Markiewicz, Tomasz

Security for debt in the demotic papyri

The Journal of Juristic Papyrology 35, 141-167

2005

The Journal of Juristic Papyrology
vol. XXXV (2005), pp. 141–167

Tomasz Markiewicz

SECURITY FOR DEBT IN THE DEMOTIC PAPYRI*

THE AUTHOR OF THE DEMOTIC *Instructions of ʿAnchsheshonqy* gave the following advice:

> *m-ir dj.t ḥḏ r ms.t iw mn iwj.t (n)-ḏr.t̲=k*
>
> Do not give (*i.e.* lend) money at interest while there is no security in your hand (P. BM 10500, col. 16.21).[1]

The Egyptians took this wisdom seriously, judging from the diversity and multiplicity of security arrangements present in the demotic papyri. The purpose of the present paper is to present a survey of the various security instruments known from Egyptian contracts.[2] This subject has been

* The present paper is a revised fragment of my doctoral dissertation *Indebtedness in Abnormal Hieratic and Demotic Documents* written uder the supervision of Prof. J. K. WINNICKI at the Faculty of History of the Warsaw University. It has profited from the remarks of W. CLARYSSE, K. MYŚLIWIEC and E. WIPSZYCKA-BRAVO who acted as its reviewers. I am grateful to William MARTIN for correcting the English of this paper.

[1] S. R. K. GLANVILLE, *Catalogue of Demotic Papyri in the British Museum* II. *The Instructions of ʿOnchsheshonqy*, London 1955, pp. 38–39; H.-J. THISSEN, *Die Lehre des Anchscheschonqi*, Bonn 1984, pp. 28–29.

[2] 'Security' in modern legal usage is usually understood as property pledged to the creditor or his property right, which are to guarantee fulfilment of an obligation; it is especially an asset guaranteeing repayment of a loan that may become property of the credi-

treated by Richard H. Pierce and more recently by Joseph G. Manning,[3] but I hope to be able to present it in a more systematic manner.

PERSONAL LIABILITY?

Many demotic deeds contain a clause that has been styled 'the clause of personal liability'. It usually states that the sums due will fall 'on the head' of the debtor, sometimes also on the head of his children.[4] The legal function of this clause is disputed. It is tempting to assume that the debtor offers his very body (and those of his children) as the ultimate security for debt and that consequently his failure to repay would result in enslavement, as was the case in some other ancient societies (*e.g.* in pre-Solonic Athens). However, the clause in question does not explicitly refer to enslavement and other interpretations can be offered. In Pierce's words, 'the problem of personal liability and enslavement for debts in native Egyptian law is one not easily solved'.[5]

The overall evidence of the existence of slavery for debt in ancient Egypt is unfortunately very meagre. One unequivocal source is Diodorus (I 79.3), according to whom pharaoh Bocchoris abolished slavery for debt, claiming that the body of every subject belonged to the king, *i.e.* the state. Taken at face value, this passage informs us that slavery for debt was once known in Late Period Egypt, but eventually forbidden. However, the reliability of this famous passage has been often questioned. It forms part of

tor if the loan is not repaid (such a situation is created if a special agreement, *lex commissoria* between the pledger and pledgee is concluded). With this meaning, the words 'pledge' or 'collateral' can be used as synonyms. I prefer to use the term 'security' more broadly, as all means by which the creditor's rights are secured and the debtor's obligations are strengthened. These include property arrangements, but also personal liability, suretyship and oaths. This is also the approach of PIERCE (see below, n. 3).

[3] R. H. PIERCE, *Three Demotic Papyri in the Brooklyn Museum*, Oslo 1972, pp. 110–132; J. G. MANNING, 'Demotic Papyri (664–30 BCE)', [in:] R. WESTBROOK & R. JASNOW, *Security for Debt in Ancient Near Eastern Law*, Leiden 2001, pp. 307–26.

[4] For philological analysis, see K. SETHE & J. PARTSCH, *Demotische Urkunden zum ägyptischen Bürgschaftsrechte vorzuglich der Ptolemäerzeit*, Leipzig 1920, pp. 240–242.

[5] PIERCE, *Three Demotic Papyri* (cit. n. 2), pp. 128–130. See also the discussion in SETHE & PARTSCH, *Bürgschaftsurkunden* (cit. n. 4), pp. 565–70.

a longer account on the legislative activities of Bocchoris, in itself based on the lost work of Hecataeus of Abdera who visited Egypt under Ptolemy I.[6] It is surprising how little attention on the part of Egyptologists the classical tradition on Bocchoris legislation has received.[7] On the whole it seems rather improbable to me that the short-reigned kinglet Bakenranef (as he is known in Egyptian sources) of the 24th Dynasty, who ruled over part of the Delta and was defeated by Shabako, managed to leave a lasting impression on the law of the entire country. What is more likely is that Hecataeus used the name of an ancient and little known Egyptian king instrumentally in a internal Greek discussion rife with ideology – and it may be not without significance that Bakenranef ruled some 100 years before Solon's supposed visit to Egypt.[8] Hecataeus' enthusiastic and idealizing account was meant to provide a model deserving of imitation for the Greek world, which was plagued with social strife caused by excessive indebtedness.[9]

Unfortunately, we are unable to supplement Diodorus with other sources, since the Egyptian evidence concerning slavery is rather wanting.

[6] Hecateaus of Abdera, *FGrH* 264. *Cf.* Ed. SCHWARTZ, *RE* V, *s.v.* 'Diodoros'; F. JACOBY, *RE* VII, *s.v.* 'Hecataios' and K. MEISTER, *OCD* (3rd ed.), *s.v.* 'Hecataeus'.

[7] *Cf.* K. A. KITCHEN, *The Third Intermediate Period in Egypt*, Warminster 1986, pp. 376–377 and the literature quoted therein, n. 759.

[8] The reliability of Hecateaus for the study of Egyptian legal history is briefly commented upon in K. SETHE & J. PARTSCH, *Bürgschaftsurkunden* (cit. n. 4), pp. 569–70. We may add here that following Hecataios, Diodorus (I 79) also informs us that the legislation of Bocchoris required that 'whoever lent money along with a written bond was forbidden to do more than double the principal from the interest'. This finds direct contradiction in several abnormal hieratic and early demotic papyri: P. Louvre 3228 B (= *P. Choix* 1); P. BM 10113 (= *P. Choix* 2); P. Louvre 9293 (= *P. Choix* 3); P. Berlin 3110 (= *P. Choix* 5); *P. Loeb* 48 + 49 A (= *P. Hou* 12); *O. Manawir* 188. Their penalty clauses explicitely say that the capital would bear interest unceasingly, *cf.* S. P. VLEEMING, *The Gooseherds of Hou*, Leuven 1991, p. 171. In my opinion this makes Hecateaus' account all the less reliable.

[9] It is enough to mention the link between widespread indebtedness and debt-bondage and the so-called 'Solonic Crisis' in Athens or the 'Struggle of Orders' in early Rome. The problem continued to haunt Greek city-states: 'Athens after Solon was exceptional in its successful prohibition of loans secured on the person (*Ath. pol.* 6.1); debt-bondage and other forms of debt-dependence were common throughout the remainder of the Greek and Roman worlds. Frequent laws intended to regulate debt were rarely enforceable and generally had only limited effect' (P. C. MILLET, *OCD* [3rd ed.] *s.v.* 'debt').

The few known contracts of self-sale discussed by Bakir[10] could have resulted from unpaid debts, but need not have. The argument put forth by Bakir that the vendor was discharging his debt through self-sale, since in the documents 'there is no mention of the exact consideration'[11], can be dismissed – Egyptian contracts of sale never mention the price. Nothing else in these documents points to motives of would-be slave.

