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NEO-BABYLONIAN LEGAL DOCUMENTS AND JEWISH LAW*

In this article, I shall discuss the Neo-Babylonian legal document, together with the legal institutions reflected therein, with reference to Jewish law of the Biblical period, including the Aramaic papyri, and of the post-Biblical or Talmudic period. Some of the evidence which I shall present here has already been discussed by me in some of my previous publications, but the bulk of it is new.

A. The Biblical Period

1. The Dialogue Form

About the middle of the 5th century B.C. there becomes frequent in Babylonia a new form of legal document which represents a radical departure from the form which had been in use

* The following abbreviations are used in this article: *AJS* = V. Scheil, ed., *Actes juridiques susiens* (*Mémoires de la mission archéologique de Perse*, vols. XXII–XXIV); *Ar. Or.* = *Archiv Orientàlni*; *BT* = *Babylonian Talmud*; Bezold = C. Bezold, *Assyrisch-babylonisches Glossar*; Cowley = A. Cowley, *Aramaic Papyri of the Fifth Century B.C.*; *GB* = Gesenius-Buhl, *Hebräisches und Aramäisches Handwörterbuch über das Alte Testament* (17th ed.); Kraeling = Emil G. Kraeling, *The Brooklyn Museum Aramaic Papyri*; *JDT* = M. Jastrow, *A Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature*; *NRV* = M. San Nicolò und A. Ungnad, *Neubabylonische Rechts- und Verwaltungsurkunden*; *PNP* = = Herbert Petschow, *Neubabylonisches Pfandrecht* (*Abhandl. der Sächsischen Akademie der Wissenschaften zu Leipzig, phil.-hist. Kl.*, Band 48, Heft 1, 1956); *RA* = *Revue d'Assyriologie*; San Nicolò, *Beiträge* = M. San Nicolo, *Beiträge zur Rechtsgeschichte im Bereiche der keilschriftlichen Rechtsquellen*; *ZA* = *Zeitschrift für Assyriologie*; *ZSS* = *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung.*

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in that region for almost two millennia. The old form recites, in objective form, that certain property has been purchased by A from B, that the purchase price has been paid and that in the future there shall be no complaint or suit by B against A[1]. On the other hand, the new form, which German scholars call a *Zwiegesprächsurkunde*, recites, in direct discourse, the offer by one of the parties and the acceptance by the other, and winds up with a statement, in objective form, of the legal consequences of the transaction[2]. The following is an example of the new form:

"X, son of Y, spoke of his own free will to A, son of B, thus: 'My orchard and uncultivated land and the orchard and uncultivated land of C, my deceased uncle (literally, brother of my father), ...all I will give to thee for sixty years for rent and for planting it with trees, hold thou the orchard for a rent of twenty *gur* of dates *per annum* and the uncultivated land for planting it with trees'. Whereupon A, son of B, accepted his offer (literally, hearkened unto him), and for sixty years he took over (literally, held) the orchard and the uncultivated land, his (i.e., X's) portion and the portion of his deceased uncle C, the orchard part for a rent of twenty *gur* of dates *per annum*, and the uncultivated part for planting it with trees. Each year, in the month of Tishri, A shall pay the twenty *gur* of dates to X, as rent of that property.

From the month of Nisan of the 37th year of King Artaxerxes that property is held for sixty years for rent and for planting it with trees by A, son of B"[3].

The question arises, how and by whom was this new form introduced in the Neo-Babylonian formulary? It must be borne in mind that there is quite a difference between a change of addition and one of substitution. A lawyer may not hesitate to add

[1] See, e. g., M. Schorr, *Urkunden des altbabylonischen Zivil- und Prozessrechts*, 173 ff.

[2] See J. Kohler und A. Ungnad, *Hundert ausgewählte Urkunden aus der Spätzeit des babylonischen Schrifttums*, 73 f.; M. San Nicolò, *Zur Entwicklung der babylonischen Urkundenform* (*Festschr. für Gustav Hanausek* 29),; id. *Beiträge*, 152 f., 159 f.

[3] A. T. Clay, *Business documents of Murashu Sons of Nippur*, *University of Pennsylvania Babylonian Expedition*, Series A, vol. 9, 36—38. It is perhaps not irrelevant to the discussion that follows to mention here that the Murashu Sons of Nippur, in whose archives the *Zwiegesprächsurkunde* is of the most frequent occurrence, were descendants of exiles from Judaea. See Georges Contenau, *La vie quotidienne à Babylone et en Assyrie*, p. 92.

to a legal document a new clause, such as a warranty clause in a deed of conveyance, if he thinks that the interests of his client will thereby be better served. But giving up an old form and adopting a new one instead is quite a different matter. There must have been a powerful influence at work in Babylonia during the period in question which brought about this change. What was this influence?

San Nicolò cautiously suggests that this new type of document, which is fundamentally different from the old type which had been in use in Babylonia for a period of over two millennia, was perhaps brought there from the West together with the new writing material of papyrus and parchment[4]. I believe he would have been nearer the truth if he had said more specifically: from Judaea, probably by exiles from that land. The pattern of the *Zwiegesprächsurkunde* is discernible already in the story of the purchase of the Cave of Machpelah by Abraham[5], and this type of document was used extensively, probably exclusively, by Jews throughout the Talmudic period[6]. In one legal form, that of the *ketubah* (marriage document), it is used by Jews to this day.

The parallelism between the *Zwiegesprächsurkunde* and the story of the purchase of the Cave of Machpelah is fully apparent even from the English translation, which reads:

'And Ephron answered Abraham, saying unto him: 'My lord hearken unto me: a piece of land worth four hundred shekels fo silver, what is that betwixt me and thee? bury therefore thy dead'. And Abraham hearkened unto Ephron; And Abraham weighed to Ephron the silver, which he had named in the hearing of the children of Heth, four hundred shekels of silver, current money with the merchant. So the field of Ephron which was in Machpelah, which was before Mamre, the field, and the cave which was therein, and all the trees that were in the field, that were in all the border thereof round about, were made sure unto Abraham for a possession in the presence of the children of Heth, before all that went in at the gate of his city".

[4] See M. San Nicolò, *Beiträge*, 159 f.

[5] Cf. J. Augapfel, *Babylonische Rechtsurkunden aus der Regierungszeit Artaxerxes I und Darius II* (Denkschriften der Kaiserlichen Akad. d. Wiss. in Wien 59, 3), p. 20, n. 2.

[6] See, e. g., *Mishnah*, *Ketuboth* 4:7—12.

There is here a recital of the offer by Ephron, in direct discourse, of the acceptance by Abraham, in objective form, and a statement of the legal consequences of the offer and acceptance. Particularly revealing is the expression *he hearkened unto him* (Hebrew שמע = Accadian *šemû*), which is used in both the Babylonian document and the Biblical story in the technical legal sense of *he accepted his offer.*

In Babylonian Talmud, Baba Metzia 15a, where a portion of a deed of conveyance is quoted, the purchaser's acceptance of the seller's offer is expressed in the following words: וצבי זבונא דנן וקביל עלוהי (and this purchaser agreed and accepted). It thus appears that among the Jews of Babylonia, in the course of time, the term צבי (agreed) was substituted for the Biblical שמע (hearkened) as signifying the acceptance of the offer. The same term signifying acceptance also appears in the *ketubah* which, as indicated above, is couched in dialogue form (וצביאת פלוניתא דא והות ליה לאנתו). But, significantly enough, the term appears only in the form of the *ketubah*[7] stemming from the Babylonian tradition. In all of the available forms of the *ketubah* stemming from the Palestinian tradition (including Egypt) the old Biblical term used in the story of the purchase of the Cave of Machpelah is preserved (ושמעתיה פלוניתא דא והות ליה לאנתו).[8] Most revealing is the fact that this Biblical term is preserved also in the Babylonian tradition[9] in the special form of the

[7] See *Jewish Encyclopedia*, vol. 7, 472. For the full text of the Jewish *ketuban*, see Maimonides, *Mishneh Torah*, *Yibbum Ve-Halisa* 4, 33, and for an English translation thereof, see McClintock and Strong, *Encyclopaedia of Biblical, Theological and Ecclesiastical Literature*, vol. 5, 776. San Nicolò, *Beiträge*, 152 f., mentions the fact, pointed out by Schacht, that the *Zwiegesprächsurkunde* also occurs in early Islamic formularies which, as he says, „das Fortleben dieser spätbabylonischen Urkundenform im islamischen Rechte wahrscheinlich machen". No explanation is offered either by San Nicolò or by Schacht of the interval of over a millennium between the Neo-Babylonian and the Islamic *Zwiegesprächsurkunde*. That an explanation is called for is quite obvious. In all probability, this form of document came to Islamic law by way of Jewish law.

[8] See A. Gulak, *Osar Haštaroth*, No. 28 (a. 1030, Egypt), 29 (a. 1082, Egypt); Asaf, *Ancient Documents from the Genizah*, Tarbitz, vol. 9, p. 28 (a. 935, Tiberias); p. 30 (a. 1037, Egypt).

[9] See *Sefer Haštaroth* (Formulary) of Rab Hai Gaon (Supplement to Tarbitz I, 3), No. 19; *Halakoth Pesukoth of Rab Jehudai Gaon* (ed. Mekise Nirdamim), p. 163.

ketubah for a childless widow who marries her deceased husband's brother by levirate marriage. In the case of this form, which by the nature of things is seldom used, the conservatism of the legal profession withstood the pressure for a change, which was not so constant as in the case of the ordinary form, and the old term was preserved.

2. Taking Formal Possession of Property

In the Neo-Babylonian document quoted above, there is, besides the dialogue form, another important feature which has been overlooked by historians of Babylonian law and which points to the Jewish legal tradition as its source. I am referring to the recital in the document to the effect that the lessor gave the lessee permission to take formal possession of the property and that the lessee did take formal possession. For this is the meaning of the phrases which are rendered by Clay as "hold thou the orchard" and "for 60 years he took over (literally, held) the orchard", respectively. The intensive (*kullu*) of the Accadian word *kâlu* (hold) is used in this document in the technical legal sense of taking formal possession, just as the intensive of the Hebrew word חזק (hold) is used in the Talmud[10] in this sense. That this is so is clearly deducible with compelling logic from the fact that at the time of the writing of the document the 60-year period was just beginning, a fact which caused Clay to render the word which literally means *held* by *took over*.

In Babylonian documents there is apparently no reference anywhere — except in the document under consideration and in two other leases[11] belonging to the same group of documents of the Murashu sons and similarly couched in dialogue form — either to permission to take formal possession or to the taking of formal possession. On the other hand, in Jewish law, as reflected in a number of places in the Bible, the taking of formal possession was apparently a necessary element in the acquisition of ownership[12].

[10] In the formula לך חזק וקני (Go forth, take possession and acquire) quoted in BT Gittin 58a; Baba Kama 52a.

[11] See Kohler and Ungnad, *op. cit. supra* n. 2, No. 5; J. Augapfel, *op. cit. supra* n. 5, p. 61.

[12] See my *Jewish Law*, 7 ff.

It so happens that the requirement of taking formal possession is reflected, in addition to other places in the Bible, in the story of the purchase of the Cave of Machpelah. It seems that under the law reflected in this story there were two stages in the process of acquisition of property, namely: 1. Payment of the price by the transferee to the transferor. 2. Taking possession of the property by the transferee. These two stages are clearly discernible in Gen. 23: 16—20, quoted above. Twice it is said there that the field was made sure unto Abraham—once after Abraham weighed the silver to Ephron, that is, after payment of the price, and then again after he buried Sarah, that is, after he took possession of the field. The first time it is said that the field was made sure unto him as a purchase (למקנה), and the second time that it was made sure unto him as a burial possession (לאחזת קבר).

It will perhaps be argued that the story of the purchase of the Cave of Machpelah is copy of the Neo-Babylonian *Zwiegesprächsurkunde*, rather then the reverse. However, what has been said above with respect to the two stages in the process of transfer of property furnishes a complete refutation of this argument. Furthermore, San Nicolo is authority for the proposition that in Neo-Babylonian documents of sale the *Zwiegesprächsurkunde* never occurs. To quote:

"Es ist dabei beachtenswert, dass diese Urkundenform, trotz ihrer grossen Verbreitung seit der späteren Perserzeit (oben S. 152), niemals für den Spezieskauf verwendet wird. Das erklärt sich wohl daraus, dass sie nur für Verpflichtungsgeschäfte geeignet war und daher für den stets bargeschäftlich formulierten Stückkauf nicht in Betracht kommen konnte"[13].

It hardly needs to be said that San Nicolo's explanation of the absence of the *Zwiegesprächsurkunde* from instruments of conveyance is flatly refuted by the story of the purchase of the Cave of Machpelah by Abraham. For a different explanation, see below.

3. נערה (Maiden) in Marriage Contract

The dialogue form also occurs in some marriage documents considerably earlier than the middle of the fifth century B.C.E. and in one of these, at least, there is what appears to be a significant Hebraism. The essential part of this document reads:

[13] *Beiträge*, 219, n. 1.

