize the

³⁴ Cfr. P.M.Meyer, *Jur. Pap.* p. 9; Fritz Schulz, *Roman Registers of births*, *Journal of Roman Studies*, vol. XXXII, 1942, p. 78ff., XXXIII, 1943, p. 55ff.

³⁵ The legitimacy of such children is out of question. Correctly Fink, p. 122, against J. Kromayer, *Heerwesen und Kriegsfuehrung der Roemer*, 1928, p. 532. Fink, however, argues that doubts might later have been raised (why?) whether the boys were born before their father's enlistment.

debris of our papyrus as a type of a contract so far quite unknown. Here some examples of similar documents, all of them in Greek and of the Roman period: on the one hand, divorce agreements:³⁶ BGU. III, 975 (45 A.D.), Oxy. VI, 906 (2nd-3rd cent.), on the other hand dowry receipts: BGU. IV, 1104 (Aug.),³⁷ Oxy. II, 266 = Mitteis, *Chr.* 292, a. 96 A.D.; P. Princ. II, 31 (a. 79/80 A.D.); P. Lond II, 178 (p. 207, a. 145). In these documents the restitution of the dowry is acknowledged without any divorce agreement.

There is no reason why a divorce agreement in P. Mich. cit. should be a *limine* rejected.³⁸ Some features remind directly of similar agreements: the wife appears with her guardian and acts *tutore auctore*,³⁹ her age and personal marks are indicated, she enumerates the objects of the dowry she had given to her husband, and of which she might have acknowledged the receipt in the lost part of the papyrus, since such a clause is one of the principal ones in a divorce contract.⁴⁰

Particular attention should be paid to the seven witnesses, presumably Roman citizens, as far as their fragmentary Greek signatures on the verso of the papyrus permit to suppose.⁴¹ These seven witnesses recall us of the famous Paulus text, Dig. XXIV, 2, 9: *nullum divortium ratum est nisi septem civibus Romanis adhibitis*. The genuinity of the first four words, however, is not certain. We refer to the

³⁶ For a complete list of divorce agreements see O. Montevecchi, *Aegyptus* XVI, 1936, p. 20.

³⁷ Cfr. Berger, *Strafklauseln*, p. 195.

³⁸ As Fink, p. 116 did, cfr. supra p. 20. Of course, who sees in the document the factual establishment of a dowry, cannot accept this solution. Fink's further objection that "the participation of the tutor shows that Demetria was not under legal authority of either the father or a husband" and therefore the possibility of a divorce agreement is excluded, is unimportant.

³⁹ This is the first example of this Latin locution in the papyri, cfr. Taubenschlag, l.c., p. 125 n.45. For general information on the role of the guardians in the papyri see Taubenschlag, *Archives d'histoire du droit oriental* II, 1938, p. 293ff.

⁴⁰ Cfr. Berger, *Strafklauseln*, p. 225.

⁴¹ Sanders, p. 581. See, moreover, Schuman, *Trans. Amer. Philol. Assoc.* LXXIV. (1943), p. 202.

inventive and adroit reconstruction of the classical wording of the text by Levy⁴² which—although hypothetic as all substantial reconstructions are—imposes some reserve towards the authenticity of the text. Moreover, the seven witnesses should not be considered as a decisive element for the divorce hypothesis, in view of the fact that this number of witnesses appear in various documents of the Roman period.⁴³

More important is, of course, the question, what advantage arose from a divorce document to Demetria. She wished, maybe, to marry another man and get rid definitely of her husband, the sailor, from whom she has been separated for years because of his service and should remain so for a long time.⁴⁴ In this case a written statement that she is divorced and able to conclude a new marriage, was certainly of some use to her. Many divorce contracts are provided with a similar clause.⁴⁵ The care for the two boys may have been also a reason to enter a new matrimony. A divorce, it is true, did not require a written deed,⁴⁶ but in her particular situation as a wife of a sailor who enlisted after several years of marriage and as a mother of two children, a document stating that nothing was in her way against a second marriage, was doubtlessly not without importance. It is known that the enlistment of a married man had some influence on the marriage. Some scholars, with

⁴² *Hergang der roemischen Ehescheidung*, 1925, p. 25ff., 46, followed by Pringsheim, *Gnomon*, III, 1927, p. 518, but contradicted by Ratti, *Bull. Ist. Dir. Rom.* XXXV, 1927, 206ff. and Brasiello, *Archivio Giuridico*, XCVIII, 1927, 241f. See also Bonfante, *Corso*, I, 1925, p. 246 and 512, Kaser, Art. *Testimonium*, *Pauly-Wissowa's RE.*, V A, 1022, 67; 1024, 23. Against Levy's reconstruction decidedly, and with not negligible arguments, P.E. Corbett, *The Roman law of marriage* (Oxford 1930), p. 231ff. and M. Lauria, *Matrimonio e dote* (Rome, 1936), p. 59f.—At any rate, if our papyrus was really a divorce agreement, it would be the first with 7 witnesses; cfr. Levy, p. 131.

⁴³ Kaser l.c., p. 1031f.

⁴⁴ Cfr. supra n.32. See also Starr, l.c. p. 105: "while engaged in active service the sailor could not hope to have his wife present or near by."