The evidence concerning slavery for debt in Ptolemaic period comes mainly from royal decrees. P. Col. Inv. 480 (= *Sel. Pap.* II 205) of year 198/97 BC is an ordinance concerning slaves and imposes dues on sale of slaves, including those sold into slavery for debts to the Crown and to private persons. *SB* V 8008 (= *C. Ord. Ptol.* 22) of year 262/61 BC prohibits personal execution against debtors at least in Ptolemaic Syria and Phoenicia.[12] The Amnesty Decree of 118 BC, known from *P. Tebt.* I 5 (= *Sel. Pap.* II 210 = *C. Ord. Ptol.* 53), exempts certain social groups, notably the *basilikoi georgoi*, from personal execution – they are to bear financial liability only, and this seems to be also restricted by older royal laws. The underlying consideration, besides the aim to restore social order, may have been similar to the one ascribed to Bocchoris: that there was a special personal bond between the king and his *basilikoi georgoi* (perhaps more of the 'patron-client' type, rather than 'master-slave'), which granted them personal immunity from their creditors.

In sum, the above evidence shows that slavery for debt was known in Ptolemaic Egypt and was widespread enough to form both a revenue source for the fisc and an object of royal social policy.[13] But whether it had been known to the Egyptians prior to Alexander's conquest is impossible to say: under the Ptolemies it may have been a custom imported from Greece. In other words, the exact function of the 'personal liability clause' in demotic documents remains a puzzle.

[10] A. EL-MOHSEN BAKIR, *Slavery in Pharaonic Egypt*, Cairo 1978, pp. 74–76.

[11] EL-MOHSEN BAKIR, *Slavery* (cit. n. 10), p. 119.

[12] For Philadelphus' legislation on slavery see B.-J. MÜLLER, *Ptolemaeus II. Philadelphus als Gesetzgeber*, Köln 1968, pp. 70–86.

[13] See the discussion in E. SEIDL, *Ptolemäische Rechtsgeschichte*, Glückstadt 1962, p. 103, who concluded that personal execution rarely, if ever, resulted in total loss of freedom: 'die Personalexekution hat wohl kaum zu einer Versklavung geführt, sondern war eher ein Beugemittel gegen den Schuldner, den Gläubiger doch irgendwie zu befriedigen'.

Taking Diodorus' account at face value and believing that debt-bondage was forbidden in Egypt, Revillout thought that the primary function of this clause was to secure the creditor's interests in case of the debtor's death, in other words it established the responsibility of heirs for the debts of the testator.[14] Pierce discussed the clause in question labelling it 'the paragraph of personal liability', but failed to produce decisive conclusions other than that it was not primarily concerned with assuring the persistence of debt beyond the lifetime of the debtor.[15] More recently, this clause has been briefly discussed by Vleeming, who points out yet another possible interpretation: that the aim was 'probably to prevent the debtor's children from objecting to the alienation of any part of their patrimony in payment of their father's debt'.[16] This is possible, but I would not underestimate the first explanation offered by Revillout: in a society where life expectancy was short and the danger of sudden death omnipresent, it was very rational to stress that the debt did not expire with the debtor's death and that children and heirs were liable for it.[17] It has to be noted that the clause of personal liability first appears in the abnormal hieratic P. BM 10113 (= *P. Choix* 2) of 570 BC, alongside a more or less fully developed clause of general liability. There is no trace of an evolution from a more 'primitive' personal security for debt to more sophisticated legal instruments. Afterwards the clause in question keeps appearing in demotic deeds well into the Ptolemaic period, probably with the same function.

[14] E. REVILLOUT, *Précis du droit égyptien comparé aux autres droits de l'antiquité* II, Paris 1903, p. 1233, p. 1240. *Contra* PARTSCH, who believed that 'die ägyptische Bürgschaft erzeugt eine Haftung des Bürgen mit dem Leib', in SETHE & PARTSCH, *Bürgschaftsurkunden* (cit. n. 4), pp. 565–572. However, his reasoning is almost entirely based on comparative legal sources and he is forced to admit (p. 569): 'alles Nähere über die leibliche Haftung des Schuldners nach ägyptischem Rechte ist heute noch unbekannt'.

[15] PIERCE, *Three Demotic Papyri* (cit. n. 2), pp. 128–130.

[16] VLEEMING, *The Gooseherds of Hou* (cit. n. 8), p. 171.

[17] This is further confirmed by the guarantee clause of the Aramaic loan TAD B 3.13, l.8–9: 'And if I die and have not yet paid and given you the silver of yours which is above written, afterwards my children or my guarantors shall pay you the silver which is written above' (I quote after B. PORTEN, [in:] B. PORTEN & *al.*, *The Elephantine Papyri in English*, Leiden – New York – Köln 1996, p. 253). The survival of the debt beyond the debtor's lifetime is clearly stressed here.

To sum up, there is no decisive evidence that 'the clause of personal liability' proves the existence of execution on the person of the debtor (and/or his dependants) — leading to slavery for debt — in Egyptian customary law. Its equally plausible function may have been to stress the perseverance of the debt beyond the debtor's lifetime.

POSSESSORY PLEDGE

The most natural way of securing a debt is to hand over certain thing to the creditor. This thing is called pledge (*Pfand*). As only possession of the thing is transferred to the creditor, we speak of a possessory pledge (*Besitzpfand*); if it was only assigned to him, the pledge is hypothecary (*Hypothek*).[18] The person giving the pledge is called the pledger; the one receiving it, the pledgee. These are general definitions taken from modern law and they roughly correspond to the distinction between *pignus* and *hypotheca* of classical Roman law.

A possessory pledge would have been a convenient form of security from the creditor's point of view, since it gave him control over pledged items. For the same reason it was much less convenient to the debtor, who would have been unwilling to pledge items of substantial value, such as real estate, in this way. That is why the possessory pledge has left relatively little trace in our sources; it would not have appeared in more important transactions for which written contracts were produced. It is also impossible to say much about the 'legal construction' of the pledge in Egyptian law. For example, the use of pledged items was a tort (*furtum usus*) in Roman law (unless the parties agreeded otherwise, so-called *pactum antichreticum*), but it is uncertain if it was also forbidden under Egyptian law. One document, P. Berlin dem. 3108 (= *P. Survey* 72), says:

pȝ nkt mtw=f (read: *ntj iw=f*) *r ḥwš n.im=w ... mtw Mnṯ-m-ḥȝ.t ḏbȝ=f ḥḏ*

[18] I adopt this terminology and definitions from Westbrook & Jasnow, *Security for Debt* (cit. n. 2), 'Introduction', p. 3.

> the thing which will be missing from them (*i.e.* objects pledged) ... Montemhes will compensate it in money[19]

The compensation meant here seems to have consisted of the market price; no penalty for misuse of the pledge is mentioned. This suggests that the pledgee was responsible for keeping the value of the pledge up to the mark, but could choose between returning the pledge or its monetary equivalent. Nothing is said about the use of pledges.

The extant documents give evidence of different categories of items that could become objects of pledge. Most natural securities for smaller debts would have involved handing over some valuable household items, especially garments and metal vessels. Such objects were present in most households and the Egyptians were ready to dispose of them when need arose.[20] A similar practice is also attested in other societies: 'when a character in Aristophanes' *Ecclesiazusae* wishes to make an inventory of his movable property, which he lines up outside of his house (sieve, pots, cock, oil flask, tripods), a passer-by naturally assumes he is intending to offer everything as pledges (ll. 746–55)'.[21]

Commonplace items must have been popular as pledges, but they have left little trace in our sources, probably because they were used in petty transactions for which no written agreements were made. Several documents, however, list such objects. P. Tor. Suppl. 6110 (= *P. Tor. Botti* 13) mentions garments, jewellery, one vessel and another metal object; pride of place is given to the valuable bridal veil *in-šn*. An interesting, but somewhat confusing case can be found in P. Tor. Suppl. 6108 (*P. Tor. Botti* 14),

[19] P. W. Pestman, *The Archive of the Theban Choachytes*, Leuven 1993, p. 222. Pestman also quotes a curious stipulation: 'the thing which will be missing from them, ... you (*i.e.* the pledger) will replace it'. I fail to understand how the pledger can be made responsible for safekeeping of objects he had handed over to the pledgee! Either we do not understand the nature of Egyptian pledge, or the text is corrupt here. This is only another reason for this important document to get finally published properly.