"[Im ...ten Jahre des] Nabu-na'id, Königs von Babylon, hat Nabû-šumu-[ibni, der Sohn des] Bêl-šumu-iškun, des Nachkommen des Nanaḫḫu, zu Nûptâ, der Tochter des Nâdin, des Nachkommen des Fischers, also gesprochen: 'Tupḳîtu, die Tochter(des) Nabû-zêru-ukin, deine Tochter, die Sängerin, gib mir, dass sie meine Ehefrau sei.' Nûptâ erhörte den Nabû-šumu-ibni und gab ihm Tupḳîtu, ihre Tochter, die Sängerin, zur Ehefrauschaft"[14]. Landsberger[15] has pointed out that what is rendered by San Nicolò as *Sängerin* (singer) should be rendered instead as *Jungfrau* (maiden) and that it the equivalent of the Hebrew נערה. He hesitatingly says that the word seems to occur once more in Accadian. It did not even occur to him that the word might be a Hebraism. With all due respect to the eminent scholar, I must say that this amounts to a failure to follow the evidence. In several other places in his article, Landsberger points to parallels in Biblical Hebrew, but never does he as much as intimate that there may have been borrowings from the Hebrew legal style by Babylonian scribes during the Neo-Babylonian period. In the introductory part of his article[16] he states that the legal document of the Neo-Babylonian period is radically different from that of the Old-Babylonian period, and that it is strongly influenced by Aramaic. In the main body of the article, however, he does not give any specific instances of Aramaic influence. The specific parallels he does give are Hebrew, not Aramaic[17].

4. Date-Formula at Beginning of Documents

It will be noted that in a marriage document quoted above there is a date-formula at the beginning — "in the xth year of Nabonidus". This is a departure from the usual style of the Babylonian legal document in which the date occurs only at the end. Significantly enough, the same departure from custom is observable in another marriage document[18], also couched in dialogue form, dated 623 B.C.E. San Nicolò dismisses the fact that the date-formula in this latter document also occurs at the beginning as

[14] *NRV*, No. 3.
[15] See *ZA* 39, 290.
[16] *Ibid.*, 277 f.
[17] *Ibid.*, 281, n. 2, 283, 289, 290.
[18] *NRV*, No. 1.

unimportant. He points out that there is in this document another date-formula, at the end, and asserts that the latter formula is the one that is significant.

The language San Nicolò uses is very vague, having the appearance of an explanation, but in reality being no explanation at all. He writes: "Das ist keine Datierung, sondern eine gelegentlich vorkommende Einleitungsformel mit Zeitbestimmung. Das Ausstellungsdatum befindet sich auch in neubabylonischer Zeit am Schluss der Urkunde"[19].

I must admit that I do not know what he means by "eine Einleitungsformel mit Zeitbestimmung" (a form of introduction with time determination). What is the difference between a date-formula and *Zeitbestimmung*. Again, why does the same "Einleitungsformel mit Zeitbestimmung" appear about 75 years later in another document, also a marriage document and also couched in dialogue form? The answer is that both of these features — the dialogue-form and a date-formula at the beginning — point in the same direction, namely to the Jewish legal tradition. Placing the date at the beginning of the document is almost a necessary concomitant of the dialogue-form. When the scribe reports the words spoken by the party or parties it is natural for him to state at the beginning when these words were spoken, since the date of the writing of the instrument may not be the same as that when the words were spoken, and it is the latter date that is controlling. In other words, where, as in the Jewish document of the Talmudic period and in the Aramaic papyri, the emphasis is upon the words spoken, the date appears at the beginning; where, as in the Babylonian document, there is no reference to the words spoken, the date appears at the end. It is true that in the Neo-Babylonian *Zwiegesprächsurkunde* of the 5th century B.C.E. there is no date at the beginning. The only date occurring there is at the end of the document. But this only indicates that the form was a foreign importation which, so far as the place of the date is concerned, could not overcome the long tradition of the Babylonian scribes. At the time, apparently, some scribes effected a compromise between the new and the old, the foreign and the native, by placing an incomplete date, containing only the regnal year, at the beginning and a complete date of year, month and day at the end. But in

[19] *Ibid.*, n. 2.

the end the conservatism of the legal profession asserted itself; the old custom prevailed and the incomplete dating at the beginning disappeared.

5. A Partnership Agreement

A partnership agreement[20], dated in the 6th year of Nebukadnezzar, contains a clause wherein it is provided that the partners shall share profits and losses equally. The following is San Nicolò's translation of this clause: "An allem, soviel sie miteinander machen, sind sie gleichberechtigt; miteinander werden sie Gewinn und Verlust tragen". So far there is nothing unusual about this clause. Similar clauses may also be found in modern partnership agreements. What is most unusual about this clause, however, is the figurative language in which it is expressed. In note 3 to this document San Nicolo gives the transliteration and literal translation of part of this clause as follows: *it-ti a-ḫa-meš i-šaḳ-ḳu-ú u i-šap-pi-lu* "wörtlich: werden sie hoch oder niedrig werden". Is it a coincidence that precisely the same figure of speech occurs in 1 Sam. 2:7: ה׳ מוריש ומעשיר משפיל אף מרומם ("The Lord maketh poor and maketh rich; He bringeth low, He also lifteth up".)? That the scribe in drafting an intensely practical document, such as a partnership agreement, used such lofty figures of speech indicates that he was familiar with these figures of speech in their natural context. In the absence of evidence to the contrary, we may presume that the ultimate source of these figures of speech is not Babylonian.

6. *Epêšu* = עשה = Acquired

In note 2 to the partnership agreement cited in the preceding section, with respect to the word which he renders as *machen*, San Nicolò writes: "*Epêšu* bedeutet in diesen Texten 'erarbeiten' durch den Geschäftsbetrieb". The Hebrew עשה, the basic meaning of which is similarly *to make* is used a number of times in the Bible in the sense of *to acquire*. This meaning is most pronounced in Gen. 12:5 והנפש אשר עשו בחרן ("and the souls that they had gotten in Haran").

[20] *NRV*, No. 644.

7. *Maḫîru Epêšu* = to Acquire for a Price

In a large number of documents there occurs the expression *maḫîru epêšu* the meaning of which was not quite clear either to San Nicolo and Ungnad or to Landsberger[21]. Commenting on this expression San Nicolò and Ungnad say: "Der Sinn der Wendung *maḫîru epêšu* (giving citations) ist zweifellos '(käuflich) erwerben', eine wörtliche wiedergabe jedoch ist, wegen der erst näher festzustellenden technischen Bedeutung des Hauptwortes, noch nicht möglich"[22]. Well, the technical meaning of this noun is very simple: price, as in Hebrew מחיר.[23].

8. *Maḫîru Nabû* = to Name the Price

In a number of documents there occurs the expression *maḫîru nabû* which has caused considerable difficulty to San Nicolo, Ungnad[24] and Landsberger. Landsberger proposes that the phrase be rendered as "den Kauf (feierlich oder formelhaft) aussprechen, verkünden"[25]. He apparently takes the word *maḫîru* as meaning *purchase*, which, as shown above, is incorrect, the word meaning *price* instead.

San Nicolò, commenting on a Neo-Babylonian document first published in transliteration and translation by him, in which the expression *kaspu nabû* occurs, writes:

"In *kaspu nabû* haben wir...eine dem *maḫîru nabû* im Formular des Immobiliarkaufvertrags...analoge Wendung. Sie beweist auch, dass *maḫîru* dort ebenfalls auf den 'Gegenwert' für die verkaufte Sache, also auf den Preis (bzw. Preisangebot) zu beziehen ist...Man hat sich somit den im Formular des Immobiliarkaufes schematisierten mündlichen rechtsgeschäftlichen Vorgang derart vorzustellen, dass der Verkäufer die Sache dem Käufer anbietet und dieser den Preis nennt, den er als Gegenleistung zu zahlen bereit ist, worauf, wenn der Verkäufer damit einverstanden ist, die Einigung erfolgt"[26].

[21] See ZA, 39, 279.
[22] *NRV*, No. 49, n. 1.
[23] See GB, 413b.
[24] See NRV, No. 3, n. 6.
[25] *ZA*, 39, 280.
[26] *Ar. Or.* 5(1933), 68, n. 3.

San Nicolò seems to be right. The expression under consideration is a reflection, in very concise language, of the offer and acceptance which preceded the writing of the instrument. The *Zwiegesprächsurkunde*, in which the offer and acceptance, the *consensus* between the parties, are given forceful expression, is never used in Neo-Babylonian deeds of conveyance of real property. In this type of document, the most solemn in the array of legal documents, the resistance to the departure from tradition was too strong to be overcome by foreign importations. By adding the clause about the naming of the price, scribes gave expression, within the framework of the traditional form, to the *consensus* between the parties which was receiving emphasis in other types of documents, couched in the dialogue form.

9. *Ana Šimi Ḫariṣ* = as a Complete (Definitive) Purchase

In deeds of purchase of slaves and movables there occurs often the obscure phrase *ana šimi ḫariṣ*. San Nicolò and Ungnad propose that this phrase be interpreted as "purchase price on account", that is that the purchase price was not paid in cash, but was either wholly or in part deducted from a debt owed by the purchaser to the buyer. After citing several Old-Babylonian sources where the verb *ḫarâṣu* means "Geld (oder Getreide) von (*ina*) etwas abziehen, abrechnen", they continue: "Demgemäss wird auch der obige Ausdruck so zu verstehen sein, dass der Kaufpreis nicht (oder wenigstens nicht zur Gänze) bar bezahlt wird, sondern entweder ganz oder teilweise durch Aufrechnung, beziehungsweise überhaupt im Verrechnungswege beglichen werden soll"[27].

Landsberger, on the other hand, proposes that the phrase be interpreted as meaning "at the determined (agreed) price". To quote from his article:

"Versuchen wir *šim ḫ(ariṣ)* zu übersetzen, so werden wir uns zunächst nicht an die altbab. Bdtg. von *ḫ(arâṣu)*' (Geld) abziehen' halten, sondern an die neubabylonische. Hier ist *ḫ.* (von seiner Grundbdtg. '(hinein)schneiden' übertragen) = einen unbestimmten oder unbekannten Tatbestand klären...Auf den Kaufpreis angewendet, kann dies nur bedeuten, dass der zunächst unbestimmte Kaufpreis durch die Kaufverhandlung geklärt, genau

[27] *NRV*, No. 63 n. 2.

bestimmt werde. Der Gegensatz zu einem solchen 'Kauf durch Preiseinigung' kann allerdings nur 'Kauf durch Barzahlung' sein"[28].

The legal implications of Landsberger's interpretation of the phrase under discussion are far reaching. If this interpretation is correct, then the Neo-Babylonian law of sale reached an advanced stage of development — purchase and sale by mere consensus — which was not reached either by Greek law or by Jewish law of the Mishnaic period, and in Roman law is comparatively late. This circumstance alone is of course not sufficient to refute Landsberger's interpretation. However, as we shall presently see, there is evidence of a different and more convincing nature which leads to a rejection of his interpretation. In a note to his philological discussion of the word *ḫariṣ*, quoted above, he says: Vgl. aram. חרץ '(ein)schneiden'. Für das Hebr. Ges., 258[29]. Had Landsberger paid closer attention to the Hebrew חרץ, he might have discovered the correct meaning of the phrase *ana šîm ḫariṣ*. חרוץ is used in Biblical Hebrew in the sense of *final*, *complete*, *absolute*, *definitive*[30], and it is in this sense that *ḫariṣ* is used in the phrase under discussion. The combination *šîm ḫariṣ* means a *complete*, *final*, *absolute*, *definitive* purchase. The word *šîm* in this phrase does not mean *price*; it means *purchase*. A similar phrase — קנין גמור — occurs in the Talmud[31]. In medieval Jewish deeds of conveyance[32] there occurs regulaly the formula מכירה (sale) or מתנה (gift) גמורה, חתוכה, חלוטה, the three words being synonymous and all of them meaning *final*, *complete*, *definitive*, *absolute*. These formulae, the Neo-Babylonian and the Jewish, have, it seems, a long history behind them. They go back, at least, to the Susa tablets of about 2000 B.C.

In deeds of conveyance from Susa there occurs regularly a formula, of which the following, in Scheil's transliteration and translation, is an example:

5 a-na ši-mi-šu ga-am-ru-t[i
5/6 ma-na kaspam iš-ku-ul

[28] *ZA*, 39, 281.

[29] *ZA*, 39, 281, n. 2.

[30] See Isa. 10:22 and cf. GB, 262a.

[31] See BT Yebamoth, 18b and cf. JDT, 255a.