⁴⁵ Cfr., for instance, BGU. IV, 1102, 1103; Lips 27; PSI VIII 921, 29; Grenf. II, 76 where expressly the wife is given the right to marry ϕ $\epsilon\alpha\nu$ $\beta\omicron\upsilon\lambda\eta\tau\alpha\iota$. In BGU. IV, 1104 (cfr. Berger, *Strafklauseln*, p. 195), a receipt for the restitution of a dowry—the same right is even granted to a widow.

Mitteis at the head,⁴⁷ speak of a full annulment of the marriage previously concluded⁴⁸—others, as P. M. Meyer,⁴⁹ only of a suspension and an isolated opinion denies any influence of the subsequent *militia* on an existent marriage.⁵⁰ The question is controversial, at any rate no explicit norm in Roman sources gives a definite answer. One text by Gaius, Dig. XXIV, 1, 61, belonging to the same epoch as our papyrus,⁵¹ leads rather to the conclusion that the marriage did not become automatically null in consequence of the enlistment of the husband.⁵² It says only that in such a case *matrimonium satis commode retineri non potest*, similarly as when the husband is very old or sick. An attached sentence of a later Roman jurist, Hermogenianus (third-fourth cent.), fr. 62 eod., advises that the couple divorce in mutual agreement (*bona gratia*).⁵³ Under these circumstances it is

⁴⁶ Dig. XXIII, 1, 4: *sufficit nudus consensus*.

⁴⁷ *Grundzuege*, p. 282; cfr. however, n.3 *ibid.*—In 1908 (*Roem. Privatrecht*, p. 191 n.19) Mitteis wrote: *die Soldatenehe wird in eine Nichtehe verwandelt*; E. Rabel, *Grundzuege des roem. Privatrechts*, p. 417, 422⁵; E. Levy, *Verschollenheit und Ehe, Gedächtnisschrift fuer Seckel*, 1927, p. 148²; Fink, p. 117, 121; Kunkel, *Pauly-Wissowa's RE*. XIV 2268, 15. Kromayer, *l. supra* n.35 cit.

⁴⁸ Mitteis' principal argument is BGU I, 140, the well-known *epistula Hadriani* (cfr. *infra* II), which, in my opinion, hardly can be considered as absolutely decisive.

⁴⁹ *Jur. Pap.*, p. 53; Nietzold, *Ehe in Aegypten*, 1903, p. 85. Ch. Lécivain, in Daremberg-Saglio's *Dictionnaire*, II, p. 1659.

⁵⁰ Tassistro, *Il matrimonio dei soldati romani, Studi e Documenti di storia e diritto*, XXII, 1901, p. 31.—For the whole question see P. E. Corbett, *The Roman Law of marriage*, 1930, p. 41ff.

⁵¹ According to Sanders, p. 584, P. Mich. is not later than second century A.D.

⁵² The case cannot be compared with that of *captivitas* of the husband where the marriage becomes null because of the loss of the *status libertatis* with the husband. For this question see Mitteis, *Roem. Privatr.* l.c.—There remains still another problem to be studied: whether there was not perhaps a different treatment of the *classarii* in this regard? Cfr. P. M. Meyer, *Sav.-Ztschr.* XVIII, 1897, p. 71f. Starr, l.c., p. 92.—See the Ulpian-text quoted *supra* n.30.

⁵³ Never mind whether this locution is always interpolated, as Solazzi, *Divortium bona gratia, Rend. Ist. Lomb., Cl. di lettere LXXI* 1938, p. 511ff., courageously assumes. More cautious is Bonfante, *Corso di dir. rom.* I, 263. At any rate the statement in Dig. XXIV, 1, 62 pr.: *et ideo bona gratia matrimonium dissolvitur* does not seem of Justinian origin, in spite of its wording arousing suspicion.

not unlikely that if Demetria wished to be free, a formal divorce by mutual agreement, presented to her some advantage and for this purpose a written document was the right way, all the more that there were financial matters to be arranged, first of all the restitution of the dowry. After all, Demetria, whether divorced or not, had a great interest to get back the dowry which in the hands of her husband during his service made no sense and by no means served to alleviate the *onera matrimonii*. It was therefore quite natural that she wanted to have her dowry returned instead of leaving it at Gemellus' disposal since their marriage, annulled or suspended, factually was no marriage more.

Thus we arrive to the solution of the problem of the nature of the document: Demetria acknowledged in it—be it within or without a divorce agreement—the receipt of the dowry from Gemellus. Hence the intervention of her guardian, the identification of all persons involved, in the same manner as in Greek documents, the precise indication of the dowry together with the form as it was constituted, hence, finally, the witnesses whose assistance is certainly not an obstacle against this interpretation.

The missing part of the papyrus should therefore have contained: first of all Demetria's declaration that she received back her dowry and that she released her ex-husband from his obligations connected with the dowry. Since a part of it was a *dos aestimata*, there might have been a phrase referring to her right of choice, if, of course, she had reserved it for herself when establishing the dowry, *ut aut aestimatio aut res praestetur*, cfr. Dig. XXIII, 3, 10, 6; XXIII, 5, 11; Fr. Vat. 114. Such clause is frequent in papyri of the first three centuries A.D. and some of the following examples concern estimated clothes: ἐκλογῆς οὔσης ἢ τὰ ἱμάτια ἢ τὴν συντίμησιν κτλ., cfr. BGU. III, 717, 21; CPR. 22, 23; 27, 18; Fay. 90, 15; Oxy. III, 496, 15; 497, 19; IV, 729, 41.⁵⁴ Besides this the dowry-apoche had to contain the μὴ-ἐπελεύσασθαι-obligation of Demetria, that is to say, the obligation

⁵⁴ In CPR 23, 4 (= Mitteis, *Chr.* 294) the receipt of *syntimesis* is acknowledged.

not to make any claim nor proceed against Gemellus in connection with the dowry. A penalty clause connected with the renunciation of further claims was certainly attached.⁵⁵ The declaration of the woman with regard to the restoration of the dowry and the respective renunciation required the approval by her guardian who participated in the whole transaction by giving his *auctoritas*.