[20] Compare the Ramesside P. Cairo 65739 describing how a woman Irinofret purchased a slave girl paying with 17 pieces of clothing, 6 bronze vessels and some worked copper. These object must have come from her household, some may have been purchased from the neighbours for this transaction. *Cf.* A. H. Gardiner, 'A Lawsuit Arising from the Purchase of Two Slaves', *JEA* 21 (1935), pp. 140–46.

[21] P. Millett, *Lending and Borrowing in Ancient Athens*, Cambridge 2002, p. 77.

drafted on the same day and for the same creditor as P. Tor. Suppl. 6110 mentioned above. Here, wheat is loaned against pledges. These are not specified, but must have comprised some movable objects. The debtor seems to have been given a choice between repaying the value of the grain and forfeiting the pledges when the debt became due. The following delivery clause mentioning the costs of delivery must refer to the delivery of grain, not pledges, since these are said to be already 'in the hand' of the creditor in l. 11.

Pledging of movables is better attested in temple oaths, since disputes over pledges seem to have been quite frequent. These texts show that commodities could also be pledged: *O. Tempeleide* 56 mentions corn as pledge in a gardening agreement; *O. Tempeleide* 133 gives 11 measures of wine as pledge for the delivery of some other amount of wine. *P. Rylands* 36 (= *P. Tempeleide* 172) shows how a dispute over the value of pledges could arise.[22] This must have often been the case, since the debtor was naturally interested in overestimating the value of objects pledged, and the creditor in just the opposite.

A rare example of an agreement concerning pledges is P. Berlin 3108 (= *P. Survey* 72). This interesting text deserves closer scrutiny, since together with P. Berlin 3106 (= *P. Survey* 70) and P. Berlin 3139 (= *P. Survey* 71) it illustrates neatly the use of pledges in a complicated transaction involving the sale of priestly offices. On 3 January 98 BC Nechtmonthes purchased from Montemhes certain liturgies and emoluments. However, since he was purchasing quite extensively (he is the buyer in *P. Survey* 69, 70, 71 and 73, a series of sale agreements falling within a period of two weeks), he ran out of cash and was unable to meet his obligations. For that reason he pledged several objects of value with Montemhes[23] and stipulated that he would redeem them within 40 days. The sum for which the pledges were to be redeemed would thus effectively be the price of

[22] This difficult text received two different interpretations: one of SEIDL, *Ptol. Rechtsgeschichte* (cit. n. 13), p. 139 (he is followed by PIERCE, *Three Demotic Papyri* (cit. n. 2), p. 111); another was offered by U. KAPLONY-HECKEL, *Die demotischen Tempeleide*, Wiesbaden 1963, pp. 289–90.

[23] These were bronze vessels, ovens and a sieve – either kitchenware or objects used in funerary rites conducted by a choachyte, see P. W. PESTMAN, *The Archive of the Theban Choachytes*, Leuven 1993, pp. 222–23.

the liturgies. As additional security the documents of sale *P. Survey* 70 and 71 seem to have remained with the seller Montemhes until he was compensated with money — a somewhat redundant precaution, since his interests were already secured by the handing over of pledges. All three documents were deposited together in the archive of Theban choachytes by Nechtmonthes, which means he was eventually able to redeem the pledges and to pay the price of emoluments in cash.

The above transaction was misinterpreted by Pierce, who regarded the arrangement of P. Berlin 3108 (= *P. Survey* 72) to be a debt of Montemhes *versus* Nechtmonthes, secured by the conditional sale of offices (it was exactly the other way around).[24] Manning supposed that what the documents did not mention was a loan of money from Montemhes to Nechtmonthes, which was secured by the pledge arrangement, and that 'this borrowed capital would become the purchase price for the priestly offices'.[25] However, such a transaction would not make much sense: the failure of the debtor to repay his debt would be effictively rewarded with the transfer of emoluments and liturgies from the creditor! This 'unmentioned loan' actually makes things less clear and is redundant in my opinion.

Along with household items we find legal documents as objects of pledge. Such an arrangement was, however, rather uncommon and is attested only twice: in *P. Adler dem.* 10 and in O. BM 25 487 (published by U. Kaplony-Heckel, *Acta Orientalia* 25 [1960], p. 232). The former mentions the pledging of some object of value together with the instrument in which the surrender of pledges is recorded. The latter describes how a married woman offered the document recording her marriage settlement as security.

Finally, we have a few documents establishing security on real estate, but in a different manner than in *Kaufpfandvertäge* discussed below. For instance, in P. BM 10523, ll. 2–3, we find the usual paragraph of general liability. This is followed by a specification of a house in Thebes that must have been the most valuable constituent of a debtor's property. Why the house was so singled out is not quite clear, since it would have been already included in the phrase: 'everything that I have'. Pestman thought

[24] PIERCE, *Three Demotic Papyri* (cit. n. 2), pp. 112–13.

[25] MANNING, 'Demotic Papyri' (cit. n. 2), pp. 317–18.

that the pledge consisted actually only of the house, but this view need not be true.[26]

The situation is clearer in the pledge paragraph of P. BM 10425:

dj=j n=k p3j(=j) ʿ.wj ntj n t3 iwj.t r t3 mtr.t n t3 m3j (n) n3 Išwr.w n iwj.t n.im=w š ʿ-tw=j ḏb3=w n=k r ḥn (r) p3 sw-ḥrw ntj ḥrj iw=j tm ḏb3=w n=k iw=k m-s3=j (r) ir n=k sḫ ḏb3-ḥḏ r p3j(=j) ʿ.wj ntj ḥrj n p3 idb ntj m-s3 p3 ibd rn=f n ḥtr iw ṯ mn

I gave you my house that is in the central quarter of the 'Island of Syrians' as pledge for them, until I repay them to you on the above date. If I do not repay them to you, you will be after me to make for you a document-concerning-money for my house that is (mentioned) above in the month that is after the named month, compulsorily, without delay.

This document gives a house on an 'Island of Syrians' as security (dem. *iwj.t*) for the debt. Should the debtor default, he is obliged to issue a 'document concerning money', *i.e.* a deed of sale in regard of the house for the creditor. This is quite different than a *Kaufpfandvertrag* where a conditional deed of sale was drafted directly upon farming of a loan. The document is silent as to whether the detention of the house remained with the debtor (as in Roman *hypotheca*) or was transfered to the creditor (as in Roman *pignus*).

With the question of pledges comes the alleged Egyptian custom of pledging mummies of relatives and family tombs.[27] According to Herodotus (II 136), a great shortage of money[28] in Egypt forced an Egyptian king named Asychis[29] to issue a law by which it was only possible to

[26] P. W. PESTMAN, 'Eine demotische Doppelurkunde', [in:] E. BOSWINKEL, B. A. VAN GRONINGEN & P. W. PESTMAN (eds.), *Antidoron Martino David* (*P. L. Bat.* 17), Leiden 1968, p. 109: 'Die Fortsetzung des Textes zeigt jedoch, dass es sich in Wirklichkeit nur um ein einzelnes Haus handelt'. I fail to see which part of the text in question he meant. On the contrary, the persistent use of the 3 pl. pronoun in l. 4 seems to refer to all elements of debtor's property, not just one house.

[27] R. TAUBENSCHLAG, *The Law of Greco-Roman Egypt in the Light of the Papyri*, Warszawa 1955 (2 ed.), p. 271, n. 1.

[28] This could only have meant silver bullion, since coined money was not in mass use before the Ptolemaic period and full monetisation may have occurred even later.

[29] He cannot be identified with any historic pharaoh.

borrow money on security of the debtor's father's body (*i.e.* the mummy). Another law – we are told – was also issued, by which the creditor could seize the family tomb of the debtor. A defaulting debtor and his relatives would have been deprived of a burial until the debt was discharged. From the way the story is told it is not self-evident how pledging of bodies would have remedied the situation, but the reasoning behind it was probably as follows: cash shortage made a great number of debts unredeemable, thus creating social strife and disrupting the economy. The king tried to discourage borrowing and put additional pressure on the debtors in order to reduce the amount of outstanding arrears.