[32] See, e. g., *Sepher Haschtaroth, Dokumentenbuch von Rabbi Jehudah ben Barsillai aus Barcelona*, C. J. Halberstamm, ed. (Berlin, 1898), Nos. 11, 26.

a-na du-ur u pa-la
a-na se-ir-[še]-ir-ri
a-na ba-aq-[ri] u ru-gi-ma-n[i]
U-za-lum a-na Sin im-gur-an-ni i-za-az
u-ul] ip-ṭe-ru
u-ul] ma-za-za-nu
ši-mu ga-am-[ru
ki-ma a-bu a-na ma[ri i-ša]-mu
Sin im-gur-[an-ni i-na ki-di-en
ša (ilu) Šušinak a-na da-[ra-ti i-ša-am

"Pour son prix du tout, 5/6 de mine d'argent il a payé. Pour toujours et jamais, dans la postérité; contre revendication et contestation, Uzalum pour Imguranni fera front. Pas de rachat, pas de gage: le prix est complet. Comme un père pour un fils achète, Sin Imguranni, dans le temple de Šušinak, pour jamais, a acheté"[33].

The sense of the clause just quoted seems to be that there is to be no redemption, the transaction not being a mortgage similar to the Greek πρᾶσις ἐπὶ λύσει, but a complete, definitive, purchase. Consequently, Scheil should have rendered lines 11—13, as *pas de rachat, pas de gage, l'achat est complet.* The word *šîmu* is used in this clause in two different senses. In line 5 it is used in the sense of price, whereas in line 13 it is used in the sense of purchase. That this is so may be seen from another Susa tablet, apparently representing a redemption of a mortgage. This document, in Scheil's transliteration and translation, reads in part as follows:

.....
[ip-ṭu]-ru
u] -ul ma-an-za-za-nu
ip-ṭi-ru ga-am-ru-tu
ki-ma a-bu-um a-na ma-ri-im
ip-ṭu-ru i-zi-bu

"...ils ont racheté...Pas de cautionnement, le rachat est complet"[34].

[33] *AJS*, XXIII, No. 202.
[34] *Ibid.*, XXII, No. 158.

Iptiru gâmrutu in the above-quoted deed of redemption obviously corresponds to *šimu gâmru* in the above-quoted deed of purchase. The latter phrase is rendered by Scheil as *le rachat est complet*, and, accordingly, the former phrase should be rendered as *l'achat est complet*.

To return to the phrase *ana šîmi ḫariṣ*. Landsberger[35] has already noted that this phrase is interchangeable with *ana šimi gamrûti*. This, I believe, furnishes a further link in the chain of evidence to the effect that *ana šîmi ḫariṣ* means *for a complete purchase*.

Finally, from the provisions in certain Neo-Babylonian mortgage documents it becomes clear that *šîm ḫariṣ* means *complete purchase*. I shall quote Petschow on this point:

"Entweder erhielt der Gläubiger vereinbarungsgemäss im gennanten Falle (of default) einfach das Eigentum am Pfandobjekt oder es wurde bestimmt, das letzteres zum *ḫariṣ*-Kaufpreise (*šîmu ḫariṣ*) oder zum vollen Kaufpreise (*šîmu gamrûtu*) an Stelle eines bestimmt bezifferten Betrages dem Gläubiger gehören solle, das heisst, dass hier der Gläubiger als Käufer des Pfandgegenstandes gelten sollte"[36].

In a note he says: "Zum *ḫariṣ*-Kaufpreise ist noch keine sichere Deutung möglich. Conntenau, *Vie* 27, gibt *šîmu ḫariṣ* mit *prix convenu* wieder"[37]. In the light of the above discussion, there is little doubt as to what the phrase means: *complete purchase*.

10. להציג לפני = To Set before = To Produce

In Gen. 43:9, Judah's undertaking to bring Benjamin back from Egypt, there occurs the phrase והצגתיו לפניך ("And I shall set him before thee"), which, as I have repeatedly stressed[38], is a technical phrase meaning *to produce* a person or a thing. A similar phrase is used in Neo-Babylonian documents in the same sense. In a document dated 558 B.C., which was published by Scheil[39] there occurs the phrase *i-bu-ku-nim-ma i-na ma-ḫar-šu-nu uš-zi-zi-zu*, which is rendered by Scheil as "amenèrent devant eux la firent

[35] *ZA*, 39, 280.
[36] *PNP*, 120.
[37] *Ibid.*, 121, n. 374.
[38] See *Jewish Law*, 15.
[39] *RA*, 12(1915), 8—9.

comparoir". In this document the phrase is used with respect to a person made to appear before a court. In another document dated 538/7 B.C.E., which was published by San Nicolo[40], the same phrase occurs with respect to the production of certain property (cows) before a court. In both cases the phrase consists of the causative of *nazazu* equals להציג and of *maḫar* = לפני.

At this point I beg to be permitted a digression. The phrase meaning *to set before*, which is pregnant with meaning from the legal point of view and which covers almost the entire range of obligations, had an interesting career. It is found in Greece as early as the 5th century B.C.E. I quote from Liddell-Scott-Jones, *A Greek English Lexicon*, 549b, s.v. ἐμφανής II.b. "As legal term ἐμφανῆ παρέχειν τινά To produce a person or thing *in open court*, Antipho 5.36, cf.D. 56.38; so ἐμφανῆ καταστῆσαι produce *in court* either the property or the vouchers. Id. 52.10; ἐμφανῶν κατάστασις *actio ad exhibendum*, Is. 6.31, D. 53.14". For further elucidation of the point I shall quote the pertinent phrases from Demosthenes 52.10 and 56.38: ἐμφανῆ καταστῆσαι τὰ χρήματα ἢ τὸν κεκομισμένον ("That the money be produced or the person who has received it")[41]. Ἐὰν δὲ μὴ παράσχωσι τὰ ὑποκείμενα ἐμφανῆ καὶ ἀνέπαφα...ἀποδιδότωσαν διπλάσια τὰ χρήματα ("And if they shall not produce the security, plain to see,... they shall pay double the amount")[42].

As I have suggested elsewhere[43], it seems that the Latin *promitto*, which is one of the technical terms used in the Roman *stipulatio* is ultimately traceable to the Hebrew להציג לפני or to its Aramaic equivalent. This suggestion seems to be confirmed by the occurrence in Greek legal terminology of the phrases ἐμφανῆ παρέχειν and ἐμφανῆ καταστῆσαι in the sense of "produce a person or thing". The words *in open court*, by which Liddell-Scott-Jones render ἐμφανῆ are superfluous. Lexicographers and students of the Greek classics apparently did not know that the Greek phrases under discussion are literal translations of a Hebrew or Aramaic legal phrase meaning *to produce*. They therefore assigned to the

[40] *Ar. Or.* 5(1933), 62, lines 39—40. See n. 4 at p. 62.

[41] A. T. Murray, tr., *Demosthenes, Private Orations* III (Loeb Classical Library), 81.

[42] *Ibid.*, 218.

[43] *Jewish Law*, 15.

word ἐμφανῆ a separate meaning such as *in open court* or *plain to see.*

It should be noted here that the term παρέχω in the sense of *to produce* occurs also in Lysias 13.23 cited by Liddell-Scott-Jones *A Greek-English Lexicon*, 468a s.v. ἐγγυάω II 2: ἐγγυᾶσθαι καὶ ὁμολογεῖν παρέξειν. This, it will readily be seen, is similar to Judah's guarantee to produce Benjamin.

11. A Neo-Babylonian Formula of Suretyship

A Neo-Babylonian contract of suretyship, dated in the 14th year of Nabonidus, reads, in Dougherty's translation, as follows:

"The responsibility for Kalbi, the son of Nûrêa, Nûrêa, the son of Aḫulâp-Ishtar, his father, and Balâṭu, the son of Nabû-ushallim, son of Sin-lîq-unnînni, until the tenth day of Elul to Ilâni-rîmanni, the chief officer of the king, the chief guardian of Eanna, bear. On the day when he lifts up his head (*rêša našû*), they shall bring (him) and shall give (him). If they do not bring (him) and do not give (him), they will be guilty of a sin against the king (*ḫi-ṭu ša šarri i-šad-da-du*)[44]. This is so obviously and strikingly similar to the formula of suretyship in Gen. 43:9 that the similarity will be fully apparent even from a translation. The Biblical formula reads:

"I will be surety for him; of my hand shalt thou require him; if I bring him not unto thee and set him before thee, then I shall be a sinner against thee (וחטאתי לך) all the days".

San Nicolò, in a document dated 531/30 B.C. published by him in transliteration and translation[45], renders the phrase *ḫi-ṭu ša šarri i-šad-da-du* as "werden sie die Strafe des Königs sich zuziehen". In a note to *ḫi-ṭu ša šarri* he writes:

"Parallel hierzu finden wir im neuassyrischen Verwaltungsrecht das *arnu ša šarri* während wiederum in den Immunitäts-und Schenkungsurkunden von Susa aus altbabylonischer Zeit die Strafe

[44] N. P. Dougherty, *The Babylonian Principle of Suretyship as Administered by Temple Law* (*American Journal of Semitic Languages* 46 (1930), 91. For other documents of similar import, see *ibid.*, 90—98).

[45] M. San Nicolò, *Materialien zur Viehwirtschaft in den neubabylonischen Tempeln* II, *Orientalia* N.S. 18 (1949), 295 ff.

(*ḫaṭṭu*) Gottes, des Sukkal-maḫ und des Königs den Anfechtenden treffen soll..."[46].

He then goes on to cite several documents from Susa. In the light of the Biblical parallel quoted above, there can hardly be any doubt that *ḫiṭu* in the Neo-Babylonian documents and *ḫaṭṭu* in the documents from Susa[47] is to be rendered rather as "sin". This, then, is another case of parallelism between the Susa tablets and the Bible.

In addition to the similarity between the Neo-Babylonian and the Biblical formulae, the former contains another mark of what seems to be Hebrew idiom. The phrase which is rendered by Dougherty as "when he lifts up his head" obviously means something like "takes account of him" or "remarks his absence", A similar phrase in similar context and in precisely the same sense occurs in Gen. 40:12—13 in Joseph's interpretation of the chief butler's dream. These verses read:

"And Joseph said unto him: 'This is the interpretation of it: the three branches are three days; within yet three days shall Pharaoh lift up thy head (ישא פרעה את ראשך), and restore thee unto thine office; and thou shalt give Pharaoh's cup into his hand, after the former manner when thou wast his butler". Incidentally, in the light of the Neo-Babylonian parallel, the meaning *jem. zu Ehren bringen*, given for the phrase נשא ראש פ׳ in Gesenius-Buhl (17th ed.), 523a, is incorrect[48].

[46] *Ibid.*, 299.

[47] *AJS* XXII 1. 17—19.

[48] In the light of the Neo-Babylonian parallels, J o ü o n ' s interpretation of the Biblical phrase as meaning *remarquer l'absence de quelqu'un* seems to be correct. See *Journal Asiatique*, 10éme Série, Tome 8 (1906), 377. He also seems to be right in viewing this meaning of the phrase as a probable semantic development from the meaning *prendre la somme, faire le total, faire le compte* attested several times in the Bible (e. g. Exod. 30:12; Nu. 1:2). See *ibid.*, 378. In this latter sense of taking a count the phrase *rêšu našû* occurs a number of times in Neo-Babylonian documents. See, e. g., *NRV*, Nos. 48, 759. In n. 4 to the latter document (NRV, p. 647), ʿS a n N i c o l ò - U n g n a d write: „Der genaue Sinn der in den neubabylonischen Geschäftsurkunden häufigen Wendung *rêšu našû* ist noch nicht entgültig festgesetzt. Eine Bedeutung in der Richtung 'kontrollieren, revidieren', dann aber auch 'fordern, verlangen '(= erêšu), weiter 'jd. vorladen' scheint in den meisten Fällen zu entsprechen...". They cite D o u g h e r t y, *American Journal of Semitic Languages* 46, 85, 90, n. 1, and 98, n. 1. D o u g h e r t y in turn (p. 98, n. 1) refers to an article written by Hugo W i n k-

12. The "Aramaisms" in Nabonidus' Inscriptions

In an article entitled *The Babylonian Background of the Kay Kâûs Legend*, H. Lewy, discussing Nabonidus' national background, writes:

"As regards Nabû-na'id's inscriptions, they contain several locutions which suggest that Aramaic was more familiar to him than Accadian. We especially mention in this respect the use, in Col. VI, 11.29f. of the Stela Hillah, of the prease *apulšuma aqbiš* which strongly recalls the well-known Aramaic idiom ענה ואמר"[49].

Well-known from where? From the Bible, of course. As every student of the Bible knows, this phrase occurs innumerable times in the Bible. In the few places it does occur in the Aramaic part of Daniel it is probably a Hebraism.