Together with the necessary signatures of all persons participating in the act, and perhaps of the notary who intervened in the confection of the deed,⁵⁶ there was material enough for the missing second half of the papyrus. If the document was also a divorce agreement, an adequate declaration by Gemellus as well as his signature are to be supposed. Even, if the document was not a full divorce agreement, a brief reference to the solution of the matrimony might have been inserted, similar perhaps to that of P. Oxy. II, 266 v. 15: ἔνεκα τοῦ ἀναξυγῆν τοῦ γάμου γενέσθαι. A precedent divorce is also to be considered, because the phrase *cui nupta erat* sounds exactly as the Greek locution τῷ γενομένῳ αὐτῆς ἀνδρί⁵⁷ which occurs everywhere when the restitution of the dowry by the ex-husband is acknowledged by the ex-wife.⁵⁸ Maybe, these words allude to the solution of the marriage as a consequence of the husband's enlistment. At any rate, the essential element of the document, the restitution of the dowry, is, in my opinion, beyond any doubt.

II

*Αναλαμβάνεσθαι IN THE EPISTULA HADRIANI, BGU. I, 140

*Αναλαμβάνειν and its passive voice as well have very different meanings. For the language of the Greek papyri alone F. Preisigke has noted in his *Woerterbuch der griechischen*

⁵⁵ Cfr. Berger, *Strafklauseln*, p. 188ff.

⁵⁶ This is uncertain, of course, since the beginning of the papyrus is not preserved.

⁵⁷ Cfr. supra, before n.5.

⁵⁸ P.Princ. II, 31 (A.D. 79/80), a dowry-apoché, unfortunately also partially preserved, shows the same structure as our papyrus: ὁμολογεῖ (ἡ δέικνα) . . . μετὰ κυρίου . . . τῷ γενομένῳ αὐτῆς ἀνδρί . . . ἀπέχειν κτλ.

Papyrusurkunden, I, pp. 93-95, twenty-one groups of German versions. And yet, just the ἀναλημφθέντες in the famous Epistula Hadriani, BGU. I, 140 v. 24 (119 A.D.),¹ is missing in the long list of papyri cited by the author, and likewise among the German equivalents there is not to be found any expression corresponding to the term as applied in the imperial letter. This omission in the dictionary which is highly appreciated for its exactitude, might have been caused by the fact that s.v. ἀναιρέω, nr. 2, Preisigke had identified the medial voice ἀναιρείσθαι with the passive voice ἀναλαμβάνεσθαι. He quoted there beside the passage of v. 11 of our papyrus οὗς οἱ γονεῖς αὐτῶν ἀνείλαντο which he awkwardly translated: "die von ihren Eltern als ihre leiblichen Kinder anerkannten Kinder," also v. 23 of the epistula where no ἀναιρείσθαι appears. This latter passage is built up on ἀναλαμβάνεσθαι: οἱ τῷ τῆς στρατείας χρόνῳ ἀναλημφθέντες. By exploiting v. 23 wrongly under ἀναιρέω the author overlooked that the right place for this passage was the article ἀναλαμβάνω, even if a new, twenty-second group of significations had to be added.

In a recent dissertation on the *Martyrs of Caesarea*,² Professor Saul Lieberman—following an earlier statement by Professor Henri Grégoire³ concerning the meaning of ἀνελήμφθη = "died" on three Montanistic grave inscriptions—has shown that the same expression was used frequently in Jewish Greek texts, and especially in the Apocalyptic literature,⁴ in the same sense of "to die." The following pages will prove that in Hadrian's epistula the same verb signified "to be born," "to be procreated." Hardly may be found a greater contrast between two meanings of the same word.

¹ Republished in all collections of Roman pre-Justinian legal sources (Bruns-Mommsen-Gradenwitz; Girard, *Textes*; Riccobono, *Fontes*) and in Mitteis' *Chrest.*, nr. 373.

² *Annuaire de l'Institut de Philol. et d'Hist. Orientales et Slaves*, Tome VII, 1944, p. 437ff. (New York).

³ *Byzantion* II, 1925, p. 331 and X, 1935, p. 248 ff.

⁴ Cfr. furthermore the text quoted by Lieberman, *Roman Legal Institutions in Early Rabbinics and in the Acta Martyrum*, repr. from *The Jewish Quarterly Review*, v. XXXV, 1944, p. 50.

In his letter to the prefect of Egypt, C. Rammius Martialis, which according to its own statement is a translation from Latin, v. 1/2, Hadrian deals with the right of succession on intestacy accorded to soldiers' children, ἀναλημφθέντες τῷ τῆς στρατείας χρόνῳ.⁵ Ἀναλημφθέντες is here the exact version of the Latin *suscepti*. The composition and meaning of both verbs are perfectly identical: *sus-cipere*, ἀνα-λαμβάνειν. *Suscipere* is a frequent technical term in legal sources, used in the sense of *procreare*, *concupere*, *nasci* (*suscipi*=*nasci*), cfr. *Voc. Iur. Rom.* V, 894. In the same meaning ἀναλαμβάνειν is used in BGU. I, 140.

