Marzena Wojtczak

Settlement of claims as a way of dispute resolution in the light of P. Petra iv 39 : A legal commentary

The Journal of Juristic Papyrology 42, 353-380

2012

The Journal of Juristic Papyrology
vol. XLII (2012), pp. 353–380

Marzena Wojtczak

SETTLEMENT OF CLAIMS AS A WAY OF DISPUTE RESOLUTION IN THE LIGHT OF P. PETRA IV 39

A LEGAL COMMENTARY*

To date, much attention has been devoted to the figure of arbitration and other alternative methods of dispute resolution in Roman law.[1] In recent years particular attention has also been paid to the considera-

* The draft version of this article has been read by Jakub Urbanik, to whom I am very grateful for the fruitful discussions and useful suggestions. All dates unless otherwise indicated are AD.

[1] *E.g.*, R. Düll, *Der Gütegedanke im römischen Zivilprozessrecht*, München 1931; M. Talamanca, *Ricerche in tema di 'compromissum'*, Milano 1958; G. Marani, *Aspetti negoziali e aspetti processuali dell'arbitrato. Contributo alla dottrina dell arbitrato*, Torino 1966; E. De Ruggiero, *L'arbitrato pubblico in relazione con privato presso i Romani: studio di epigrafia giuridica*, Roma 1971; K.-H. Ziegler, *Das private Schiedsgericht im antiken römischen Recht*, München 1971 (*Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte* 58); L. Murtano, *Arbiter-arbitrator: forme di giustizia privata nell'eta del diritto comune*, Napoli 1984 (*Storia e diritto: Studi* 13); G. Buigues Oliver, *La solucion amistosa de los conflictos en der echo Romano. El arbiter ex compromisso*, Madrid 1990; M. Humbert, 'Arbitrage et jugement à Rome', *Droit et Cultures* 28 (1994), pp. 47–63; P. Stein, 'Roman arbitration: an English perspective', *Israel Law Review* 29 (1995), pp. 215–227; D. Roebuck & B. De Loynes De Foumichon, *Roman Arbitration*, Oxford 2004; A. Maffi, 'L'arbitrato nell'esperienza giuridica greca e Romano', [in:] *Recht gestern und heute: Festschrift zum 85. Geburtstag von Richard Haase*, Wiesbaden 2006, pp. 109–113; Ulrike Babusiaux, *Id quod actum est. Zur Ermittlung des Parteiwillens im klassischen römischen Zivilprozeß*, München 2006 (*Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte* 95).

tion of the practical application of these institutions in the light of the available papyrological sources.[2] This is partially due to the fact that arbitration and alternative methods of dispute resolution are well attested for the Byzantine Egypt, whereas sources dealing with state jurisdiction are notably scarce.[3] The explanation for this phenomenon as well as the question of the actual scope of application of arbitration and settlement of claims as a way of dispute resolution in reference to the contemporary activity of state jurisdiction[4] remains a matter of dispute.[5] The perspec-

[2] *E.g.*, J. Modrzejewski, 'Private arbitration in the law of Graeco-Roman Egypt', *JJurP* 6 (1952), pp. 239–256; and recently a work that also presents an anthropological point of view while analyzing papyrological sources: T. Gagos & P. van Minnen, *Settling a Dispute. Toward a Legal Anthropology of Late Antique Egypt*, Michigan 1995; critical opinion on the application of anthropological method *cf.* J. Hengstl, 'Rechtsantropologie, Rechtssoziologie und die Rechtsordnung im ptolemäischen Ägypten', *PapCogr.* xxii, pp. 619–639; also in reference to Petra: T. Gagos, 'Negotiating money and space in sixth-century Petra', *ibidem*, pp. 495–509.

[3] As noted on several occasions: A. A. Schiller, 'The courts are no more', *Studi Volterra* i, Milano 1971, pp. 469–502.