A similar story is told by Diodorus (I 93.1–2), who claims that the Egyptian law allowed giving mummies as pledge for debt, but defaulting on such obligations was seen as particularly shameful and deprived the debtor of his burial.

Both these accounts have a distinct 'Eastern flavour' and were probably supposed to amuse, perhaps even to shock the Greek reader. But do they deserve credibility? We can doubt Herodotus' story for several reasons: there is no trace of a king Asychis in Egyptian kings lists (but admittedly the name may be corrupted beyond recognition); Egypt could indeed experience shortages of silver since all of it had to be imported from abroad, but in its barter economy silver played only a secondary role and most obligations were anyway expected to be settled with other commodities, such as grain – even in Herodotus' time coined silver was not in widespread use in Egypt as means of exchange. Finally, I doubt if any sane monarch would have dared to meddle with Egyptian burial customs.

However, we cannot rule out the possibility that pledging mummies and tombs, though not compulsory, was nevertheless allowed under Egyptian customary law. We know quite well that tombs were valuable real estate that could be bought and sold; it is conceivable that they could also have been pledged, like houses. Mummies of relatives definitely had high emotional value and – if indeed pledged – would have represented a particular social and emotional pressure on the debtor. The same goes for a family tomb.

Any such practice, even if permitted by law and custom, could not have been widespread. Even if we put aside the moral aspect, we must not forget that possession of family tombs and access to mummification pro-

cedures was restricted for the wealthier elite families. Such people normally would not have had to resort to such extreme measures. This explains the silence of papyrological sources on such practice. It has been claimed that in the well-known Petition of Artemisia (*UPZ* I 1) the wrong done by Artemisia's husband to their deceased daughter consisted in pledging the mummy for a debt on which he defaulted, thus depriving the girl of a proper burial.[30] This is a possible, but only one, of many conceivable interpretations. For instance, the man may have deprived his daughter of burial by simply refusing to pay for funerary rites.

GENERAL LIABILITY

General liability (*hypotheca generalis*) is the fullest possible guarantee, since it entitles the creditor to satisfy his claims from the entire property of the creditor. This means in practice that the creditor is entitled to seize whatever element of the debtor's property he chooses. Apparently, this was the best way of securing the creditor's interests; in the case of an ordinary pledge, accidental destruction of the pledged item left the creditor without security. Such danger ceased to exist when the entire property of the debtor was pledged. We can also imagine, though this is not explicitly stated in the documents, that such a security entitled the creditor to a claim against the debtor's heirs in case of his unexpected demise. Any document with the clause of *hypotheca generalis* would be proof of liabilities in the estate and would restrict the owners' right to dispose freely of the pledged property. In practice, however, such security may have been less convenient than a true pledge that changed hands and more difficult to prove in court. That is why general liability, although quite popular, did not entirely supplant other forms of securities.

Hypotheca generalis can already be found in Persian period documents, *e.g.* P. Berlin 3110, where it includes categorical description of the debtor's property. Such lists of various items of value, known also from other types of documents (*e.g.* deeds of inheritance), are well attested in the pre-

[30] U. Wilcken, *UPZ* I, p. 101 ff.

Ptolemaic and early Ptolemaic period.[31] The assets listed in them can include immovables (houses, fields, building plots), persons (slaves and other dependants[32]), movables (silver, bronze, clothes, grain), cattle, offices and deeds. Such lists have standard form, but slight differences in them led Vleeming to the supposition that these 'betray particulars of the possessions of the individuals to whom they relate'. Whether this is true, we will probably never be able to tell: it is equally possible that variations in lists are due to different scribal customs.

In the Ptolemaic period the clause of general liability was styled more generally: 'everything that I have and shall acquire in the future'. Among the Ptolemaic documents it is the standard means of securing the creditor's claims, unless they are protected by a more specific security (*e.g.* con-

[31] E. Cruz-Uribe, 'A Transfer of Property during the Reign of Darius I (P. Bibl. Nat. 216 and 217)', *Enchoria* 9 (1979), pp. 33–44. See also Vleeming, *The Gooseherds of Hou* (cit. n. 8), pp. 173–74.

[32] P. BM 10113 (= *P. Choix* 2), l. 6 and P. Louvre 9293 (= *P. Choix* 3), l. 7, say: '...servant, female servant, son, daughter...'. This is a very interesting passage, for it suggests that in Late Period Egypt the dependant persons were subject to some form of *patria potestas* that enabled the father to 'pledge' them for debt. It can be noted that 'dependant persons' include here servants and children, but not wife – in keeping with what we know about the high position of women in Egyptian law. What this form of pledge would exactly imply, we do not know. The enumeration of persons alongside with objects suggests that they were treated as yet another element of debtor's property and were subject to property law (*Sachenrecht*) rather than personal law (*Personenrecht*), similarly to archaic Roman law. This would be only natural in case of slaves, but rather less so in case of adult children. What would happen to them if the father defaulted on his debt? Would they become the creditor's slaves? E. Seidl, *Ägyptische Rechtsgeschichte der Saiten- und Perserzeit*, Glückstadt 1968, p. 55, suggests that the creditor would probably be entitled to disposing of their labour until the debt was repaid.

Some light on this question is thrown by the Ramesside letter O. BM 5631 *recto* (J. Černy & A. H. Gardiner, *Hieratic Ostraca* I, Oxford 1957, Pl. 88; E. Wente, *Letters from Ancient Egypt*, Atlanta 1990, no. 196, p. 146). Its author recounts concerning a number of copper tools: '... They are the tools of work, which used to be under my grandfather's supervision. One came to look for them, but they couldn't be found. So our twelve servants were taken away in place of them. My father appealed to Pharaoh, l.p.h., and he had me set free [...] I shall take them (the copper objects) to the overseer of the treasury of Pharaoh, l.p.h., and our servants, whom they [seized], shall be set free'. Here the son and family servants have been apprehended by the authorities in connection with his father's debt of copper tools, which were property of Pharaoh, *i.e.* the state. This measure seems to have been undertaken in order to force the father to return the tools in question rather than as means of satisfying the debt.

ditional sale). This goes not only for debt acknowledgements, but also for leases, marriage settlements and deeds of allowance.[33] This change of style may have taken place under Greek influence: general liability is also well attested in Greek documents (in the *praxis*-clause, *i.e.* clause of execution): ἡ πρᾶξις ἔστω τῷ δεῖνι ἐκ τῶν ὑπαρχόντων τοῦ δεῖνος πάντων.[34]

CONDITIONAL SALES

Conditional sales were a popular method of establishing security on immovables and are therefore sometimes referred to as 'mortgages'.[35] However, this is a technical term taken from the Anglo-Saxon legal system and has no application to the Egyptian arrangement, since there is a fundamental difference in nature of the agreement (under English Common law and in some modern jurisdictions mortgage entails a conveyance of the property right to the pledged land to the creditor until the debt is paid in full, which is precisely what the demotic conditional sale does not; a Greco-demotic arrangement more similar to mortgage is discussed below). Henceforth it is best to speak of conditional sales or to use the German term *Kaufpfandvertrag* coined by Spiegelberg who first dealt with such instruments.[36]

A typical *Kaufpfandvertrag* begins with acknowledgement of indebtedness and a promise to repay by a fixed date. After that we find a conditional clause: 'if I do not give to you (amount) by (date), you have satisfied my heart with the purchase price of (pledged property)'. There follow the specification of the property pledged: house, building plot or field and clauses typical for sale agreements. Not only immovables could be pledged

[33] For leases see H. Felber, *loc. cit.*; for marriage documents: E. Lüddeckens, *Ägyptische Eheverträge*, Wiesbaden 1960, pp. 321–23 and P. W. Pestman, *Marriage and Matrimonial Property in Ancient Egypt*, Leiden 1961, p. 38 ff.