Speaking of this imperial constitution one should not, therefore, identify ἀναλαμβάνειν with the ancient custom of the Romans *tollere liberum* as H. Kreller did.⁶ In the best presentation of the subject, S. Perozzi⁷—referred to by Kreller—described that custom as follows: when a married woman bore a son, the child was put on the earth before the chief of the family who then took it up thus demonstrating his will to keep the new-born child as a son of the family. This usage was practiced in very remoted times and had a rather symbolic than legal significance. The technical term for this act was *tollere* and, perhaps, *suscipere* could also be used in the same sense⁸ since the primary significance of both verbs was identical. But this does not mean that everywhere the terms *suscipere filium* or *liberi suscepti* occur, they are to be understood in the sense of the ancient custom and that the gesture described before had been really accomplished. On the contrary, there is no trace of it in legal sources at all,⁹ because by the times of the Roman Empire it was long since out of use.¹⁰ No formal juridical

⁵ This is the literal Greek version of *tempore militiae*, cfr. Dig. XXIX, 1, 21; XXIX, 7, 8, 4; XXXV, 2, 96; XLIX, 17, 4, 2. The plural *temporibus militiae*, used by Gradenwitz in Bruns, *Fontes*⁷, nr. 196 is not in accord with the juridical language, cfr. *Voc. Iur. Rom.* V, 982, 20ff.; 992, 33ff.

⁶ *Erbrechtliche Untersuchungen*, 1919, p. 156 n.65, quoted by Taubenschlag, *The Law of Greco-Roman Egypt*, 1944, p. 80 n.16.

⁷ *Studi Simoncelli*, 1917, p. 215ff.

⁸ Perozzi, l.c. 215.

⁹ Perozzi l.c.

¹⁰ Perozzi, p. 220. W.W.Buckland, *Textbook of Roman Law*, p. 103.

act of recognizement or admission to the family was required. The ancient *tollere liberum* had no legal importance, in particular it had no significance of recognizement of paternity or legitimacy of the child. Equally the omission of that symbolic gesture was without any legal effects.¹¹ Therefore it is wrong to refer the *suscipere* in legal texts of the second century A.D., as the epistula Hadriani, to the long since forgotten *tollere liberum*.¹² If we read the texts listed in *Voc. Jur. Rom.*, s.v. *suscipere* vol. V, 894, 40ff. we hardly find any text where *suscipere* would be compatible with the ancient usage. With regard to our papyrus it is to say that the mention of the whole period of the father's military service (*tempore militiae*) excludes a connection with the act of taking up a new-born child. "Lifting up a child during the time of military service" sounds awkwardly. Moreover, the presence of a soldier at the birth of his child was very unlikely, since common living with the wife during his *militia* was simply out of question,¹³ not to speak of the legal repercussion of a married man's enlistment on the existence of the matrimony concluded before.¹⁴

Kreller quotes Stephanus' *Thesaurus* as reference for the identification of ἀναλαμβάνειν with *tollere*.¹⁵ I could not find this equation, but it may be correct. What I found in

¹¹ P. Bonfante, *Corso di dir.rom.* I (1925), p. 13.—Therefore, the explanation given in *Voc. Jur. Rom.* V, 1063 s.v. *tollere nr. II: e terra capere vel in brachia ab obstetrice accipere, suscipere* is in its first part not pertinent to the texts cited which do not allude to the ancient custom. The best proof is Dig. XXXVIII, 8, 3 where *tollere, procreare and suscipere* are applied as synonyms; in Dig. XXXVII, 4, 6, 4 *tollere = procreare*; in Dig. XXIII, 4, 27; XXIX, 2, 92; XXXI, 77, 24; XXXIV, 4, 24 pr. XXXVII, 14, 6 pr. *tollere* is referred to the mother which is the best argument against any connection with the ancient gesture.

¹² It is interesting that Kreller, himself, translates ἀναλημθέντες correctly with "born," cfr. the text before n.165 l.c. But two pages later, p. 159 n. 69, he speaks once more of ἀναλαμβάνειν as an action accomplished particularly by the legitimate father. *Tollere liberum* was, however, executed by the *pater familias*, hence under circumstances by the grandfather or even the great-grandfather.

¹³ This against Kreller's inference, p. 157, that Hadrian presupposes a permanent living together of the parents.

¹⁴ Cfr. supra p. 26.

¹⁵ He cites: I 2, Sp. 433.

Stephanus¹⁶ is ἀναλαμβάνειν τὸν παῖδα = *penes se asciscere puerum, et id ferme, quod agnoscere filium dicitur*, and later¹⁷ ἀναλημφθεὶς υἱός = *in domum receptus filius*. But all this has nothing to do with BGU. 140, where ἀναλημφθεὶς means simply *natus, procreatus*. The Emperor Hadrian did not think even in the farthest way of an *agnoscere* or *recipere in domum filium*.