[4] On the subject of civil process in province and style of documents see, for instance: K. Hackl, 'Der Zivilprozeß in den Provinzen', *ZRG RA* 114 (1997), pp. 141–159; D. Nörr, 'Römisches Zivilprozeßrecht nach Max Kaser. Prozeßrecht und Prozeßpraxis in der Provinz Arabia', *ZRG RA.* 115 (1998), pp. 80–98; *cf.* H. J. Wolff, 'Römisches Provinzialrecht in der Provinz Arabia (Rechtspolitik als Instrument der Beherrschung)', *Aufstieg und Niedergang der römischen Welt* ii.13, Berlin – New York 1980, pp. 763–806; H. J. Wolff, 'Der byzantinische Urkundenstil Ägyptens im Lichter der Funde von Nessana und Dura', *RIDA* 8 (1961), pp. 115–154.

[5] The lack of sources for state jurisdiction dating after Justinian inclined A. A. Schiller to formulate his controversial thesis according to which this period witnessed a total vanishing of state jurisdiction in favour of amicable measures of dispute resolution (*cf.* Schiller, 'The courts are no more' [cit. n. 3]). Schiller's thesis, however, was met with vehement objections. D. Simon, for example ('Zur Zivilsgerichtsbarkeit im spätbyzantinischen Ägypten', *RIDA* 18 (1971), pp. 623–657) argued that state jurisdiction existed also in 6th and early 7th centuries. Recent studies brought a variety of perspective on the subject. J. Urbanik, ('Compromesso o processo? Alternativa risoluzione di conflitti e tutela dei diritti nella prassi della tarda antichità', [in:] *Symposion 2005. Vorträge zur griechischen und hellenistischen Rechtsgeschichte (Salerno, 14.–18. September 2005)*, Wien 2007, pp. 377–400) presents a socio-historical-juridical approach with the main question focused around the reasons for turning away from institutionalised courts and seeking help in settlement of claims and arbitration. Urbanik's multifaceted (and appealing) conclusion includes finan-

tive obtained with the use of this considerable amount of the Egyptian papyri has been recently expanded by data provided by documents found in 1993 in Petra.[6]

The Petra papyri offer a rare and valuable insight into the judicial practice of this region of the empire, thus filling the noticeable geographical and chronological gap in the papyrological documentation from

cial, personal and practical reasons. On the other hand, B. Palme, ('Antwort auf Jakub Urbanik', *ibidem*, pp. 401–410) raises strong and reasonable doubts that the increase of alternative methods of dispute resolution was that significant. He suspects that we may be carried away by an illusion created by the current state of research and argues that the choice between *compromesso* and *processo* could have very well not existed at all and that the alternative methods of dispute resolution did not actually cause the fall of state jurisdiction. Admittedly, his reconstruction of Roman jurisdiction in late Antiquity seems balanced and convincing. Somewhat in this vein is the study of Claudia Kreuzsaler, ('Die Beurkundung außergerichtlicher Streitbeilegung in den ägyptischen Papyri', [in:] Ch. Gastgeber (ed.) *Quellen zur byzantynischen Rechstpraxis. Aspekte der Textüberlieferung, Paläographie und Diplomatik. Akten des internationalen Symposiums, Wien 5–7.11.2007*, Wien 2010, pp. 17–26) who ponders the extent to which the written material reflects the actual functioning of the daily Egyptian legal reality. Her systematic presentation of the available documents of juridical praxis helps to realise how limited these sources are, when it comes to reconstructing the juridical structure. One should also note M. Buchholz 'Außergerichtliche Streitbeendigung in Petra im 6. Jh. n. Chr.: der Papyrus Petra inv. 83', [in:] *Recht gestern und heute. Festschrift Richard Haase*, Wiesbaden 2006, pp. 133–147, at p. 140, who also discussed the sources from outside Egypt.