Another Hebraism is found in col. V of the Stela from Hillah. In this column there occurs a passage which in Oppenheim's English translation, reads:

"I am the real executor of the wills of Nebuchadnezzar and Neriglisser, my royal predecessors. Their armies are entrusted to me, I shall not treat carelessly their orders and I am (anxious) to please them (i.e.to execute their plans)"[50]. The words which Oppenheim renders as "real executor" are *našparu dannu*. These words are rendered by Langdon-Zehnpfund as "mächtiger Abgesandter"[51]. Oppenheim was apparently dissatisfied with the German translation which does not fit the context. However, his translation in not very satisfactory either. The correct rendering would be: *faithful emissary*. *Dannu* is apparently a translation of the Hebrew נאמן. The meaning of this Hebrew word is given in Gesenius-Buhl 48b as *fest...zuverlässig, treu*. One of the meanings of *dannu* given by Bezold, *Assyrisches-babylonisches Glossar* 108a

ler in 1910 and published posthumously under the title *Pharao wird dein Haupt erheben*, in *Archiv für Orientforschung* V (1929), 155—161. All of these authors, as also Landsberger in *ZA* 39, 283, failed to take account of Joüon's article.

[49] H. Lewy, *The Babylonian Background of the Kay Kâûs Legend*, *Ar. Or.* 17/2, 68.

[50] A. Leo Oppenheim apud J.B. Pritchard, *Ancient Near Eastern Texts Relating to the Old Testament*, 309.

[51] Langdon-Zehnpfund, *Die neubabylonischen Königsinschriften*, Vorderasiatische Bibliothek, Heft 4, 277 (lines 17—18).

is similarly *fest*. By assimilation with נאמן *dannu* also came to mean *faithful*. The combinations ציר נאמן and ציר אמונים, both of which mean a *faithful emissary* occur in Pr. 25:13 and 13:17, respectively.

Had Assyriologists given some thought to the possibility that the style of Nabonidus' inscriptions was influenced by the literary style of the Bible they would perhaps have discovered that in col. VII of the Stela from Ḥillah there occurs a passage which looks very much like a paraphrase of certain familiar Biblical verses. I am referring to the priestly benediction in Nu. 6:24—26, which reads: "The Lord bless thee, and keep thee; The Lord make His face to shine upon thee, and be gracious unto thee; The Lord lift up His countenance upon thee, and give thee peace". The passage from the inscription reads: *pa-ni-šu tu-saḫ-ḫi-ram-ma ina bu-ni-šu nam-ru-ti ki-niš tap-pal-sa-an-ni-ma taš-ri-im-mi ra-am-ma*[52]. This is rendered by Langdon-Zehnpfund, as follows: "Da wandte sie ihr Angesicht, mit strahlendem Antlitz blickte sie mich treulich an, erwies mir Gnade"[53]. The striking similarity between the passages quoted above is obvious, and that such similarity is not the result of chance is equally obvious.

Finally, in an inscription which was written either for the mother or for the grandmother of Nabonidus[54] there occurs the following passage: *û-mu ar-ḳi-tú šanâti*^{meš} *ṭu-ub lib-bi uṣ-ṣi-pa-am-ma ul-tu pa-ni* ^{ilu}*ašur-bani-aplu šar* ^{mâtu}*aš-šur a-di-i šatti 6-kam* ^{ilu}*nabû--na'id šar babili* ^{ki}*mâr ṣi-it lib-bi-ia 104 šanati*^{meš} *damḳati*^{meš} *ina pu-u-ti ša* ^{ilu}*sin šar ilani*^{meš} *ina lib-bi-ia iš-ku-nu-ma u-bal-liṭ--an-ni*[55]. This is rendered by Langdon-Zehnpfund as follows:

"...lange Lebenszeit, Jahre der Herzensfreude fügte er hinzu. Von der Zeit Ašurbanipals, des Königs von Assyrien, bis zum 6 Jahre Nabonid's des Königs von Babylon, dem Sohn und Sprössling meines Herzens, gab er 104 günstige Jahre angesichts des Sin, des Königs der Götter, meinem Herzen und liess mich am Leben"[56].

[52] *Ibid.*, 278.
[53] *Ibid.*, 279.
[54] See Oppenheim, *ibid.*, 311.
[55] Langdon-Zehnpfund, *ibid.*, 292.
[56] *Ibid.*, 293.

Oppenheim's English translation of this passage is rather involved and contains some additions which, in the light of the Biblical parallel I shall presently quote, are superfluous. It reads:

"...adding many (lit.: long) days (and) years of (full) mental capacity (to the normal span of life) and thus) kept me alive from the time of Ashurbanipal, king of Assyria, to the 6th year of Nabonidus, king of Babylon, the son of my womb, (that is) for 104 happy years, according to what Sin, the king of the gods, had promised me (lit.: put into my heart)"[57].

A close parallel to the first part of the above-quoted passage occurs in Pr. 3,1—2, which reads: בני תורתי אל תשכח ומצותי יצר לבך: כי ארך ימים ושנות חיים ושלום יוסיפו לך. ("My son, forget not my teaching; But let thy heart keep my commandments; For length of days, and years of life, and peace will they add to thee").

The last part of the above-quoted passage also seems to contain some Hebraisms which escaped the attention of Assyriologists. In a note to the phrase which he renders as "according to what Sin, the king of the gods, had promised me" Oppenheim writes: "Thus I propose to translate *ina pu-ú-ti šà Sin...ina lib-bi-ia iš-ku-nu-ma*, assuming an idiom *ina libbi NN šakânu 'to promise* to NN'"[58].

Landsberger[59] has suggested that *ina pu-u-ti ša Sin* be emended to read *ina pu-luḫ-ti ša ^{d}Sin* (in the worship of Sin). However, if we assume that a Hebrew idiom is at the foundation of the phrase, no emendation is necessary. *To live in the sight of Sin* means something like התהלך לפני (to walk in the sight of), which is used in the Bible with respect to the community of the pious with the deity (Gesenius-Buhl: Gemeinschaft der Frommen mit Gott"). As to *ina libbi šakânu*, one is reminded of Deut. 11:18: ושמתם נפשכם את דברי אלה על לבבכם ועל ("Therefore shall ye lay up these My words in your heart and in your soul").

13. *Šalâṭu* = שלט

The most frequently used legal term in the Aramaic papyri is the word שלט, which has been defined by Kraeling[60], as

[57] Oppenheim, *ibid.*, 312.

[58] *Ibid.*, 312, n. 6.

[59] Cited by E. Dhorme in his article *La mère de Nabonide*, *RA* 41 (1947), 6, n. 1. Landsberger's study is not available to me.

[60] Kraeling, 318 (Index).

"endowed with power". This definition is fairly accurate except that the word *power* requires qualification, for it is not physical power that is meant here, but legal power. I would therefore modify this definition to read: 1. Having power to do something. 2. Having power over a thing. I have dealt with this term quite extensively in my lectures at the Hebrew University during the 1950—51 academic year, in my book *Jewish Law*[61] and in an article on *ownership* in the *Biblical Encyclopedia* (Hebrew)[62].

I shall give two examples, one for each, of these two usages. In Cowley 10, a loan agreement dated 456 B.C., there is a clause providing that upon default in payment by the borrower, the lender shall have power to take pledges from the borrower. It reads:

"...and if there come a second year and I have not paid you your money and interest on it as written in this deed, you, Meshullam, and your children, have the right (שליטן) to take for yourself any security which you may find of mine in the countinghouse, silver or gold, bronze or iron, male or female slave, barley, spelt or any food that you may find of mine, till you have full payment of your money and interest thereon"[63].

In Cowley 8, a deed of gift by father to daughter dated 460 B.C., the donor states:

"This house and land I give to you for my lifetime and after my death; you have full rights over it (שליטה) from this day forever, and your children of ter yau"[64].

The term *šalâṭu*, which is the equivalent of the Aramaic שלט is used quite often in Neo-Babylonian documents but not nearly so often as the Aramaic term is used in the Aramaic papyri. The meaning of this term in the Neo-Bayblonian documents was not quite clear to San Nicolò and Ungnad, who write with respect thereto as follows:

"Die Bedeutung von *šalâṭu* muss noch näher bestimmt werden; seine häufigste Anwendung ist in der Klausel der Pfandverträge: 'ein anderer Gläubiger (wird) bis zur Befriedigung des Pfandgläubigers über die Pfandsache *ul i-šal-laṭ*'"[65].

[61] P. 124 ff.
[62] Vol. II, p. 295 f.
[63] Cowley, p. 30 f.
[64] *Ibid.*, p. 22 f.
[65] *NRV*, No. 3, n. 14.

The term *šalâṭu* occurs regularly in the general hypothec clause of documents of an obligatory nature. The following is an example: "Das Haus des Ardi-Anunîtu in Sippar, sowie alle seine Habe in Stadt und Land, soviel vorhanden ist, ist Pfand des Bît-illi-šarru-uṣur. Ein anderer Gläubiger wird darüber nicht verfügen, bis Bît-illi-šarru-uṣur jenes Silber...und seinen Zins voll (zurück) erhält"[66].

This form of general hypothec deserves very close and minute analysis, for, as we shall presently see, it furnishes substantial and important evidence of a link between Oriental law, on the one hand, and Attic law of the classical period and Greco-Egyptian law of the Hellenistic period, on the other.

It seems that the term *šalâṭu* in the sense of *having legal power* came into use in the Neo-Babylonian legal documents from the West. As I have stated above, its equivalent is used very frequently in the Aramaic papyri in widely diversified contexts, whereas in the Neo-Babylonian documents its use seems to be virtually limited to the general hypothec formula. This would seem to indicate that the Aramaic is the original and the Accadian the copy. Also pointing in the same direction is the fact that the Hebrew משל which is the exact equivalent of שלט is used already in the Book of the Covenant in the sense of *having legal power*. In Exod. 21:7—8 we read:

"And if a man sell his daughter to be a maid-servant, she shall not go out as the men-servants do. If she please not her master, who hath espoused her to himself, then shall he let her be redeemed; to sell her unto a foreign people he shall have no power (לא ימשל) seeing he hath dealt deceitfully with her".

Another indication that the general hypothec clause in the Neo-Babylonian documents comes from the West may be seen in the term *šalâmu*, which always occurs in this clause together with *šalâṭu*. In San Nicolò-Ungnad's transcription and translation this clause reads: *râšû šanamma ina muḫḫi ul išallaṭ adi P. kasapšu* (o.ä.) *išallimu* ("ein anderer Gläubiger wird darüber nicht verfügen, bis der P(fandgläubiger) sein Silber voll (zurück) erhält")[67].

[66] *NRV*, No. 322.
[67] *NRV*, p. 269.

In a note on the word *šalâmu*, they say: "*šalâmu* bedeutet eigentlich 'wohlbehalten sein', dann 'schadlos gehalten, befriedigt werden', hier mit direktem Objekt am besten wie oben wiederzugeben"[68].

It so happens that the intensive(*piel*) of the Hebrew שלם is used in 2 Kings 4:7 in the sense of *paying a debt* and the intensive (*pael*) of the same verb is used regularly in the Aramaic papyri in the same sense. It occurs in this sense in all three loan agreements (Cowley 10 and 11 and Brooklyn 11) in the Aramaic papyri now extant. Most significant in this respect is the fact that the intensive of *šalâmu* also occurs in the sense of *paying a debt* in a loan agreement from Alalakh of the 18th century B.C.[69] As I have shown elsewhere[70], there is a decided affinity between the legal formulae and legal terminology in the tablets from Alalakh, on the one hand, and in the Aramaic papyri, on the other.

Finally, the description of the hypothecated property as "property in town and in country" is strongly reminiscent of Deut. 28:3: "Blessed shalt thou be in the city, and blessed shalt thou be in the field". As has been noted by Petschow[71], such a description of property occurs already with great frequency in the Susa tablets of about 2000 B.C. So far as I have been able to ascertain, no other group of available cuneiform documents, except the Neo-Babylonian and the Susian, contain a general hypothec with such a description of the hypothecated property. And there is an interval of about 1500 years between these two groups of documents.

It so happens that the tablets from Susa contain a number of formulae which have some remarkable parallels in the Bible and in the Aramaic papyri. I do not profess to know what precisely the significance of these parallels is or how to explain the peregrinations of these formulae. But that the parallels exist and that they cannot be explained away as mere coincidence is beyond any doubt. Three of the parallels between the Susa tablets and the Aramaic papyri I have already discussed elsewhere[72]. Further

[68] *NRV*, No. 294, n. 5.

[69] J. D. Wiseman, *The Tablets from Alalakh*, No. 21. 12.

[70] In an article under preparation.

[71] *PNP*, 100, n. 300.

[72] See my *Jewish Law*, 17 ff., 116, 128, n. 13.

parallels between the Susa tablets and the Aramaic papyri and also between these tablets and the Bible will be discussed by me in a forthcoming article[73].

At this point I shall make a digression in order to discuss some ramifications into Greek and Hellenistic law.