The foregoing remarks lead to some juridical considerations which a student of Roman law hardly can neglect. Hadrian's rescript was a legislative measure in favor of children born during their father's military service. It is evident that a child conceived before the father's enlistment and born during his *militia* was treated even before Hadrian's reform otherwise than a child conceived and born during that time. The former child could not be considered as procreated by his parents "against the military discipline," as Hadrian says: *τουναντίον τῆς στρατιωτικῆς διδαχῆς*. The right of succession on intestacy to the father's property could not be denied to those children. How, however, about the hereditary rights of a child conceived during the father's *militia* and born after this time, when, for instance, the latter died as a soldier? There is no doubt that the privilege accorded by Hadrian's reform referred to such children since they were not born *tempore militiae*. But before Hadrian the problem of admitting them to the father's succession might have been a hard one, since they were not born in a *iustum matrimonium*.¹⁸

* * *

A few words only about ἀναιρεῖσθαι in v. 11 of our papyrus where it appears in the same sense as the ἀναλημφθέντες ten

¹⁶ London edition of 1882, Vol. IV, 5558 D.

¹⁷ P. 5560 B: ἀνελαμμένος εἰς τὸ γένος, *qui est a patre agnitus et domum deductus*.

¹⁸ A. Segré, *Il dir. dei milites peregrini nell' esercito romano*, *Rend. della Pont. Accad. Romana di Archeologia*, v. XVII, 1940-1941, p. 175, assumes that the epistula Hadriani refers to soldiers which were *fili families* and that it recognizes the *peculium castrense* as property of the *f.fam.* as if he had been emancipated through his entrance into the army. There is no indication whatsoever in the text for any of these conclusions.

lines later. Αἰρεῖν (mid. αἰρεῖσθαι) and λαμβάνειν are almost synonymous, and so are their composita with the same prefix ἀνά. Both ἀνααιρεῖσθαι and ἀναλαμβάνειν (= *tollere, suscipere*)¹⁹ are used in active sense although grammatically they differ in the voice. We meet in the papyri ἀνααιρεῖσθαι frequently in the sense of "taking up" an exposed child, abandoned by his parents (e.g. ἀπὸ κοπρίας)²⁰ in order to treat him as one's own. In this connection the word reminds of the ancient *tollere liberum*,²¹ but even there it was not the same act since its object was a child belonging to another family and the action took place not immediately after the child's birth. In the epistula Hadriani there is moreover one detail which excludes any link with the ancient *tollere liberum*: in the passage οὗς οἱ γονεῖς αὐτῶν ἀνείλαντο under γονεῖς are meant, as always in the language of the papyri, the parents,²² and not the fathers whom the text calls correctly πατέρες (v. 21): When *suscipere* (= ἀνααιρεῖσθαι) was an action of the father and mother, no connection can be constructed with the ancient gesture of the *pater familias*.

III

GLOSSES TO P. COLUMBIA INV. NR. 553, VERSO

In the *Annuaire de l'Institut de Philologie et d'Histoire Orientales et Slaves*, Vol. VII (New York, 1944) pp. 127ff.

¹⁹ Cfr. Stephanus, *Thes.* II, p. 1575 B: ponitur ἀνααιρούμαι pro "tollo" in alia etiam huius verbi significatione, ut ἀνααιρεῖσθαι παῖδας, tollere liberos, et quidem duplici significatione, videlicet pro "suscipere," ut cum quis dicitur liberos ex uxore sustulisse (follows a quotation from Plutarch), et pro "tollere," hoc est non exponere, sed educandos curare. (?) Cfr. also ibid. p. 1577A.

²⁰ Cfr. Preisigke, *Woerterbuch*, s.v., I p. 89, 2; his version "ein Kind nach der Geburt aufheben, als sein Eigentum anerkennen, ein Findelkind an sich nehmen" is not more fortunate than that of v. 11, of our papyrus, cfr. supra, p. 29. The first part, in particular the phrase *nach der Geburt*, is as far as the papyri are concerned, anachronistic in the same manner as the version given by Kuebler, *Voc. Jur. Rom.*, cfr. supra n.11.

²¹ See Perozzi, l.c. p. 216, with reference to BGU. IV, 1110.

²² Not correct is the translation by Gradenwitz l.c. supra n.5 "patres." Correctly P. M. Meyer, *Sav. Ztschr., Rom. Abt.* XVIII, p. 45, whose version of ἀνείλαντο and ἀναλημφθέντες ("geboren") is right.

Edward Rochie Hardy, Jr. published the Columbia papyrus, Inv. Nr. 553 under the title: *A Fragment of the works of the Abbot Isaias*. This superscription refers, however, only to the recto of the papyrus. Its verso, a text of a merely juristic character, edited by Hardy with translation and a few remarks, pp. 137-141, gives opportunity to some loose observations both philological and juridical ones which may follow here all the more so, that the document presents some features which are rather uncommon in Byzantine papyri and its editor was, as the title of the paper testifies, more interested in the text preserved on the recto.

According to the editor's correct statement the text on the verso, written in an ordinary 6th-century cursive,¹ contains the last lines and signatures of a contract of sale concerning four² arourae of land in the Arsinoite nome.

ad vv. 1-3: These lines are the very conclusion of a penalty clause, in particular of the so-called *clausula salvatoria*³ by which the transaction embodied in the contract remained in full validity, even after the payment of fine and damages (established in the missing foregoing lines) because of a previous violation of contractual bindings by the contravening party. Such clauses are known for a long time⁴ and therefore the completion of the lacunae in vv. 1 and 3 may be attempted, inspite of the innaccuracy of the edition, where their length is indicated by a highly excessive number of points, probably because of the printer's inadvertence. On the base of the average length of a line of 40 to 43 letters I suggest:

1: [22 to 24 letters] πρὸς [τῷ καὶ μετὰ τῆν] τῶν

2: πάντων⁵ καταβολῆν⁶ πάλιν ἰσχύραν καὶ ἀσσάλευτον⁷

¹ Cfr. Hardy, p. 129.