[34] H. Kühnert, *Zum Kreditgeschäft in den hellenistischen Papyri Ägyptens bis Diokletian*, PhD Diss. Freiburg 1965, pp. 186–90; H.-A. Rupprecht, *Untersuchungen zum Darlehen in Recht der graeco-aegyptischen Papyri der Ptolemäerzeit*, München 1967, pp. 104–107.

[35] *E.g.* in M. Depauw, *Companion to Demotic Studies*, Bruxelles 1997, p. 141.

[36] W. Spiegelberg, 'Demotische Kaufpfandverträge (Darlehen auf Hypothek)', *RecTrav.* 31 (1909), pp. 91–106. See also Taubenschlag, *The Law of Greco-Roman Egypt* (cit. n. 27), pp. 271–272.

in this way: in P. Louvre 2443 (= *P. Schreibertr.* 14) we find conditional sale of liturgies offered as security for debt, next to a house in Thebes.

The sale was thus conditionally suspended and would only become valid if the debt was not repaid. In such case it was probably obligatory for the debtor to draw up a document of withdrawal (dem. *sḫ n wj*) renouncing his claims to the property, as was usual in the Egyptian sale. Only after this document had been drafted would the creditor-buyer have duly acquired the property. Such procedure is attested in *P. Hauswaldt* 18: in Mecheir of year 10 of Ptolemy IV the woman Rempnofris borrowed 10 deben from a certain Andronikos. She secured her debt with the conditional sale of five plots of land (*P. Hauswaldt* 18A). A year later, having failed to discharge her debt, she had a deed of withdrawal written on the same sheet of papyrus (*P. Hauswaldt* 18B). It is not known whether the withdrawal was always necessary to complete such a sale and what happened when the debtor refused to draw it up. The creditor would probably be compelled to go to court in such a case. In fact twelve other known *Kaufpfandverträge* are not accompanied by withdrawals – but these may have recorded loans that were eventually repaid.

Conditional sale apparently did not transfer detention of the pledged property, and the lien created by it can be described as hypothec. This is evident from a passage of the *Legal Manual of Hermopolis* (col. II) that deals with a hypothetical case in which the debtor tries to sell a house that he had pledged – we may assume that he did so by means of a conditional sale, although the manual is silent on this point. In order to invalidate such a sale the creditor has to resort to a procedure called 'making a public protest' (dem. *ir šᶜr*).[37] This means that the debtor continued to exercise control over the pledged house and even kept its title deeds, *i.e.* certificates proving the origin of his title of property, which would be necessary to conduct a rightful sale. As observed by Pestman, that proves the lack of any link between the Egyptian conditional sale and the Greek *hypallagma* of the Roman period.[38] The latter was a form of pledge that

[37] On this procedure see E. Seidl, '*Šᶜr*, der öffentliche Protest im altägyptischen Recht', *ZÄS* 94 (1967), pp. 131–34.

[38] P. W. Pestman, 'Some Aspects of Egyptian Law in Graeco-Roman Egypt. Title Deeds and *ὑπάλλαγμα*', [in:] E. Van't Dack, P. Van Dessel & W. Van Gucht (eds.), *Egypt and the*

required the debtor to hand over the title deeds (Gr. *ἀσφάλειαι*) to the creditor – Taubenschlag believed this practice to be of Egyptian origin.[39]

There are also differences between the Egyptian conditional sale and its Greek counterpart, *ὠνὴ ἐν πίστει*, since it required the title to pass immediately to the creditor so that a reconveyance was necessary upon the settlement of debt.[40] A different type of *ὠνὴ ἐν πίστει* that involved drafting 'incomplete' deeds of sale that would be only completed upon default is attested in Greek texts from Gebelen.[41] This type, for which no reconveyance was apparently needed, may have evolved under Egyptian influence.

Conditional sales were subject to 2% sales tax – this indicates that the authorities recognized their suspensive, 'incomplete' nature, since ordinary sales were charged 5% of the property's value.[42]

EGYPTIAN 'MORTGAGE'

We know of a Greco-Egyptian security from the early Roman period that approximates the modern concept of mortgage. Its main feature was an unconditional sale agreement that apparently immediately conveyed the security to the creditor but did not extinguish the debt. The debtor was only given the right to redeem the conveyance upon repayment of a debt that was secured in this way.[43] The few preserved papyri of this type all date to the first century AD and have a distinct format: a Greek loan on the right-hand side; a demotic sale (*sḫ n ḏbꜣ ḥḏ*) and a demotic withdrawal (*sḫ n wj*) on the upper left hand side; and a Greek sale beneath them. The

Hellenistic World. Proceedings of the International Colloquium Leuven – 24–26 May 1982, Leuven 1983, pp. 281–302.

[39] Taubenschlag, *The Law of Greco-Roman Egypt* (cit. n. 27), p. 275.

[40] Taubenschlag, *The Law of Greco-Roman Egypt* (cit. n. 27), pp. 272–75.

[41] P. W. Pestman, 'Ventes provisoires de biens pour sûreté de dettes. *ὠναὶ ἐν πίστει* à Pathyris et à Krokodilopolis', [in:] P. W. Pestman (ed.), *Textes et études de papyrologie grecque, démotique et copte* (*P. L. Bat.* 23), Leiden 1985, pp. 45–59.

[42] Pierce, *Three Demotic Papyri* (cit. n. 2), p. 114.

[43] See Taubenschlag, *The Law of Greco-Roman Egypt* (cit. n. 27), p. 272; and Pierce, *Three Demotic Papyri* (cit. n. 2), pp. 119–21.

sale seems to have had immediate effect, and a separate deed of reconveyance or release was necessary when the debt was repaid.

Pierce suggested that the Roman period 'mortgage' described above might have had its predecessor in Ptolemaic times. He quoted *P. Adler* 20, a discharge (*sḫ n wj*) concerning deed of sale (*sḫ n ḏbꜣ ḥḏ*) drafted as security for loan. However, this interesting situation known from the papers of Horos, son of Horos, deserves closer scrutiny. Pestman[44] reconstructed the case as follows:

(1.) *P. Adler gr.* 15: in year 15 of Ptolemy X (on 31st of October ? 100 BC) Horos, son of Nechoutes, borrows 46 artabae of wheat and 69 artabae of barley, 'interest-free'[45], from Horos, son of Horos;

(2.) as pledge for this debt the debtor draws up a sale agreement for some real estate. This document, described in *P. Adler dem.* 20, l. 6–7, as *sḫ ḏbꜣ ḥḏ*, is not preserved among the Adler papyri as it was kept by a third party, the trustee Panebchounis, son of Pakoibis. It is not sure whether this document was drafted in Greek (so Pestman) or in demotic (so Pierce);[46]

(3.) between 99 and 93 BC Horos, son of Horos, died and his estate went over to Philippos, son of Onnofre, and Horos, son of [...]. Claiming that the original debt was not repaid, the heirs sued Horos, son of Nechoutes, and seized the pledged realty;

(4). in the course of the lawsuit Horos, son of Nechoutes, had to swear an oath in order to acquit himself of charges, which he did: *P. Adler dem.* 19 (= *P. Tempeleide* 67) from the 1st of July 93 BC;

(5.) on the 5th of July 93 BC the opposing party drafted a cession with regard to the object of pledge: *P. Adler dem.* 20, thus withdrawing all claims.

[44] P. W. Pestman, 'Ventes provisoires de biens pour sûreté de dettes', [in:] P. W. Pestman (ed.), *Textes et Études de papyrologie grecque, démotique et copte*, Leiden 1985, pp. 45–59. See also U. Kaplony-Heckel, *Die demotischen Tempeleide* 1, Wiesbaden 1963, p. 143, and Pierce, *Three Demotic Papyri* (cit. n. 2), pp. 120–1.

[45] Gr. *ἀτόκους* – probably meaning that the 50%-interest was included in the sum due, the amounts actually lent being 30 2/3 artabae of wheat and 46 artabae of barley. See P. W. Pestman, 'Loans bearing no interest?', *JJP* 16–17 (1971), pp. 7–29.