1. The phrase κύριον εἶναι is used by Isaeus exactly as שליט is used in the Aramaic papyri, in the sense of *having power over a thing*. In Isaeus 6,30, we read: τῆς γὰρ φανερᾶς οὐσίας οὐδένα κύριον ἔσεσθαι τελευτήσαντος Εὐκτήμονος ἄλλον ἢ τὰς θυγατέρας καὶ τοὺς ἐκ τούτων γεγονότας. This is translated by E.S.Forster as follows: "...for no one would have any claim to the real estate on Euctemon's death except the daughters and their issue"[74]. For the vague "no one would have any claim" should be substituted 'no one would be owner". A similar phrase occurs in P. Eleph. 2.5(284.B.C.): κύριον εἶναι Διονύσιον τῶν ὑπαρχόντων This phrase is rendered by Hunt and Edgar as "Dionysius shall be owner of the property"[75]. As I have shown elsewhere[76], this phrase in P. Eleph. 2.5 is almost certainly a translation of the Aramaic.

2. The description of property as "in town and in country" seems to be used also in classical Greek sources. The word ἔπιπλα, the etymology of which is obscure, seems to be a compound of ἐπί and πόλις. The terms χωρίων κτῆσις and ἐπίπλων κτῆσις in Aristotle, Rhet. 1361a, seem to correspond to the description of property which goes back to the Susa tablets. I venture to suggest that the Roman *praedia rustica* and *praedia urbana* go back, perhaps through the medium of Greek, to the same source.

3. The form of the *syngraphe* in Demosthenes 35.10—13 (Contra Lacrit.), bears, at several points, striking resemblance to Oriental sources, including the Neo-Babylonian formula of hypothec. One of the clauses in this document reads as follows: καὶ παρέξουσι τοῖς δανείσασι τὴν ὑποθήκην ἀνέπαφον κρατεῖν ἕως ἂν ἀποδῶσι τὸ γιγνόμενον ἀργύριον κατὰ τὴν συγγραφήν. This is translated by A.T.Murray into English as follows:

"And they shall deliver to the lenders in their entirety the goods offered as security to be under their absolute control until

[73] *Vetus Testamentum* 11 (1961) 59 ff.

[74] E. S. Forster, tr., Isaeus (Loeb Classical Library), 221.

[75] Hunt and Edgar, *Select Papyri* I, 237.

[76] *Jewish Law*, 63.

such time as they shall have themselves paid the money due in accordance with the agreement"[77].

There are several inaccuracies in this translation. In the first place, παρέξουσι does not mean "they shall deliver". Secondly, ἀνέπαφον does not mean "in their entirety". Thirdly, κρατεῖν does not mean "to be under their absolute control". A much more accurate translation of this text is given by Gernet: "Le gage sera tenu à la disposition des créanciers franc de tout autre droit de saisie, jusqu'à ce que le capital et les intérêts aient été acquittés conformement au contrat"[78]. In a note he writes:

"Il ne faut pas trop presser ce mot κρατεῖν et lui faire signifier une prise de possession: l'usage du mot par ailleurs, et justement en matière d'hypotheque (C.Timothée 11), n'exclut pas du tout que les débiteurs continuent a posséder; aussi bien il ne saurait être question de les empêcher de se libérer par la vente, qui est justement l'operation prévue dans l'hypothèque de droit commercial. Il faut entendre que la vente sera suivie par les créanciers (cf. C. Phorm. 8; C.Timothée 35)"[79].

This is quite correct. The key to the technical meaning of some of the phrases is to be found in Oriental sources.

First, as I have already stated, παρέχω is a literal translation of להציג לפני (to set before) or of its Aramaic equivalent, and in the language of obligations came to mean, pretty much like the Latin *promitto*, to undertake that a certain state of affairs shall come about. Secondly, the term κρατέω is in all probability a translation of the Aramaic שלט or the Neo-Babylonian *šalâṭu* (to have power over a thing). It is enough to quote standard dictionary definitions of each of these words in order that their equivalence become apparent. Gesenius-Buhl, 833b, s.v. שלט: "herrschen, Macht haben üb(er) etw(as)"; Liddell-Scott-Jones 991a s.v. κρατέω I 3: "to be lord or master of, ruler over"

The term ἀνέπαφος is rendered by Gernet by a circumlocution "franc de tout autre droit de saisie". It should be rendered instead simply as "unencumbered". This term is used in classical and Hellenistic Greek synonymously with the term ἐλεύθερος in the sense

[77] A. T. Murray, tr., Demosthenes, Private Orations I, 284—285.

[78] L. Gernet, Demosthène, Plaidoyers civils (Collection des Universités de France), tome I, 184.

[79] *Ibid.*, 173, n. 5.

of *free, unencumbered property*[80]. As far as the latter term is concerned, there is ample evidence to the effect that its use in this metaphorical sense is of Oriental origin. Driver-Miles, discussing the phrase *pûtam ullulum* (cleansing the brow), which is used in Old-Babylonian documents in connection with manumission, write: "Once *pûtam ullulum* is applied metaphorically to a house. A claim is brought before the owner who takes an oath before the emblem (?) of two deities set up 'on the brow, i.e.in front of his house' (Bab. *ina pût bîtišu*) that there are no valid claims against it (as the text may be restored), whereby 'he has cleansed the brow of the house' (Bab. *pût bîtim ûllil*). By this process in front of the house he, as it were, cleansed it from the pollution of claims against it and the house became clean or free and quit of all claims. The converse case is found where the king grants a house *ša...lâ andurārim*, namely without immunity from service and taxation, to a subject"[81].

A still closer approximation to the Greek metaphor occurs in a Middle-Assyrian document. The general hypothec clause in this document — a loan agreement — reads: *ki ša-bar-ti memušu za-ku-a ú-ka-al*. This is rendered by the editors as follows: "Als Faustpfand wird er alles pfandfreie (Eigentum) von ihm halten"[82]. *Clear, free property* is used here in the sense of *unencumbered property*. An exact parallel to the Greek metaphor occurs in Mishnaic Hebrew. where נכסים בני חוריר, literally *free property*, is used in the sense of *unencumbered property*, and the opposite נכסים משועבדים, literally *enslaved property* is used in the sense of *encumbered property*[83].

To recapitulate. In the clause quoted above from Demosthenes 35.11 the debtors promise to keep the hypothecated property unencumbered and at the disposal of the creditors until they are paid. This is almost like a paraphrase of the standard clause in the Neo-Babylonian formula of hypothec: *râšû šunamma ina muḫḫi ul išallaṭ adi P. kasapšu* (o.ä.) *išallimi* "Ein anderer Gläubiger wird darüber nicht verfügen, bis der P(fandgläubiger) sein Silber voll (zurück)erhält".

[80] See E. Schönbauer in *Archiv für Papyrusforschung* X, 184, n. 3.
[81] G. R. Driver and John C. Miles, *The Babylonian Laws* I, 228.
[82] M. David and E. Ebeling, *Assyrische Rechtsurkunden*, No. 44, 16 f.
[83] See *JDT*, 1608b.

Finally, as I have shown in my book *Jewish Law*[84], the closing formula in the *syngraphe* — κυριώτερον δὲ περὶ τούτων ἄλλο μηδὲν εἶναι τῆς συγγραφῆς (About these matters nothing else shall be more valid than this contract) — has a close parallel in the Aramaic papyri.

14. Dispositions in Contemplation of Death

NRV, No. 12 is a gift of certain property by father to daughter to take effect upon the donor's death. The gift is made upon condition that the daughter support the father during his lifetime. The document is couched in dialogue form, the father making the offer to the daughter and the daughter accepting it. The essential part of the document reads in German translation as follows:

"Uraš-šumu-iškun, Sohn des Uraš-iddina, des Nachkommen des Vermessers, hat zu Ṭâbatu, seiner Tochter, also gesprochen: ...'Ich bin krank. Zêru-ukîn, mein Bruder, hat mich verlassen, und Rêmût-Uraš, mein Sohn, ist von mir vorgelaufen. Führe mich fort zu dir und pflege mich. Und solange ich lebe, gib mir Verpflegung (und zwar) Verköstigung, Salböl und Kleidung. Dann werde ich mein Einkommen(srecht)...dir übertragen'. Ṭâbatu hörte auf Uraš-šumu-iškun, ihren Vater, und führte den Uraš-šumu-iškun in ihr Haus zu sich. Verpflegung, (und zwar) Verköstigung, Salböl und Kleidung, gab sie ihm. ...Solange Uraš-šumu-iškun lebt, wird er den Ertrag seines Einkommen(srechts) 'essen'. Sein Einkommen(srecht) wird Uraš-šumu-iškun für Silber nicht geben, (als) Gnadengeschenk wird er (es) nicht gewähren, (zu) Pfand wird er (es) nicht setzen; auch wird er einen Abzug daran nicht vornehmen. Sobald Uraš-šumu-iškun infolge des Geschickes (ab)geht, gehört es künftighin der Ṭâbatu, seiner Tochter".

It will be noted that by the provisions of this document the donor is to have the enjoyment of the property during his lifetime. The characteristic term used in the sense of *to have the enjoyment of* is *akâlu* (lit.: to eat). San Nicolò-Ungnad write with regard to this term as follows: "*ebûr* (wörtlich 'die Ernte') *iṣḳi-šu ik-kal*, die zur Bezeichnung des Niessbrauches übliche Wendung"[85]. Interestingly enough, the same term is used in the same sense

[84] P.115.

[85] *NRV*, No. 12, n. 14. Cf. Bezold, 14a and *GB*, 557b.

in a post-obit gift, also by a father to a daughter and also on condition of support, in a document from Susa[86] to which I shall have occasion to refer in another connection. A similar term — אכל — is used throughout the Mishnah[87] in various contexts, including that of a post-obit gift, in the same sense as the Accadian term is used in the Neo-Babylonian and the Susian documents. In the Mishnah, as in the Neo-Babylonian documents, the full phrase is אכל פירות (eat the fruit). In view of the importance of the parallelism between the Neo-Babylonian metaphorical phrase, on the one hand, and the Mishnah, on the other, and of the possible bearing this parallelism, in turn, may have on the question of the origin of *ususfructus* representing, as it does, the use of a similar metaphor in classical Roman law, I shall quote Danby's[88] translation of Mishnah Ketuboth 9:1, inserting in parentheses the significant phrases as they appear in the original Hebrew:

"If a man declared to his betrothed wife in writing, 'I will have neither right nor claim to thy property', he may yet have the use of it during her lifetime (אוכל פירות בחייה) and inherit her property when she dies. If so, to what purpose did he declare to her in writing, 'I will have neither right nor claim to thy property?' — so that if she sold it or gave it away her act should be valid. If he declared to her in writing, 'I will have neither right nor claim to thy property or to the fruits thereof', he may not enjoy the fruits during her lifetime (אינו אוכל פירות בחייה), but he may inherit her property when she dies. R. Judah says: He can in any wise enjoy the fruits of the fruits unless he declared to her in writing, 'I will have neither right nor claim to thy property or to the fruits thereof, or to the fruits of the fruits thereof, and so on without end..."[89].

The clause in NRV, No. 12 which reads *ù ni-is-ḫu a-na muḫ-ḫi ul i-na-sa-ḫu* and which is translated above as "auch wird er einen Abzug dar n nicht vornehmen"[90] has puzzled S a n N i c o l ò and U n g n a d[91]. K o s c h a k e r[92] says frankly that the phrase

[86] *AJS* XXIII, 285. 10.
[87] See *JDT*, 1725b.
[88] See *Mishnah*, *Baba Bathra* 8:7.
[89] H. D a n b y, *The Mishnah*, 257.
[90] *NRV*, No. 12, n. 17.
[91] See *NRV*, No. 3, n. 15.
[92] See *ZSS* 49 (1929), 651.

nisḫu nasaḫu is just as little understood to him as it is to San Nicolò and Ungnad. The solution of the puzzle, it seems, is to be found in the Aramaic papyri. In Brooklyn 10, as well as as in other documents representing gifts, the donor promises that he will not withdraw the gift from the donnee. In Cowley 8(460 B.C.), 1.18f. it is stated: "And further, I, Mahseiah will not tomorrow or on any other day take it away (אהנצל) from you give it to others"[93]. The word for *take away* is the *haphel* of נצל. The Hebrew *hiphil* of this verb is defined by Gesenius-Buhl as *entreissen, wegnehmen*[94]. The Accadian *nasaḫu* is similarly defined by Bezold as *ausreissen...fortnehmen*[95].

In Brooklyn 10.9f., in Kraeling's translation, we read: "I, Anani son of Azariah, *lḥn*, shall not be able to say 'I gave (it) to thee in affection as remainder portion(?) on the document of thy marriage until another (time)'. If I say: 'I will take it away from thee', I shall be liable and shall (have to) give Yehoyishma a fine of silver, 30 *karsh*, refined silver, in royal weight, and thou in addition shalt have power over this house, the boundaries of which are written above, in my life and at my death"[96].

The phrase which is rendered by Kraeling as "until another (time)" should rather be rendered as *until another (gift)*, that is until the donor makes a subsequent gift of the same property to another party.