² Fourteen on p. 139 of the edition is a misprint.

³ Cfr. Berger, *Strafklauseln*, p. 47ff., 82.

⁴ For different formulas see Berger, l.c. p. 50n.1; 199. The material has ever since (1911) considerably increased.

⁵ This refers to the payments mentioned in the missing part of the document, as for instance in P. Lond. I, 113, 61f. (p. 202): τοῦ προστίμου καὶ τῶν ἀνάλωμάτων καὶ δαπανημάτων καὶ ξημιωμάτων.

⁶ Cfr. Bas. XI, 2, 34, quoted by Berger, l.c. p. 200.

⁷ Leg. ἀσσάλευτον.

3: εἶναι [τὴν παροῦσαν πράσιν πανταχοῦ προφερομένην.]

ad v. 4: καὶ ὑπέθετο. This objective construction, in the third person, is very rare in Byzantine documents, cfr. P. Mon. 7; P. Par. 20.⁸ The writer passed a few lines later, v. 10, to a subjective construction ὁμολόγησα instead of ὁμολόγησεν,⁹ but nevertheless the whole structure of the stipulation formula explicitly shows the tendency towards an objective construction,¹⁰ and therefore—if the reading is correct—we should rather assume a *lapsus calami*, all the more so that the writer of the document was the notary himself,¹¹ and not the seller.

ad vv. 4ff.: The clause concerning the pledge is perfect. It does not contain any new detail, but is a concise combination of different phrases already known from other analogous documents of the Byzantine period, cfr. *Arch. f. Papf.* III, 421 94; Lond. I, 113, 69 (p. 202); Amh. II, 151, 19; Oxy. I, 138, 39. The penalty clause might have been very detailed, hence instead of a repetition, a general reference to all that had been said before: εἰς πάντα τὰ προγεγραμμένα, alluding to single obligations as *bebaiosis*, cfr. *Arch.* III, p. 421, 90, payment of the fine, etc., cfr. P. Mon. 14, 98.—P. Lond. I, 113, 66 (p. 199) repeats exactly all bindings to be assured by the pledge.¹²

ad v. 8: ἐπὶ τούτοις cannot be translated “in addition to these.”¹³ It is to be connected with the immediately following ἐπερωτηθείς and means “asked about these (sc. terms)”¹⁴ being referred to the interrogation in the *stipulatio* clause. Conformably the answer of the debtor stressed that he

⁸ Cfr. Mitteis, *Grundzuege*, p. 87f. (his statement that the objective document disappeared in Byzantine times requires a rectification); Wenger, *P. Mon.*, p. 79; P. M. Meyer, *Jur. Papyri*, p. 113; Gardthausen, *Studien zur Palaeographie und Papyruskunde* XVII, 2.

⁹ The same happened in P. Par. 20, 39.—A similar deviation in P. Mon. 7, 76.

¹⁰ Cfr. *infra ad vv. 8-10.*

¹¹ Cfr. *infra ad v. 25.*

¹² Πρὸς ἀσφαλῖαν ἐπὶ τε τῷ προστίμῳ καὶ τοῖς ἀναλόμασι καὶ δαπανήμασι καὶ ξημύμασιν. Cfr. n.5.

¹³ Hardy, p. 139.

¹⁴ Cfr. P. M. Meyer, *Jur. Papyri*, p. 25 (nr. 10 v. 16) and P. Cairo Byz. 67032, 83 (Meyer, nr. 52): ἐπὶ τούτοις ἅπασιν.

agreed "to all the above written terms." The stipulation clause in our document goes even farther in its completeness which is, as far as I see, unique. The seller repeats before his final *ὁμολόγησα* (= *spondi*) his own name and role in the contract as the transferer of the land as well as those of the purchaser. He writes: (I)¹⁵ the transferer Phoibammon, when asked on all these terms by the purchaser Paul, agreed in person¹⁶ to each of the above written terms." This is the most complete stipulation clause in the papyri where a unilateral obligation is involved.¹⁷

ad v. 9: The apparatus is to be completed: *leg. τοῦ πριαμένου*.

ad v. 13: *ἐξηράθην*. Hardy's translation "I have received" corresponds perfectly to the meaning of this strange word, so far not attested in the papyri. But the reference¹⁸ to *ἐξέρω*¹⁹ does not lead to this sense. After consulting Lid-dell-Scott²⁰ I think that it is the middle voice of *ἐξαίρω* = *ἐξαείρω* in the sense of "to lift, take up for oneself or what is one's own" (*ἐξάρνυμαι* = "to receive"). The aor. med. is *ἐξήερθην* or *ἐξήρθην*; *ἐξηράθην*, therefore, if really written, is simply a mistake of the writer. Another possibility, presupposing a mistake too, is that we have here an aor. pass. of *ἐξαρέσκω* (*ἐξηρέσθην*) or *ἐξαραρίσκω*²¹ (*ἐξήρθην*) in the sense of "to be pleased, satisfied," although the dictionaries do not list the two verbs combined with *ἐξ*. This would not be, however, a hindrance, since the prefix *ἐξ* serves only to indicate the completeness of the action. But I prefer the former suggestion because of the transitive sense of the verb referred to *τὴν τιμὴν*.

ad v. 14: *μου* (provided the reading is correct)—*leg. μοι*.