[46] I am inclined to follow Pierce, for the ensuing lawsuit seems to have been brought to an Egyptian tribunal and the cession *P. Adler dem.* 20 was drafted in demotic, which would have been strange if the two primary documents – the loan and the sale – had been in Greek.

As the above reconstruction shows, the discharge *P. Adler dem.* 20 results from litigation, not from redemption of the pledge. The long period of time that elapsed between the acknowledgement of debt (*P. Adler gr.* 15) and the final withdrawal (*P. Adler dem.* 20) was due to the dispute, not because 'the possibility of redemption continued to exist long after the term set for the repayment of the debt had expired (...)', as Pierce put it (*loc. cit.*). We cannot even be sure whether the lost deed of sale recorded an unconditional or a conditional sale of the *Kaufpfandvertrag* type. The latter would invalidate Pierce's argument altogether.

ANTICHRESIS

Antichresis is an arrangement by which the creditor acquires the right of reaping the fruit or other revenues from the property given to him in pledge, on condition of deducting their proceeds from the interest, if any is due to him, and afterwards from the principal of his debt. In other words, the creditor can use the pledge and the usufruct substitutes the interest. This type of arrangement was quite widespread in the ancient Near East, and is attested as early as in the Ur III Period.[47] It is also well known from Greek papyri from Egypt.[48]

On the contrary, demotic evidence for antichresis is very meager. Until recently only one document, *P. Ryl. dem.* 41, was commonly recognized to be an antichretic lease. This interesting text is unfortunately poorly preserved and even its provenance remains uncertain.[49] It is impossible to reconstruct its numerous lacunae for lack of parallel texts.

Three other documents, *P. Cairo* II 31079, 30615 and 30613, have become the subject of a dispute. They have been translated by Sethe for Partsch, who used them in his commentary to *P. Freib. gr.* III 34. Believing that demotic law influenced the Greek antichresis, he used the above-

[47] P. STEINKELLER, 'The Ur III Period', [in:] WESTBROOK & JASNOW, *Security for Debt* (cit. n. 2), p. 51.

[48] TAUBENSCHLAG, *The Law of Greco-Roman Egypt* (cit. n. 27), pp. 286–91.

[49] G. HUGHES, 'Notes on Egyptian Demotic Leases of Property', *JNES* 32 (1973), pp. 152–160, opts for Upper Egypt, probably Gebelen. H. FELBER, *Demotische Ackerpachtverträge der Ptolemäerzeit*, Wiesbaden 1997, 209, suggest provenance from Middle Egypt.

mentioned texts as grounds for reconstructing his very fragmentary Greek document. However, other scholars have challenged his readings and conclusions.[50] Most probably these documents record prodomatic, not antichretic leases.[51]

To *P. Ryl. dem.* 41 we should now add P. Figeac inv. E9. This text deserves a closer look, especially that it was published in an obscure periodical (*Cahiers du Musée Champollion* 1, 1988). The agreement, originating perhaps from Memphis, shows no structural similarities to *P. Ryl. dem.* 41. The latter is principally styled as a lease, with allusions to the debt interwoven with stipulations concerning rent and sharing of crops. The arrangement seems to be as follows: the debtor acknowledges a debt of 187 1/2 artabae of wheat. He promises to repay this debt from the yield of a specified field by 30 Pauni of year 23 (*i.e.* after the harvest), at the rate of 5 artabae per aroura. The deal is associated with a lease when the debtor says (l. 5): 'I shall pay them to you as my lessee', but probably no formal lien is created. Only when the date of payment is not met, does antichresis come into play: the creditor is given the right to work the field and to satisfy his claims from the crop. The antichretic pledge is thus a form of security and penalty at the same time; Partsch called it *Verzugsantichrese*.[52] The detention of the field seems to be conveyed to the creditor, but nothing more can be said for the remainder of the document is fragmentary and ill understood.

P. Figeac inv. E9 is styled differently in that it departs from the protocol of a typical debt acknowledgement. Between the standard acknowledgement of indebtedness concerning 690 deben and the promise-to--repay we find a lengthy paragraph in which the debtor stipulates 'giving' to the creditor a vineyard of 2 1/2 arourae. What is exactly meant by 'giving' is not entirely clear: the vineyard is said to belong to 'the children of [...]' (l. 5). If the vineyard belongs to a third party, the debtor can only be a tenant. He cannot convey any legal title to the vineyard but only its usufruct to which he himself is entitled through the leasing agreement

[50] The problem is summarised by J. Herrmann, *Studien zur Bodenpacht im Recht der graeco-ägyptischen Papyri*, München 1958, pp. 243–244.

[51] H. Felber, *loc. cit.*

[52] J. Partsch, *Mitteilungen aus der Freiburger Papyrussammlung* 3, Heidelberg 1927, p. 31.

with his landlords.[53] Apparently he is entitled to half of the crop from the plot (the other half going to the lessors), and this half he cedes to the creditor. He still has to cultivate the vineyard and to guard it against intruders, to pay indemnities in case of damage and taxes. Since the vineyard cannot serve as pledge for the debt, we are dealing here with an antichretic sub-lease independent of the pledge.[54] In sum, this antichretic arrangement is not a form of security, but only replaces interest.

It can be only said, following Pierce, that the demotic source material for the institution of antichresis is in need of reexamination.[55] Unfortunately this statement remains valid despite the thirty years that have elapsed since it was pronounced.

SURETYSHIP[56]

'Suretyship (*Bürgschaft*), also called guarantee, is an obligation undertaken by a third party with regard to the payment of a debt by a debtor. The person under such obligation is called surety or guarantor (*Bürge*).'[57] The above definition is a narrow one, since guarantees could have been used in connection with various obligations, not only debts.[58] But the present study is naturally only concerned with suretyship as security for debt.

[53] The fact that the tenant 'gives' a vineyard that is not his property shows how little legal precision can be expected from a demotic document. If the mention of vineyard's owners had been lost in a lacuna, we could have speculated about 'give' expressing conveyance of property. In fact this rather clumsy clause is void of legal significance.

[54] *Cf.* TAUBENSCHLAG, *The Law of Greco-Roman Egypt* (cit. n. 27), p. 290.

[55] PIERCE, *Three Demotic Papyri* (cit. n. 2), p. 110.

[56] The Egyptian institution of suretyship has been subject of a thorough study undertaken in SETHE & PARTSCH, *Bürgschaftsurkunden* (cit. n. 4). A more concise discussion can be found in SEIDL, *Ptol. Rechtsgeschichte* (cit. n. 13), pp. 160–61.

[57] R. WESTBROOK, 'Introduction', [in:] WESTBROOK & JASNOW, *Security for Debt* (cit. n. 2), p. 3.

[58] *E.g.* the early Ptolemaic surety documents published by F. DE CENIVAL as *Cautionnements démotiques du début de l'époque ptolémaïque*, Paris 1973, refer either to payments of taxes or to continued presence of individuals in a particular locality. These guarantees are received by local authorities. Throughout her book, de Cenival refers to financial obligations as 'debts' ('dettes'). I prefer to treat the notion of 'debt' as belonging to the sphere of private law and to leave financial obligations *versus* the state, such as the obligation to pay taxes or dues, out of the discussion.

The Egyptian expression for 'to guarantee' was *šp-ḏr.ṯ* – 'to take hand (of the debtor)' (*e.g.* P. Cairo 30647 = *P. Bürgschaft* 1, l. 15). Therefrom comes *šp-ḏr.ṯ* – 'hand taker', *i.e.* guarantor; and *šp-ḏr.ṯ* – 'suretyship'.[59] The expression survived into Coptic both as verb and noun.[60]

A declaration of a surety could be inserted into a debt acknowledgement after other guarantee clauses, *e.g.* P. Leiden dem. 376 (= *P. Survey* 20), ll. 25–28, P. Brooklyn 37 1796 (= *P. Recueil* 6), l. 29. These declarations clearly show that the surety was not to assume the obligation only upon the primary debtor's default, but was held jointly responsible for it from the very beginning. The creditor had a claim against both of them and could freely choose whom would he vindicate it from.