From the foregoing discussion it appears that the deeds of gift in the Neo-Babylonian documents and in the Aramaic papyri stress the irrevocability of the gift in substantially similar language: the gift is not to be taken away. In the Aramaic papyri, there is in addition to the irrevocability clause another clause in which any document, *new or old*, produced against the donnee with respect to the gift is declared void. As I have shown in my book *Jewish Law*[97], a similar clause occurs in the Susa tablets of about 2000 B.C.[98] I have also shown there that substantially the same clause occurs in *Marculfi Formularum Liber* II, No. 3, a Frankish formulary compiled about the middle of the 7th century C.E. In the Susa

[93] Cowley, p. 23.
[94] *GB*, 518a.
[95] Bezold, 200b.
[96] Kraeling, 24a.
[97] P. 116 ff.
[98] *AJS* XXIII, No. 285. 11 f.

tablets it is any document *ša pa-ni u wa-ar-ki* (prior or subsequent), in the Aramaic papyri it is חדת ועתיק (new or old)[99] and in the Frankish form it is *anterius aut posterius* that is declared void.

The almost complete correspondence between the formula in the Susa tablets of 2000 B.C. and that in the Frankish formulary of the 7th century C.E. is a vivid illustration of the value of what Leopold W e n g e r called *antike Rechtsgeschichte* for the understanding of the origin and development of some of the most important institutions of European law. We may not always be able to find the connecting links between two legal institutions found in two parts of the world as far removed from one another as are the kingdoms of the Franks in Europe and Elam in the Near East, and separated from one another by an interval of almost three millenna as are the Susa tablets and the Frankish formulary. But a link there must be, if the two institutions are expressed in the same formula. Rather than brush aside the parallelism as insignificant and as a mere curiosity, one should diligently search for a connecting link or links and, at least in some cases, the search will be richly rewarded. The formula of gift in the Susa tablets and in the Marculfian formulary is a case in point.

It so happens that C u q in his analysis of the Susa tablets has noted with surprise the similarity between the clause quoted above from AJS 285 and a clause referred to by three Roman jurisconsults of the end of the 2nd and the beginning of the 3rd century. In view of the importance of the remarks of this eminent Romanist and legal historian I shall quote from his article verbatim. After remarking that in some documents representing gifts in contemplation of death from Susa and from Nuzi the donor states that he has revoked all prior gifts, he continues:

"Le no. 285 de Suse va plus loin que les précédents; il révoque non seulement une donation antérieure a la *šimtu*, mais même une donation postérieure. C'est dire que le disposant rénonce au droit de révoquer la *šimtu* qu'il vient de faire. On ne sera pas peu surpris de rétrouver ici une clause que signalent trois jurisconsultes romains de la fin du II-ème siècle de nôtre ère, qui tous les trois ont ete préfets du prétoire. Ils reconnaissent la validité de cette clause. Mais, a leurs yeux, une pareille donation n'est plus à cause de mort, c'est une donation entre vifs faite au moment de la mort.

[99] See, e. g., Cowley, No. 8. 16.

Paul, Dig., XXXIX, 6, 35, 2: 'Sed mortis causa donatio longe differt ab illa vera et absoluta donatione quae ita profiscitur ut nullo casu revocetur; et ibi qui donat illum potius quam se habere mavult'. Ulpien (eod. 27). Papinien avant lui avait dit avec sa concision habituelle (Dig. eod. tit., 42.1): 'eum autem qui absolute donaret, non tam mortis causa quam morientem donare'"[100].

C u q's surprise would have been still greater had he been aware of the complete correspondence between the formula in AJS 285 and that of the Marculfian formulary. Let me say at once that there can hardly be any doubt that the Susian formula of about 2000 B.C. did not reappear in a Frankish formulary of the 7th century C.E. by sheer accident. We may not always be able to trace the road which the formula and modifications thereof traveled, but that travel it did is almost certain. As is often the case, the Aramaic papyri and other Jewish sources are of the utmost importance in tracing the origin of the deed of gift in Roman law of the classical period and in medieval Europe.

As far as medieval Europe is concerned, it is highly significant that a clause similar to that of the Frankish form occurs in P. Lond. 77. 59ff., where it reads: προσομολογῶ δὲ ὡς εἰ ἐμφανείη ἕτερος χάρτης προγενέστερος ἢ μεταγενέστερος ἐναντιοθῆναι ταύτης τῆς διαθήκης ἐφ'ᾧ τὸν αὐτὸν χάρτην ἔωλον εἶναι καὶ ἀνίσχυρον ἀπανταχοῦ προτεινόμενον.

In addition to this clause there are several other indications of Jewish influence in this 8-th century document. In 1.12 it is stated that the donor is *walking on earth and proceeding at market*, which as I have shown in my book *Jewish Law*, is a translation of a Talmudic formula. In 1.40f. the enumeration of possible contestants against the validity of the document follows closely that of the Aramaic papyri. In 1.45 the donor states that neither he nor his representatives will ever complain against the donnee or against his successors to *governor or judge* (ἄρχοντι ἢ δικαστῇ). This looks very much like a paraphrase of Cowley 8.11f, which reads:

"Whoever shall institute against you suit or process, against you or son or daughter of yours or any one belonging to you, and shall appeal against you to governor or judge (סגן ודין) shall pay to you or to your children the sum of 10(that is, ten) *kerashin*...[101].

[100] E. C u q, *Les actes juridiques susiens*, *RA* 28(1931), 58.

[101] Cowley, p. 22 f.

As to Roman law, it will be recalled that the deed of gift in the Aramaic papyri contain, a clause in which the donor states that the gift is *not to be taken away*[102]. This is undoubtedly the origin of the ἀναφαίρετος of the Greco-Egyptian papyri. In all probability, the clause referred to by Papinian, Ulpian and Paulus was couched in similar language. The phrase *in nullo casu revocetur* points in this direction. Again, the phrase *vera et absoluta donatio* corresponds to מתנה גמורה וחלוטה (genuine and absolute gift) of the Jewish form[103]. It is extremely unlikely that the Jewish form follows a Greek or a Latin model. The word for *genuine* occurs already in the Susa tablets and the word for *absolute* occurs in an early Mishnaic text[104].

In P. Gron. 10.13 there occurs a clause[105] which reads: μηδενὸς ἑτέρου σκόπου ἢ ἑτέρου ἐγγράφου τὴν παροῦσαν γνώμην ἀνατρέπειν δυνησομένου.
This is apparently an adaptation of the clause in the Aramaic papyri to the effect that any *new or old* document shall be void. In addition to the substantial similarity between the two clauses there is a tell-tale mark of Aramaic influence in the clause just quoted from P. Gron. 10. The word δύνασθαι in the sense of *to have legal power*, especially when used with a negative, is almost certainly a legal Aramaism or a Hebraism. The Aramaic כהל (to be able) is used numerous times in the Aramaic papyri[106] in this sense, and the Hebrew יכל is similarly used frequently in the Bible[107].

Together with ἀναφαίρετος there occurs in P. Grenf. II 68 the adjective ἀμετανόητος. This combination corresponds to the formula דלא להשנאה בה ולמיהדר מינה לעלם (not to change and not to retract forever) of the Jewish deed of gift[108]. Again, it is fairly certain that the Jewish formula, the first part of which reproduces a phrase that occurs several times in the Book of Daniel[109] was not copied from the Greek. In P. Grenf. II 71 (244—248 C.E.),

[102] See p. 157 ff. above.
[103] See p. 160 f. above.
[104] See *Mishnah Arakhin* 9:4 and cf. *JDT* 467 a.
[105] Quoted by Taubenschlag, *Law*, 206, n. 6.
[106] See, e. g., Cowley 5. 6; 6. 12.
[107] See, e. g., Deut. 12:17; 21:16. Cf. my *Jewish Law*, 104 f.
[108] See, e. g., form cited in n. 32 above. Cf. *JJP* XI—XII, 182, n. 5.
[109] See e. g., Dan. 6:9 (8), 16 (15).

also a deed of gift from the Great Oasis, ἀναφαίρετος is combined with αἰώνιος. This too is a stock phrase in Jewish deeds of gift מתנת עלמין (an eternal gift)[110]. In the Hebrew document this phrase is preceded by the phrase מתנת בריא (a gift by one in health). The juxtaposition of the two phrases indicates that the draftsman wished to emphasize the irrevocability of the gift in contradistinction to the revocable gift *mortis causa* by a sick person. P. Grenf. II 98, as well as some of the other papyri from the Great Oasis, contains another mark of the close relationship with the Jewish legal tradtion. The document is signed by two witnesses[111], a practice which is characteristic of the Jewish legal document and which is based on Deut. 19,15.

In addition to the form of the irrevocable gift, classical Roman law seems to have borrowed from Jewish law, probably through Hellenistic sources, some other ideas in the field of dispositions in contemplation of death.

In P. Oxy. 907 (276 C.E.), the will of Aurelius Hermogenes the phrase δίδωμι καταλείπω occurs twice, once in line 7 and once in line 12. In a note[112] to this phrase Arangio-Ruiz says that the phrase is an imitation of the Latin formula *do lego*. This is probably so at the end of the 3-rd century. But the question may well be asked: Is the Latin formula Latin? Is it not an adaptation of some Hellenistic formula? The answer to the last question is I believe, in the affirmative. What is more, the Hellenistic formula was probably inspired by some legal ideas which originated among Jews about the middle of the 2nd century B.C. at the latest, and which at a later time we find reflected in the Mishnah. I shall quote here what I have said concisely in a note in my book *Jewish Law*[113]. "In some wills stemming from the Thebaid and belonging to the same group as the papyri from Gebelen it is stated that the testator was in health (ὑγιαίνων) at the time the will was made. Kreller states that this is obviously a temporary or local style peculiarity ('Es liegt hier offenbar eine zeitliche oder lokale Stileigentümlich-

[110] See form cited in n. 32, above.

[111] See *Fontes Iuris Romani Antejustiniani*, Pars III, *Negotia*, V. Arangio-Ruiz, ed., p. 307, n. 3. Commenting on P. Grenf. II 68, the editor says: „Bini testes in ceteris quoque Magnae Oaseos documentis (P. Grenf. II 69 ss.) inueniuntur."

[112] *Ibid.*, p. 155, n. 8.

[113] *P.* 203 f. n. 42.

keit vor'.). However, a reference to Mishnah Baba Bathra 9:6 makes one wonder whether there is not much more than just a matter of style involved here. This text, in D a n b y's translation, reads: 'If one that lay sick assigned his goods to others [as a gift] and kept back any land soever, his gift remains valid; but if had kept back no land soever, his gift does not remain valid. If it was not written therein, 'while that he lay sick', but he said that he lay sick, whereas they said that he was in health, he must bring proof that he lay sick". From this Mishnaic proposition it appears that a recital in the instrument to the effect that the testator was in health at the time the instrument was made would serve as a protection to the beneficiary or beneficiaries against an attempt by the testator to revoke the will. Another characteristic feature of the wills from the Thebaid also seems to be explainable in terms of a Mishnaic proposition. The operative words in these wills are καταλείπω καὶ δ δωμι (I leave and give), instead of just καταλείπω (I leave). In Mishnah Baba Bathra 8:5 it is stated: "If a man apportioned his property to his sons by word of mouth, and gave much to one and little to another, or made them equal with the firstborn, his words remain valid. But if he had said that so it should be 'by inheritance', he has said nothing. If he had written down, whether at the beginning or in the middle or at the end of his testament, that thus it should be 'as a gift', his words remain valid." If the testator had said only καταλείπω (I leave), which is a technical word of inheritance, the division of the property would have been void, as contrary to the laws of succession. But by adding the word (I give), which is a word of gift, he rendered the division valid. In the formula καταλείπω καὶ δ᾽δωμι of the wills of the 2nd century B.C. from the Thebaid we seem to have the origin of the formula *do lego* of classical Roman law. By the time Gaius wrote his *Institutes* the reason for using the two words and their exact technical meaning had apparently been forgotten. In Book II, 193, Gaius states that either word will suffice to constitute a valid will.

It should be noted here that when a Greek legal formula containing two wordes with a copula καί is translated into Latin the copula seems to be dropped. καταλείπω καὶ δ᾽δωμι becomes *do lego*. The same phenomenon is observable in ὠνὴ καὶ πρᾶσις which, when rendered into Latin, becomes *emptio venditio*[114]. Interestingly enough,

[114] See F. P r i n g s h e i m, *The Greek Law of Sale*, 11 f. Cf. my *Jewish Law*, 25.

when *do lego* is re-translated into the original Greek the copula is not restored to it.

Finally, Mishnah Baba Bathra 9:6 quoted above together with the term ὑγιαίνων quoted from the 2nd century B.C. wills is probably not unrelated to the *donatio mortis causa* of classical Roman law. The rule reflected in the Mishnah, distinguishing between a gift made by a donor while in health and one made during illness, is in all likelihood of great antiquity[115]. This rule was apparently well established and well known at the time when the above-quoted Mishnaic proposition was formulated. The author of this proposition took the rule for granted without stating it specifically.