¹⁵ For the question, first or third person, see *supra*.

¹⁶ For *κατὰ πρόσωπον* see Taubenschlag, *Law of Greco-Roman Egypt*, p. 300 n.4.

¹⁷ In stipulations with bilateral bindings it is told: *ἐπερωτηθέντες παρ' ἀλλήλων καὶ ἀλλήλους ἐπερωτήσαντες*, cfr. P. Cairo Byz. 67032; 67159; 67298.

¹⁸ P. 139 n.13.

¹⁹ Through a reference to the article of H. Grégoire and R. Gossens, *Byzantion*, XIII (1938), 399.

²⁰ S. νν. ἄρνυμαι I, αἰίρω. II 1 ἐξάρνυμαι.

²¹ The last suggestion is by Professor Henri Grégoire.

ad v. 15: The declaration ἀπέλυσα is known from many other papyri.²² Its meaning is that of the Latin *absolvere* in Justinian's enactments: Cod. IV, 21, 17, (a. 528), referred too in Inst. III, 23 pr. and Cod. IV, 38, 15, 1, (a. 530), generally not quoted in this connection. In all these sources the so-called *completio* by the *tabellio* is mentioned before the *absolutio* by the parties to the contract,²³ although as we learn from the papyri, on the contrary the *absolvi*-declaration was written before the completion clause. But the Justinian texts are nevertheless correct and the whole discussion about this alleged divergence is rather sterile.²⁴ The factual procedure was, as the papyri show, the following: one—or both parties, if both assumed some bindings—wrote the ἀπέλυσα-clause before the notary added the completion-clause, then the subscribing party let the document go out of his hands in order to be completed by the *tabellio* and thus concluded. But the real, effective ἀπόλυσις = "dismissal," "handing over" the document, was achieved after, when the notary had put the completion-clause which was necessary to the full validity of the document.²⁶

²² Cfr. Partsch, *Ztschr. f. das gesamte Handelsrecht*, LXX (1911) p. 456ff; Wenger, *P.Mon.* p. 48; P.M.Meyer, *Jur.Pap.* p. 113. Sachers, in *Pauly-Wissowa's RE.* vol. V A, 1858/9. His explanation of *absolutio* (ἀπόλυσις) by "approval" ("*Genehmigung*") is not correct as well as that of *dimissio*, the Latin synonyma in the Authenticum translation of Just. Nov. 44, 1pr., by "*Versammeln der Zeugen beim Tabellio.*"

²³ Cfr. Nov. 44, 1 and Bas. XXII, 2, 1 (Heimb. II, p. 510).

²⁴ For this question see Karlowa, *Roem. Rechtsgeschichte* I, 1001; Steinacker, *Die antiken Grundlagen der fruehmittelalterlichen Privaturkunde*, 1927, p. 91.

²⁵ Partsch l.c.: "*ich habe die Urkunde als fertig aus der Hand gegeben.*"—Just. Nov. 44, praef. ἀπολέλυται is translated in the Authenticum by *dimissum est*. Cfr. c.1 pr. *ibid.*—Unilateral was the *apolyseis* where one party only assumed some obligations, as, for instance, in the case of a sale where the seller promised the *bebaiosis* and payment of penalty—bilateral or multi-lateral *apolyseis* occur in the case of a *dialysis* (transaction) and similar settlements, where two or more parties involved assumed some bindings, cfr. P.Mon. 13; Lond. V, 1722, 47; 1724, 8 (ἀπελύσαμεν); P.Mon. 14, 99 (ἀπέλυσαν). Several ἀπέλυσα-clauses in one document: SB. 7033, vv. 79.83.86.89; P. Cairo Byz. 67298, vv. 44, 46, 54, 57, 60, 65, 69.

²⁶ By the way: The wording of Inst. Just. III, 23 pr.: *et fuerint partibus absoluta* is confirmed by Theoph. Paraphr. Inst.: ἀπολυθῆ τὰ συμβόλαια τοῖς μέρεσι and by an identical translation in sch. 2 ad Bas. XXII, 1, 76 (Heimb.

ad vv. 16ff.: The signatures of the witnesses bring a precious contribution to our knowledge about witnesses in documents of the 6th century for whom a particular monograph is still wanting.²⁷ The witnesses in our document testify to have been present not only at the sale, but also at the payment of the price-money.²⁸ As the sale of a land is concerned, this papyrus is the first example of such a witness formula, but a few examples are known concerning other sale objects. Particular attention, however, has so far not been paid to this detail. If I am correct, the only examples of similar wider witness clauses are: a Strassburg papyrus, Inv. nr. 1404, published by Preisigke, *Arch. f. Papf.* III, p. 413ff., v. 108ff. from Hermupolis, where a female slave was sold (6th cent. A.D.) and two papyri from Arsinoe, SB. 5174, 5175 (512 and 513 A.D.), both dealing with sales of a hermit cell (*μοναστήριον*). Another example refers not to a sale, but a *dialysis*-settlement, P. Lond. I, 113, 99 (p. 199), where the witness testifies: "in my presence Valentinus, my colleague, paid τὰ διαλυτικά ἐξ χρυσίνα." The small list of these exceptional testification clauses has now been joint by our papyrus.