But we also know suretyships recorded in separate documents, *e.g.* P. Berlin dem. 13528 (= *P. Bürgschaft* 14). In this interesting document we have two sureties providing guarantee for exorbitant debt (963 deben = 19260 *drachmae*)[61] of a certain Pinyris, former high priest of the temple of Edfu. Apparently through Pinyris' mismanagement the temple had suffered heavy losses and his fellow priests brought him before the *epistates* of the temples of Upper Egypt. He was sentenced to cover the loss and fell into a debt that he was apparently unable to pay. Two other priests appear as his sureties and promise to pay the money in the course of the next four years. What is interesting is that the sureties apparently did not act disinterestedly but took over the land and other property of the debtor.[62] The person who received the declaration of sureties in this doc-

[59] DG 500 and 643; Sethe & Partsch, *Bürgschaftsurkunden* (cit. n. 4), pp. 36–39.

[60] T. S. Richter, *Rechtssemantik und forensische Rhetorik*, Leipzig 2002, p. 320.

[61] To give an idea how much that would be, let us remind that 1 silver deben could buy 10 artabae of wheat (H. Cadell & G. Le Rider, *Prix du blé et numéraire dans l'Égypte lagide de 305 à 173*, Bruxelles 1997, p. 28) and 1 person could live on 10 artabae of wheat for a year (C. Préaux, *L'économie royale des Lagides*, p. 134). 963 silver deben could thus feed almost 1000 people for a year. But we need not speculate on that, for the text is fragmentary and too many important details have been supplemented by Sethe, as was pointed out by W. Clarysse, 'The Archive of the Praktor Milon', [in:] K. Vandorpe & W. Clarysse (eds.), *Edfu, an Egyptian Provincial Capital in the Ptolemaic Period*, Brussels 2003, p. 20.

[62] This procedure reminded Seidl of the Roman law *venditio bonorum*, *cf.* his *Ptolemäische Rechtsgeschichte*, p. 162. The interpretation of the case rests upon the question whether debtor's property was handed over to the sureties conditionally as pledge, or unconditionally and for good. The language of the document is imprecise, but the latter seems to

ument was the 'commissioner of the temple' (gr. πράκτωρ τῶν ἱερῶν, transcribed in demotic as *p3-rktr*), considered by Clarysse to be 'a temporary official, called up when some of the priests could not pay their debts to the temple and/or to the government.'[63]

Finally, sureties might have simply issued debt acknowledgements in the name of debts actually contracted by someone else. One such case has been recognized: in P. Reinach dem. 3 (= *P. L. Bat.* 22, 3) two women, mother and wife of Dionysios/Plenis, acknowledge owing 50 artabae of wheat to a certain Dionysios, son of Asclepiades. This debt is no other than the one contracted on the very same day by Dionysios/Plenis with the same creditor (recorded in P. Reinach gr. 20 = *P. L. Bat.* 22, 17). The survival of both documents allows us to identify P. Reinach dem. 3 as suretyship for another debt – it was probably to be entrusted to a trustee (see below) and released by him to the creditor only in case of the principal debtor's default. One can imagine that quite a few apparent debt acknowledgements were in fact guarantees, but we are unable to identify them as such, since there was no difference in the protocol.[64]

OATHS

According to Taubenschlag, 'taking on oath is also employed as a security for a debt. Cases of this kind are very frequent in the Saite and Persian eras, very rare in the Ptolemaic but more frequent in the Roman and Byzantine eras.'[65] This statement deserves attention.

The word 'security' used by Taubenschlag is perhaps a little surprising, since we are used to associating security for debt with something more material than an oath. Perhaps the word 'guarantee' would be more accurate here.

be more probable: deprived of all his property and income, Pinyris would not have had the means to repay his debt anyway.

[63] W. Clarysse, 'The Archive of the Praktor Milon', (cit. n. 61). p. 22.

[64] P. W. Pestman, *Les archives privées de Dionysios, fils de Kephalas*, Leiden 1982, p. 95 and p. 99, claims that P. Reinach dem. 3, l. 11, makes explicit reference to P. Reinach gr. 20. I am not convinced.

[65] Taubenschlag, *The Law of Greco-Roman Egypt* (cit. n. 27), p. 417.

As far as the Saite and Persian eras are concerned, Taubenschlag could have only meant demotic documents. However, I know of no oaths related to debts from that period. The only oath appearing in a pre-Ptolemaic debt acknowledgement can be found in the abnormal hieratic P. Louvre 3228 B (= *P. Choix* 1), ll. 1.5–1.7:

> [*dd=f ʿnḫ Imn ʿ*] *nḫ Pr-ʿ3 snb=f dj n=f Imn p3 qn bn iw(=j) rḫ st3 p3 md(3.t) ntj ir sḫ ḥrj*
>
> He said: On the life of Amon, on the life of the Pharaoh, may he be healthy, may Amon give him victory! I will not be able to annul this document that is written above.

The above oath is not an independent guarantee relating to the debtor's performance with regard to the debt itself, but is a solemn promise (with a religious sanction) not to deny validity of the document. Such oaths are also present in several other abnormal hieratic and early demotic contracts, but none of them is a debt acknowledgement.[66] We are not dealing here with a 'security for a debt', but with a guarantee regarding possible litigation.

Such oaths are absent from the demotic papyri of the Ptolemaic period. We have quite a few temple oaths from the 2nd and 1st centuries BC that mention debts.[67] However, these are not guarantees ('securities') but rather means for the defendant to acquit himself of charges in a dispute.

Demotic royal oaths serving as security for debt appear in the archive of the *praktor* Milon.[68] In *P. Eleph. dem.* 7 (= *P. Eleph. gr.* 7) a certain Thotmosis, *hierogrammateus* of the Edfu temple swears an oath that he will pay his debts. The oath is received by the *praktor* Euphronios. In *P. Eleph. dem.* 5 (= *P. Eleph. gr.* 26) Harsiesis, the *epistates* of the Edfu temple swears

[66] Quoted by Seidl, *Ägyptische Rechtsgeschichte* (cit. n. 32), p. 36, as: 'Promissorische Eide, bei einem etwaigen Prozeß die Urkunde künftig immer gelten zu lassen'. See also E. Seidl, *Der Eid im ptolemäischen Recht*, München 1929, pp. 83–4.

[67] See *e.g.* U. Kaplony-Heckel, *Die demotischen Tempeleide*, Wiesbaden 1963, nos. 32, 60, 61, 63, 67, 71, 95, 101, 146, 149–154, 157, 172A.

[68] Clarysse, 'The Archive of the Praktor Milon' (cit. n. 61), pp. 17–27.

a royal oath in front of Milon concerning payments for linen. These oaths would no doubt strengthen the debtor's obligation to repay the debt.

TRUSTEE

Strictly speaking, the institution of trustee is not a form of security, but it is not out of place here, since in ancient Egyptian practice it could have been used for the purpose of securing a debt.[69] As noted above, pledging of property usually implied surrender of legal documents recording forfeiture of property rights to the creditor. Such a procedure was risky for the debtor, since some creditors may have been tempted to press dodging debtors for repayment even after having acquired legal rights to the pledge. The debtor would have been helpless against such abuse, as both the debt acknowledgement and the forfeiture remained in the hands of the creditor. To avoid such danger the parties could resort to the services of a trustee.

The origin of the Egyptian word *ꜥrḫ.t* – 'trustee', perhaps connected with the origin of the institution itself, is disputed.[70] Trustees are only attested in the documents of the Ptolemaic period, where their function resembles that of the Greek *συνγγραφοφύλαξ*, but the word is attested much earlier, *e.g.* as part of compound personal name *Ḫnsw-pꜣj=s-ꜥrḫ.t* – 'Chonsu is her trustee' in P. Louvre 10935 (553 BC)[71] and is perhaps of Semitic origin.