I venture to suggest that the distinction between a gift made by a p rson in good health and one made by a sick person goes as far back as the 14th century B.C., the time of the Nuzi tablets. One of these tablets, in S p e i s e r's translation, reads in part as follows:

[115] Further research on the subject has confirmed my supposition that the formula "while in health", found in the second century B. C. papyri representing wills from the Thebaid and reflected in the Mishnah, is of great antiquity. Precisely the same formula is found in a will from Alalakh of the 18th century B. C. No. 6 of the tablets from Alalakh (D. J. W i s e m a n, *The Alalakh Tablets*, p. 33) is entitled by Wiseman "The Will of Ammitaku". In Wiseman's translation it reads in part as follow: "Ammitaku the governor of Alalakh while alive (*i-na bu-ul-ṭi-śu-ma*), in the presence of Iarimlim the king his lord has bequeathed his possessions". The phrase *i-na bu-ul-ṭi-śu-ma* does not mean "while alive" but rather "while in health". See Bezold 89 b: "*bulṭu* Lebenszeit; Gesundheit". The same formula occurs in a document from Ḫana first published by C. H. W. J o h n s in *Proceedings of the Society of Biblical Archaeology* 29 (1907), 177 ff. J o h n s (ibid., 181) correctly renders the phrase as "in full health". A. T. C l a y, who republished the document in *Babylonia Records in the Library* of J. P. M o r g a n, vol. IV, No. 52, renders the phrase as "by his generosity", apparently as a mere guess. Kohler and Ungnad, in *Hammurabis Gesetz* III, No. 5, render it as "bei seinen Lebzeiten". Similarly, K o s c h a k e r in *ZA*, 35 (1924), 197. However, in *Orientalistische Literaturzeitung*, 1932, 319 f., on the basis of certain parallels from some documents from Susa, Koschaker already interprets the phrase under discussion in the document from Ḫana as "körperliche Gesundheit". On the documents from Ḫana generally, see S a n N i c o l ò, *Beiträge* 42, n. 3 and the literature cited there. That a formula in a document written in Greek in Egypt in the second century B. C. should throw light on the interpretation of the same formula, expressed ambiguously in Accadian, in a document written in the 18th century B. C. in Alalakh is most remarkable. It is a vivid illustration of the continuity of legal institutions.

"Tarmiya son of Huya with Shukriya and with Kulahupi, with (these) two of his brothers, sons of Huya, on account of the slave-girl...in a lawsuit before the judges of Nuzi appeared, and thus Tarmiya before the judges spoke: 'My father Huya was ill and on (his) couch he lay (*ma-ru-uš-mi ù i-na*^{Gis} *erši na-al*). And my hand my father seized and thus to me he spoke, The other sons of mine are older (and wives they have taken). But you have not taken a wife. So Zuluti-Ishtar as your wife to you herewith I am giving'. And the judges witnesses of Tarmiya requested. And Tarmiya his witness before the judges produced (Names of witnesses follow)"[116].

In a note, S p e i s e r writes: "The homely picture of a father who senses the approach of death and reaches out for the hand of his youngest son, and then speaks to him tenderly, is unique in cuneiform literature. It is a worthy forerunner of the Benjamin episodes in the Old Testament"[117].

I doubt very much whether the reference to the circumstance in which the gift was made is a reflection of the son's lingering memories with respect to the tender feelings of affection shown to him by his father. The document is not a stenographic report of the proceedings before the court. Tarmiya's plea was not formulated by him spontaneously under the spell of emotion. It was drawn up by a practical scribe to serve a practical purpose. That purpose, it may be surmised, was to describe the circumstances of the father's gift to the son in such a manner as to give legal effect to the gift. It was apparently required, either by custom or by statute, that a deed of gift be drawn up at the behest of the donor in order that the gift be given legal effect. In order to justify the failure to comply with the requirements of the law, the scribe thought it necessary to emphasize that the donor was sick in bed. The language in which this is expressed is remarkably similar to the formula which in Talmudic times characterized a gift by a sick person: כד הוה קציר ורמי בערסיה (While he was sick and lying on his couch)[118]. The revocability of a gift made informally by a sick person is a likely corol'ary of the rule dispensing with the formality of a writing.

[116] R. P f e i f f e r and E. S p e i s e r, *One Hundred New Selected Nuzi Texts* (*Annual of the American Schools of Oriental Research* XVI), No. 56.

[117] It seems to me that the Joseph episode in Gen. 48 is more relevant.

[118] See *BT*, *Baba Bathra*, 154a. Cf. my *Jewish Law*, 195 ff.

To conclude this section on dispositions in contemplation of death I shall expand somewhat an on observation I have made in a footnote in my *Jewish Law*[119] as follows:

"With respect to P. Lond. 77, H.Kreller (*Erbrechtliche Untersuchungen auf Grund der graeco-aegyptischen Papyrusurkunden*, 309 f.) says that it represents an interesting exception to the rule that a will is revocable. He also cites (*ibid.*,n. 3) several Coptic wills which, by their terms, are irrevocable and concludes that in the late period (Spätzeit) in Egypt there is noticeable a certain tendency toward the irrevocable disposition *mortis causa*. This tendency resulted from the assimilation of the will to the Talmudic irrevocable gift to take effect after the death of the donor. The characteristic formula *walking on his feet at market* is eloquent proof of that".

Recently, I have come upon a bit of evidence which confirms this observation. In P. Cairo Masp. 67151 (670 C.E.) which is classified as a testament, but which, like P. Lond. I 77, contains a statement (11.29—30) saying "I am in health and walking at market" (ὑγιαίνω καὶ ἐπ' ἀγορᾶς βαδίζω), there is also a statement to the effect that the maker ordered that the document be drawn up in public place (γραφῆναι ἐπέταξα ἐν δημοσίῳ καὶ πρακτικῷ τόπῳ). Maspero was puzzled by the latter statement. In a note he writes: "La phrase est peu nette; il est probable qu'il s'agit ici de la garde du testament. Le δημόσιος καὶ πρακττκὸς τόπος est le lieu ou sont déposés les actes (πρακτικά)". Lewald[120], discussing this phrase, maintains that it means that the document was written in the office of the συμβολαιογράφος. In all probability, there is a reflection here of the requirement of Talmudic law[121] that in order that a gift be valid the donor must *order that it be written in a public place*. The following is an English translation of the pertinent Talmudic passage:

"Rab Judah said: A deed of gift drawn up in secret is not enforceable. What is meant by a deed of gift drawn up in secret ? R.Joseph said: If the donor said to the witnesses: 'Go and write it in some hidden place'. Others report that what R.Joseph said was: If the donor did not say to the witnesses 'Find a place in the street or

[119] P. 198, n. 40.

[120] In *ZSS* 33, 625 f.

[121] *BT*, *Baba Bathra*, 40 b.

in some public place and write it there'. What difference does it make which version we adopt ?— It makes a difference where the donor simply told the witnesses to write, without saying where"[122].

This, apparently, is the origin of γραφῆναι ἐπέταξα κτλ. of P. Cairo Masp. 67151.

B. The Talmudic Period

1. Assignment of Obligations

Under Talmudic law, the transfer of a debt was accomplished through an authorization given by the transferor to the transferee to demand and receive payment. The assignee is is referred to in the Mishnah as בא ברשות (one who comes with authority)[123] the verb הרשה (authorized), without more, is used in a Talmudic text of about the middle of the 2nd century C.E. in the sense of *assigned a debt*[124]. In Babylonian Talmud, Baba Kamma 70a, the

[122] *The Babylonian Talmud, Baba Bathra* I, Maurice Simon tr., (The Soncino Press, London, 1935, p. 175. P. Cairo Masp. 67151 contains some other marks of the influence of Jewish law. In lines 89 ff. there is an enumeration of items, which reads in part as follows: κινητῶν καὶ ἀκινήτων καὶ αὐτοκινήτων πραγμάτων πάσης ἐνοχῆς καὶ ἀγωγῆς... πάσης λήμψεως καὶ δόσεως ὑπὲρ ἐμοῦ. The first three items, which seem to occur only in 6th century papyri, have Talmudic parallels of considerably earlier date. See BT, *Baba Bathra* 68 a. The phrase ἀγωγὴ καὶ ἐνοχή which occurs most frequently in connection with the extent of an agent's powers (See, e. g., P. Oxy. 134. 14) seems to be a translation of בין לזכות בין לחובה (for right and for liability), which is a standard formula in the Jewish form of the power of attorney. As I have shown in my *Jewish Law*, 270 ff., this formula, which is of Talmudic origin, was translated in medieval England into Latin by the formula *ad lucrandum vel perdendum*. Preisigke, *Wörterbuch* 15 b s. v. ἀγωγή has misinterpreted this phrase. He cites from P. Oxy. 134. 14 (6th century C. E.) and translates as follows: "ὁ δεῖνα προσπορίζων τῷ ἰδίῳ δεσπότῃ τὴν ἀγωγὴν καὶ ἐνοχήν der seinem Brotherrn gegenüber (als Verwalter) einsteht für Belastung = Leistung (Zahlung aus frei verfügbaren Mitteln) und Haftung". The phrase has been correctly interpreted by Emil Kiessling in Band IV of the *Wörterbuch*, 27 a, as meaning "Rechte und Pflichten". Finally, the phrase λήμψις καὶ δόσις is apparently a literal translation of משא ומתן (taking and giving). Cf. δοσολημψία in P. Lond. 1727. 45 and the comment thereon in my *Studies in Legal History*, 29 f.

[123] See *Mishnah*, *Ketuboth*, 9:5.

[124] See *BT*, *Kiddushin*, 47 b.

essential formula of an instrument of assignment is given as זיל דון ואפיק לנפשך (Go, litigate and collect for thyself).

It seems that the Talmudic formula of an instrument of assignment quoted above constitutes an important link in a long chain of development going back, at least, to the Middle-Assyrian documents. Among these documents there are some representing assignments of debts in which the essential formula is that authorizing the assignee to demand (payment) and take (the proceeds). The formula in one of these documents, in Koschaker's transliteration and translation reads: *ki-i-mu úmaru*^{pl} *Silli-ku-bi ú-ba-a i-laq-qi.* "Anstelle der Söhne des Silli-Kubi wird er fordern (und) nehmen"[125]. Discussing the above formula Koschaker writes:

"Wie sie im Einzelnen zu interpretieren ist, mag dahingestellt bleiben. Sie könnte besagen, dass der Zessionär nur alieno nomine als Vertreter der Zedenten die Forderung geltend machen darf, also ähnlich wie der römische procurator in rem suam mandatum agendi, sie könnte aber auch zum Ausdruck bringen, dass dem Zessionär die Forderung nunmehr in derselben Weise zustehe wie vorher dem Zedenten, was auf eine Singularsukzession in die Forderung im Sinne des modernen Rechts hinausführen wurde"[126].

A formula substantially similar to the Middle-Assyrian formula quoted above occurs also in a Neo-Babylonian instrument of assignment of several debts outstanding in favor of the assignor, which was published by San Nicolò and Ungnad in German translation. However, their resistance to the correct interpretation of a crucial term in the document caused them to misinterpret this unique document, which is of inestimable value for the history of the assignment of obligations. The document, in German translation, reads:

"...NN. hat einen Verpflichtungsschein über 22 Kur Gerste und $\frac{1}{2}$ Mine 2 Sekel Silber zu Lasten der Elamiter, einen Verpflichtungsschein zu Lasten des Bêl-ibni, Sohnes des Nasir, des Nachkommen des Priesters der Göttin Ištar von Babylon, unter Siegelung dem Mašdu(?), dem Sohne des Nabû-îpuš, des Nachkommen des Goldschmiedes, gegeben. Die Verpflichtungsscheine wird er (d.h. der Beschenkte) ...und dann davontragen"[127].

[125] P. Koschaker, *Neue keilschriftliche Rechtsurkunden aus der El-Amarna Zeit* (Abhandl. der Sächs. Akad. d. Wiss. phil. hist. Kl. 39), 152 f.

[126] *Ibid.*, 43.

[127] *NRV*, No. 11.

A note to the last sentence reads:

"ù-il-tim^{mus} is-si-ru-ma i-na-aš-ši. Die Bedeutung des ersten Zeitwortes ist noch unklar, die Ableitung von *esêru* oder *sêru* 'einschliessen', bzw. 'bedecken' gibt auch keinen brauchbaren Sinn. Keinesfalls ist eine Bedeutung wie 'eintreiben' anzunehmen, weil die Schuldscheine nach Tilgung der Forderung an den Schuldner zurückzugeben sind; auch würde in diesem Falle *našû* nicht passen"[128].

Despite San Nicolò-Ungnad's vigorous objections, Koschaker[129] has shown that *esêru* does mean "eintreiben", and this was later accepted by Ungnad. In the Glossary to the Neo-Babylonian documents, compiled by Ungnad alone and published in 1937, we find, at p. 32, the following entry: "*esêru* G 'unter Anwendung von Zwang nehmen', im Allativ: (Schulden) 'eintreiben'".