The witnesses write generally a simple *μαρτυρῶ*, cfr. for instance, P. Mon. 5, 8, 12 to 16, P. Lond. V 1722, 1724, 1733, 1734 or mention the agreement to which they testify either indicating the type of the deed²⁹ or the juridical content of the agreement.³⁰

II, 502). The Greek version of Cod. Just. IV, 21, 17 pr. in the Bas. XXII, 1, 76 corresponds to "*a partibus*."—P. Krueger adopted in his last edition of the Code (1929, 10th ed.) *partibus*, while in the 8th ed. (1908) he had still written "*a partibus*." The explanation for this change is given in the Addenda, p. 514 in the later editions: "*partibus*" more *Graeco usurpatum est pro "a partibus*." This is correct, but the following reference to the Basilica and their scholia is without importance because they confirm both readings (παρὰ τῶν μέρων—τοῖς μέρεσι).

²⁷ Cfr. Kaser, *Pauly-Wissowa's RE.*, vol. V A, 1034, 61; 1039, 19.

²⁸ *Μαρτυρῶ τῆδε πράσι, παρήμην δὲ καὶ τῆ δόσι τοῦ χρυσίου.* Τῆς τιμῆς is still added by the last witness, v. 24.

²⁹ *Homologia*: P. Mon. 1; SB. 5273. *Grammaton*: P. Lond. III, 1001, p. 270. *Cheirographon*: SB. 4505.

³⁰ *Δωρεά*: Lond. III, 1044, p. 254; *γαμικὰ συμβόλαια*: CPR. 30; *μισθώσεις*: P. Grenf. I, 57, 58; *ὀφιλῆ*: P. Georg. III, 37; *διάλυσις*: SB. 7033; Mon. 7;

It is well-known that the Greco-Egyptian sale was a cash transaction,³¹ but sales on credit were not unknown, although very rare,³² even in the Byzantine period. The particular mention of the payment of the price money by the witnesses which after all had been already acknowledged by the seller himself, was therefore not a legal requirement for the validity of the sale. This is proven, moreover, by several sale contracts where the witnesses testify only to the sale as such *τῆ πράσει*, cfr. e.g. SB. 5112; 5114; 7996; P. Mon. 5 v.52; 9; 11; P. Lond. V, 1686; 1764; Grenf. I, 60. Neither did the additional testifying to the payment of the price depend upon the kind of sale object inasmuch as the examples mentioned above are very different. Therefore I believe that this particularity in the witness formula might have been a local usage practised in the offices of some *tabeliones*, more anxious about evidence than their colleagues.

ad v. 25: The editor notes that the signature of the *tabelio* is from the same (first) hand as the contract itself. This is exceptional, too.³³ This circumstance may perhaps explain the objective construction of the deed.³⁴

The expression indicating the activity of the notary at the confection of the document and written by him both in Latin and Greek,³⁵ is also exceptional: *di emu Apaol ept(ychthe)*, ἐπτύχθη δι' ἐμοῦ. The normal expression is *eteliothe*,³⁶ but some other occur too, as ἐγράφη, ἐγένετο, etc. Ἐπτύχθη is not frequent, cfr. SB. 5174, 23; 5175, 24.³⁷ P.Cairo Byz. 67154; παρακλητικὴ ὁμολογία: SB.8029; ἐντολίμαιον γράμμα: P.Cairo Byz. 67161.

³¹ Cfr. Mitteis, *Grundzuege*, p. 172; Pringsheim, *Kauf mit fremdem Geld*, 1917, p. 40; Taubenschlag, *Law*, p. 246.

³² Cfr. the papyri quoted by Taubenschlag, l.c., p. 257 n.6. The contrary statement by Erhardt, *Sav. Ztschr.* LI, 175 was already not correct when written. Nowadays the new material published in the meantime does not admit of any doubt.—See also Weber, *Untersuchungen zum gr.-ägypt. Obligationenrecht*, 1932, p. 15.

³³ Cfr. Wenger, *P.Mon.*, p. 39; P.M.Meyer, *Jur.Pap.*, p. 112.

³⁴ Cfr. supra ad v. 4.

³⁵ This is not new.

³⁶ *Completem est*. Cfr. P.M.Meyer l.c. p. 113; Sachers l.c. 1857. This is the technical term, cfr. Nov. 44 praef.; 73 c. pr. Cfr. τέλεσμα in Bas. XXII, 1, 76 (Heimb. II, 502).

³⁷ Mentioned before ad vv. 16ff.

Literally the expression means that the document was folded and closed by the notary, cfr. P. Gen. 10, 17. Substantially it refers to the *completio* of the deed by the notary and has the same legal significance as the formulas mentioned above.³⁸ The editor translated it by "executed"; I should like better "completed" which corresponds more to Justinian's technical term.³⁹ The editor avoided apparently here the latter expression since he had used the same expression as a translation of ἀπέλυσα in v. 15.⁴⁰

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³⁸ Cfr. supra ad v. 15.

³⁹ See the texts cited supra ad v. 15.

⁴⁰ In his instructive article: *Di emu der aegyptischen Notare, Studien zur Palaeogr. und Papyruskunde* XVII, 1917, p.1ff. Gardthausen overlooked the two examples of *eptychthe* in the papyri published by Sayce, *Rev. Ét. Grecques III* (1890), then reedited in SB. under nr. 5174 and 5175 (cfr. supra ad vv. 16ff.). Therefore this expression has remained neglected by him.