The function of a trustee is better known than the origin of this institution. The trustee acted formally as a 'third party' to the transaction that was recorded in a special document called *šꜥ.t n ḥn* – 'letter of agreement', *bꜣk n ḥn* – 'document of agreement' or simply *nꜣ ḥn.w* – 'the agreements'.[72]

[69] The role of a trustee in Egyptian law was first explained by Ch. Nims, *University of Michigan Demotic Papyri from Philadelphia*, PhD Diss. Chicago 1937, 78–82. See also Seidl, *Ptol. Rechtsgeschichte* (cit. n. 13), p. 58; Pierce, *Three Demotic Papyri* (cit. n. 2), pp. 116–119.

[70] DE 66 has only: 'ein Titel'. For an up-to-date bibliography consult CDD ꜥ (03.1), pp. 100–101. *Cf.* especially J.C. Darnell, 'A Note on *ꜥrḫ.t* (and *ꜣrḫ*/ⲁⲣϩⲃ)', Enchoria 17 (1990), pp. 83–7; Richter, *Rechtssemantik* (cit. n. 60), p. 185.

[71] M. Malinine, *Choix de texts* I, 130, n. 10. For the name see H. Ranke, *Die ägyptischen Personennamen*, Glückstadt – Hamburg 1952, 270, 25; *Demotisches Namenbuch* 878.

[72] For demotic word *ḥn* see DG 276 and CDD H (01.1), pp. 57–58. See also P. W. Pestman, 'Lo scriba privato Amenothes, figlio di Horos', *P.L.Bat.* 23, 174–175, n. a.

Such documents are rare examples of bilateral contracts, since they record declarations of both parties pronounced *vs.* the trustee.[73] After the *hn*-document had been drafted, it was entrusted to the trustee together with other documents constituting security for debt. If the debt was repaid on time, then the trustee had to return the documents in his keeping to the debtor, and the creditor abandoned all claim against the trustee. If the debtor defaulted, the trustee handed over the documents to the creditor who could only then start to exercise rights recorded in them.

The documents handed over to the trustee must have been unconditional documents of sale accompanied by instruments of withdrawal. As P. Michigan 4526.B1 shows, full 5% sales tax was charged on such sales by the fisc, as opposed to 2% on conditional sales. The creditor was expected to pay this tax only after the debtor's default – only then would the forfeiture become legally effective.[74]

An interesting example of a *hn*-agreement pretending to be a loan can be found in P. *Loeb* 62 + P. Berlin 15558. The document in question appears to record an interest-free loan: the debtor Herieus the Younger acknowledges having received 70 *deben* of copper from the creditor P.nepheros and promises to repay his debt after a certain time (probably after a year – unfortunately the date on which the document was made is now lost). Should he hold to this promise, the creditor will give to him another acknowledgement of indebtedness concerning 21 silver *deben* that Herieus had made for P.nepheros and his daughter Taonnophris on an earlier date. Should he default on his debt of 70 copper *deben*, he would have to face a much more substantial obligation of 21 silver *deben*.

At first sight the transaction appears to be a loan with a fictitious acknowledgement of another debt as security. However, the value of the 21 silver *deben* is so exorbitantly high compared to 70 copper *deben* that another interpretation was offered by Nims and Seidl.[75] According to

[73] The bilaterality refers here to the formal appearance of the document; functional bilaterality could have been achieved also in contracts styled unilaterally, *e.g.* in P. Berlin dem. 3108, where the declaring party mentions obligations of the receiving party as well as his own.

[74] Pierce, *Three Demotic Papyri* (cit. n. 2), p. 117 f.

[75] Ch. F. Nims, 'Demotic Papyrus Loeb 62: a Reconstruction', *AcOr* 25 (1960), pp. 266–276; Seidl, *Ptol. Rechtsgeschichte* (cit. n. 13), p. 58.

them, we probably deal with a 'conditional' marriage agreement. Herieus the Younger married Taonnophris and made for her a 'document of maintenance' (*šḫ n ʿnḫ*) or a 'document concerning money' (*šḫ n ḏbʾ ḥḏ*) as security for the wife should he fail to fulfil his obligations.[76] This is the 'document concerning 21 (silver) *deben*,' mentioned in *P. Loeb* 62 + P. Berlin 15558. However, the original agreement between Herieus the Younger and his father-in-law Pnepheros must have contained a provision that the former could annul the marriage after a trial period of one year (probably if the wife did not become pregnant during this time and was 'proven' barren). Herieus would then have to pay a rather modest sum of 70 copper *deben* as compensation and would receive back his deed concerning 21 silver *deben*.[77]

Although the 'debtor' Herieus the Younger explicitly states having received the said 70 copper *deben*, the sum probably never changed hands. Here a 'loan' is a legal fiction and serves to convey an altogether different type of transaction. One cannot but wonder why the parties resorted to this complicated and – no doubt – expensive procedure, involving finding a trustee and producing a notary contract with 16 witnesses, instead of simply putting an appropriate provision into the original marriage settlement. This was probably due to the fact that the *šḫ n ʿnḫ* usually contained a clause preventing the husband from returning the dowry unless asked by the wife to do so.[78] It is remarkable that Pnepheros and Herieus preferred not to alter the traditional form of the marriage settlement but changed it by means of another document, a fictitious 'loan'.

[76] On Egyptian marriage settlements see LÜDDECKENS, *Ägyptische Eheverträge* (cit. n. 3); P. W. PESTMAN, *Marriage and Matrimonial Property in Ancient Egypt*, Leiden 1961; H. S. SMITH, 'Marriage and the Family in Ancient Egypt: 1. Marriage and Family Law', [in:] M. J. GELLER *& al.* (eds.), *Legal Documents of the Hellenistic World*, London 1995, pp. 46–57.

[77] So SEIDL, *loc. cit.* If the deed in question were a 'document concerning money' (*šḫ n ḏbʾ ḥḏ*) this would settle things. If, however, it were a 'document of maintenance'(*šḫ n ʿnḫ*), situation would have been more complicated, since the husband would still have to return the dowry (so NIMS, *op. cit.* who treats the 21 silver *deben* as the dowry of the bride, to be repaid by the husband if he decides to abrogate the marriage). But our document fails to mention this, rather crucial, point.

[78] PESTMAN, *Marriage* (cit. n. 76): clause C § 13, 69–71. This clause was meant as a disincentive for a man to repudiate his wife, since he would have to continue to pay for her maintenance even after divorce if she wished so, and the value of maintenance in proportion to the dowry was high.

The above enumeration of different types of security for debt encountered in demotic documents is a static one. It could create a false impression that all these types are equally well attested while in fact they must have enjoyed different degrees of popularity, probably changing over time and place. For instance, we could mention 45 instances of the clause of general security known to Pierce[79] against only one published example of an antichretic pledge of the fragmentary *P. Rylands dem.* 41. Unfortunately, any attempt at a 'statistical' analysis is thwarted by the scantiness of preserved documents: publication of one new archive from a little known locality could invalidate it altogether. Moreover, it is conceivable that even if we had thousands of documents instead of a mere handful, the impression they would give us would still be far from accurate. Petty loans that were secured, if at all, by pledging household items, would seldom have found their way into written documents. Finally, let us remember that no legal deed is likely to mention what was perhaps the strongest 'security' of them all, social pressure and conformity – factors not to be underestimated in the case of debts contracted between members of small, closed groups, such as a family or the priesthood of one temple.

Tomasz Markiewicz

Department of Papyrology
Institute of Archaeology
Warsaw University
Krakowskie Przedmieście 26/28
00-927 Warsaw 64
POLAND

e-mail: *tmarkiewicz@uw.edu.pl*

[79] PIERCE, *Three Demotic Papyri* (cit. n. 2), p. 125. This number includes not only debt acknowledgements but also other types of agreements. With the bulk of published material ever growing, this number increased over the last 30 years, but it still serves my purpose.