Koschaker is undoubtedly right, as appears from the Middle-Assyrian and Talmudic parallels quoted above as well as from Greco-Egyptian papyri which I shall presently discuss. San Nicolò-Ungnad's original objections to the meaning of "eintreiben" for *esêru* are not valid at all. The word *uiltim*, as they themselves say in n. 2 to No. 11, is used in the sense of the *debt* represented by the document as well as in the sense of *document*. To quote: "Zu bezeichnen ist, dass *ú-il-tim* sowohl den 'Verpflichtungsschein', als auch die darin verkörperte 'Forderung' bezeichnet, so dass in der Übersetzung die beiden Bedeutungen nicht immer ausseinander gehalten werden konnten". The word *našû* (carry away), therefore, fits very well into the context. The assignee is authorized to *collect* the debt and *carry away* the proceeds.

One of the oldest instruments of assignment in the Greco-Egyptian papyri is P.BGU 1170 IV (Alexandria, 10 B.C.)[130]. The form by which the transfer of the obligation is effected in this instrument is probably the origin of the *procuratio in rem suam* of Roman law. The assignee is authorized (1.52 ff.) to exact payment (πρᾶξις) and carry away the proceeds for himself (ἀποφέρεσθαι εἰς τὸ ἴδιον). This is so obviously similar to the Talmudic ואפיק לנפשך (and carry away for thyself) that it is difficult to escape the conclusion that one is a translation of the other.

[128] *NRV*, No. 11, n. 6.
[129] *ZSS*, 49 (1929), 650, n. 5.
[130] See Taubenschlag, *Law*, 418, n. 5.

The question naturally arises: Is the Aramaic formula found in the Talmud a translation from the Greek or is the reverse the case? The answer is that in all probability the Greek is a translation from the Aramaic. In the first place, the formu a, as I have shown above, is found already in Middle-Assyrian and Neo-Babylonian documents, and it is more likely to have been further transmitted in Aramaic than in Greek. Secondly, P. BGU 1170 IV containes a phrase which undeniably is a literal translation from the Aramaic. The assignor authorizes (1.56) the assignee to κομίζ(εσθαι) καὶ παραδιδό(ναι) (to receive and to give) with respect to the debt. This is a translation of the Hebrew נשא ונתן[131] or the Aramaic נסב ויהב[132] Finally, as I have shown in my book *Jewish Law*[133], the group of papyri from Alexandria of the time of Augustus to which P. BGU 1170 IV belongs exhibit a number of characteristics which brings them into close relationship with Jewish sources, including the Aramaic papyri.

The nature of an assignment as an authorization to *collect* the debt and *carry away* the proceeds stands out in bold relief in P. Oxy 271. 2ff (56 C.E.), where the formula reads: ὁ[μολο]γεῖ...ἐν ἀγυιᾷ[134] παρακεχωρηκέναι αὐτῷ πρᾶξιν καὶ κομιδὴν ἀργυρίου. The term πρᾶξις, as we have just seen, occurs also in P. BGU 1170. As to κομιδή, I shall quote one of the definitions of this term from Liddell-Scott-Jones, *A Greek-English Lexicon*, 975b: "carrying away for oneself, rescue, recovery...esp. *recovery of a debt*".

In P. Oxy. 272. 13f. (66 C.E.), another instrument of assignment, the essential formula reads: ὁμολογ[ο]ῦμεν ἔχειν σε ἐξουσί[αν τε] αὐτῇι τὴν ἀπαίτησιν ποιεῖσθαι. This is substantially the same formula as that of P. Oxy. 271. It will be noted that the word ἐξουσία

[131] See *JDT*, 937 a.

[132] See *ibid.*, 915 a.

[133] P. 65 ff.

[134] On this phrase, which is characteristic of Oxyrhynchus documents from the first century C. E. onward, and on parallels in the Talmud and in a Nabatean document from the Dead Sea Region, see A. Gulak, *Das Urkundenwesen im Talmud im Lichte der gr. äg. Papyri*, 23 and my article *A Clue to the Nabatean Contract from the Dead Sea Region*, *Bulletin of the American Schools of Oriental Research*, No. 139, p. 13. For a Neo-Babylonian parallel — *ina sûka* — see *NRV*, No. 21, n. 5. A similar formula — *ištu sûqi* — also occurs in a Nuzi document of about the 14th century B. C. See E. A. Speiser, *New Kirkuk Documents Relating to Family Laws* (*Annual of the American Schools of Oriental Research* X [1930]), No. 29, line 4 and Speiser's comment thereon.

(authority) corresponds to רשות (authority) in the phrase בא ברשות (one who comes with authority), used in the Mishnah as a designation of the assignee, and to the verb הרשה (authorized) which became a *terminus technicus* meaning *assigned a debt*.

2. The Widow's Oath

In NRV 29 a woman, who receives, from the adopted son of her deceased husband, as her share, an interest to the extent of ½ mina of silver in an instrument of indebtedness left by her husband, is required to take an oath that she has nothing, except certain enumerated household articles, which belonged to her husband, and that she is not concealing from the son any instrument of indebtedness which belonged to her husband. The document, in San Nicolò-Ungnad's translation, with Landsberger's correction[135] accepted by them[136], reads in part as follows:

"Von einem Verpflichtungsschein über 1 Mine 10 Sekel Silber des Gimillu, Sohnes des Marduk-šumu-ibni, des Nachkommen des Schmiedes, zu Lasten des Bêl-aplu-iddina, Sohnes des Dâdija, des Nachkommen des *ḫrabi-bânê*, wofür sein Haus als Pfand genommen ist,...gehörig dem Iddina-Nabû, dem Sohne des Nabû-bani-zêri, des Nachkommen des Schmiedes, welcher den Nachlass des Gimillu (über)nommen hat, — davon hat ½ Mine Silber Iddina-Nabû (als) Anteil der Tappašar, der Ehefrau des Gimillu, anstelle ihrer Verpflegung bestimmt ½ Mine von jenem Silber, (nämlich von) 1 Mine 10 Sekeln, wird Tappašar nehmen, und der Rest gehört dem Iddina-Nabû...Tappašar hat (unter Eid) bei der Ištar von Babylon für den Iddina-Nabû 'hinaufgehen lassen': wahrlich, nichts befindet sich in meinem Besitz, abgesehen von 1 Metallwärmer, 1 Metallbecher, 1 Bett und 1 Tisch nebst Stuhl, (d.s.) 4 (Stück) Hausgerät des Gimillu, meines Ehemannes. Auch habe ich den Verpflichtungsschein dem Iddina-Nabû zum Einlösen (?) überwiesen".

Where and when the rule concerning the widow's oath originated is, on the available evidence, impossible to determine. But we do possess evidence of its dissemination in the Near East during the Hellenistic period and much later. The rule is specifically stated in the Mishnah and is reflected in Egyptian docu-

[135] See *ZA*, 41 (1933), 220.
[136] *NRV*, p. 701.

ments as late as the 8th century C.E. It is also found in a Greek papyrus of the 6th century C.E.

In Mishnah Gittin 4:3, in Danby's translation, we read: "A widow may not receive payment [of her *Ketubah*] from the property of the orphans unless she swears [to her claim] on oath"[137].
As I have pointed out in my book *Jewish Law*[138], there is reference to a parallel legal institution in some Demotic papyri from Gebelên. Speaking of Ostracon Lond. dem 13602, in which a woman who demands 200 *argenteus*, her nuptial gift (*don nuptial*), and 300 *argenteus* as her share of the common property, is subjected to an oath, Revillout says:

"La femme, qui n'avait pas été exemptée par son mari du serment, fut donc obligée d'en passer par là et le prêter à la fois et sur son don nuptial et sur l'honnêteté avec laquelle elle avait usé des biens de la communauté. Ceci ne vous étonnera nullement quand vous vous rappellerez que, d'après un contrat copte de Londres souvent cité par moi, un tel serment a été encore demandé par les enfants a leur mère au VIII siècle de nôtre ere"[139].

Most interesting is P. Mon. 6.7f. (583 C.E.) and the editors' note thereon. A widow is to swear a ὅρκος ἐπακτός to the effect ὅτι οὐδὲν ἀπεκρύψατο. The editors in a note to 1.7f. state that "Es handelt sich offenbar um den im gemeinen Prozess sogenannten Manifestationseid". They go on to say that the source of this oath in Roman law is Cod. Just. 6, 30, 22, 10 (a.531), according to which creditors or legatees who suspect that the inventory is incomplete, in the absence of other means of proof, may impose an oath upon the heirs to the effect that they concealed nothing. In the case of the woman's oath — they say — we have before us an extension of the Justinianian provision. They further state a similar extension of the *Manifestationseid* occurred in medieval Italy under the influence of the Germanic *juramentum purgatorium*. After citing some Italian sources which express themselves in a vague and general manner about the widow's duty to show the extent of the inheritance, they continue:

"Andere Statuten, wie die von Genua...verlangen von der Frau den Manifestationseid, wenn sie wegen Dotalforderungen

[137] Danby, *The Mishnah*, 311.
[138] P. 97.
[139] E. Revillout in *Revue égyptologique*, IV (1886), 145.

Vermögensstücke des Mannes in Anspruch nimmt...Sowenig aber wie für die Entwickelung der italienischen Praxis ist für unseren Fall die justinianische Gesetzgebung ausreichende Grundlage. Im Osten und Westen wächst Theorie und Praxis über das Gesetz hinaus. Für den Osten haben wir jetzt Zeugnisse aus früherer Zeit. Das die Entwickelung hüben und drüben parallele Züge aufweist, ist bemerkenswert, wenn auch keineswegs überraschend".

In the light of the evidence presented above, it would seem that the widow's oath had nothing to do with Justinian's *Manifestationseid*. In both the East and the West it is probably *vorderasiatisches Rechtsgut*, transmitted through the medium of Jewish law. For, as we shall presently see, P. Mon. 6 exhibits some other marks of the influence of Jewish law. In line 59 it is stated that the testimony of one witness is of no effect (τὰ παρ' ἑνὸς δὲ μαρτυρούμενα ὁ νόμος παντελῶς οὐ προσίεται)[140]. In line 80 it is stated that proof is to be made *by three trustworthy witnesses* (διὰ τριῶν μαρτύρων ἀξιοπίστων)[141]. I have called attention elsewhere[142] to the probable origin in Jewish law of the term ἀξιόπιστος as applied to a witness. As to the rule that three witnesses are required in order to make legal proof, it is inconsistent with the rule that the testimony of one witness is not sufficient. The logical inference from the latter rule is that the testimony of two witnesses *is* sufficient, whereas by the former rule such testimony *is not* sufficient. I believe that the inconsistency is traceable to Deut. 19:15, which reads:

"One witness shall not rise up against a man for any iniquity, or for any sin, in any sin that he sinneth; at the mouth of two witnesses, or at the mouth of three witnesses, shall a matter be established".

In the first part of the verse it is stated negatively that the testimony of one witness is not sufficient. In the second part the same proposition is stated affirmatively, namely that a minimum of two (two or more) witnesses is required. The Byzantines apparently misinterpreted the second part of the verse as allowing to future lawmakers a choice between two and three witnesses, and they chose the latter figure[143]. The requirement of three witnesses is

[140] See Taubenschlag, *Law*, 516.

[141] See *ibid.*, 519.

[142] *JJP*, XI–XII (1957–1958), 175 f.

[143] For a Talmudic interpretation of Deut. 19:15, see *Mishnah*, *Makkoth*, 1:7 (Danby, *The Mishnah*, 402).

also found in P. Lond. 1711, which I have discussed in detail in the article cited above. There (an p. 174) I have said: "It is perhaps not without singnificance in this connection that, as has already been noted by Bell, the provision that the wife's misconduct be proved by 3 men bears a striking resemblance to the provision to the same effect in P. Eleph 1(311/310 B.C.)". However, upon further consideration I find that the provision in P. Lond. 1711 is quite different from that of P. Eleph. 1. In the former document the misconduct is to be proved by (διά) three men as witnesses, while in the latter document it is to be proved *before* (ἐναντίον) three men as *judges* or *arbitrators*.

3. Reversion of Dowry

10 of the Neo-Babylonian Laws, in Driver-Miles translation, reads: "The man who has given a settlement to his daughter and she has not a son or a daughter and death has carried her off — her settlement shall revert indeed to her father's house..."[144]. A provision in the *ketubah* (marriage document) similar in effect to this law is mentioned in the Palestinian Talmud Ketuboth 9:1 where it is stated: "Those who write 'If she dies without children her dower shall revert to her father's house', it is a stipulation with respect to matters pecuniary and is valid". A similar provision is also contained in P. Oxy. II 265.30 (81—95 C.E.). With the ramifications of this legal institution into medieval law I have dealt in my book *Jewish Law*[145].

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[144] Driver-Miles, *The Babylonian Laws*, II, 343.
[145] P. 191 ff.