[6] In reference to the content of the discovered papyri see Z. T. Fiema, L. Koenen & F. Zayadine, 'Petra romana, byzantina et islamica', [in:] T. Weber & R. Wenning (ed.), *Petra: Antike Felsstadt zwischen arabischer Tradition und griechischer Norm*, Mainz 1997, pp. 145–62; P. M. Bikai, 'Petra Church Project, Petra Papyri', *AJA* 100 (1996), pp. 533––535; for descriptions of the find and the nature of the archive, see: L. Koenen, 'The carbonized archive from Petra', *JRA* 9 (1996), pp. 177–188 [as well as: idem in *Michigan Quarterly Review* 35 (1996), pp. 513–531]; see also: A. Arjava, 'Family finances in Byzantine Near East: P. Petra inv. 68', *PapCongr.* xxii 1, pp. 65–70; R. W. Daniel, 'P. Petra inv. 10 and its Arabic', *ibidem*, 1, pp. 331–341; J. Frösén, 'The first five years of the Petra Papyri', *ibidem*, 1, pp. 487–493; Gagos, 'Negotiating money' (cit. n. 2), pp. 495–509; Maarit Kaimio, 'P. Petra inv. 83: A settlement of dispute', *ibidem*, 11, pp. 719–724; L. Koenen, 'Preliminary observations on legal matters in P. Petra inv. 10', *ibidem*, 11, pp. 727–742; Marjo Lehtinen, 'Preliminary remarks on the prosopography of the Petra Papyri', *ibidem*; 11, pp. 787–794; Marjaana Vesterinen, 'Theft and taxes. A series of short documents (P. Petra inv. 69.1–8)', *ibidem* 11, pp. 1281–1285; additionally: R. W. Daniel, 'Toponomastic Mal in P. Nessana and P. Petra Inv. 10', *ZPE* 122 (1998), pp. 195–196.

outside Egypt.[7] Although both the terminology and the legal procedure in Petra resembles those known to us from the Byzantine Egypt, certain differences in legal language and legal practice in sixth-century Petra could be observed.[8]

The present paper investigates certain legal issues addressed in a recently published papyrus from the Petra collection, *P. Petra* IV 39,[9] a document describing a settlement of a dispute by arbitration.

With the length of 6.20–6.50 meters and 500 lines of written text *transversa charta P. Petra* IV 39 is one of the longest papyri ever discovered. Large parts of it, however, are badly preserved and, as noted by the editors, the reconstructed position of several fragments remains disputable.[10]

P. Petra IV 39 has been considered unique for its formal construction, legal terminology, and other features of settlement of dispute.[11] One of

[7] *Cf.* Hannah M. Cotton, W. E. H. Cockle & F. G. B. Millar, 'The papyrology of the Roman Near East: a survey', *JRS* 85 (1995), pp. 214–235; also *cf.* J. Hengstl, 'Die byzantinischen Papyri aus Petra: Stand der Bearbeitung und Bitte um Unterstützung', *RIDA* 49 (2002), pp. 341–357.

[8] *Cf.*, *e.g.*, Wolff, 'Der byzantinische Urkundenstil Ägyptens' (cit. n. 4); M. Buchholz, 'Juristische Terminologie in P. Petra Inv. 83. Beobachtungen zur Rechtsgeschichte Petras und zur Wiedergabe des römischen Rechts in griechischer Sprache', *PapCongr.* XXIV 1, pp. 111–128; Buchholz, 'Außergerichtliche Streitbeendigung' (cit. n. 5), pp. 133–147.

[9] Transcription and the English translation of the papyrus used in the article were taken from: Maarit Kaimio, 'P. Petra IV 39 Settlement of dispute by arbitration', [in:] A. Arjava, M. Buchholz, T. Gagos & Maarit Kaimio (eds.), *The Petra Papyri* IV, Amman 2011, pp. 41–116, esp. pp. 56–73.

[10] The state of preservation of the document hinders the proper reconstruction and interpretation of the dispute; see also *e.g.*, Buchholz, 'Außergerichtliche Streitbeendigung' (cit. n. 5), p. 136; Kaimio, 'P. Petra IV 39' (cit. n. 9), p. 51; for the detailed information concerning the physical condition of the papyrus see, pp. 41–44; for the reconstruction of the agreement see, p. 47.

[11] Constituting minutes of the proceedings, *P. Petra* IV 39 has seldom counterparts attested for in the Egyptian practice. In Egypt more frequent was utilisation of a *dialysis*, which contained signatures of witnesses and a notary and from the legal point of view had a similar function as a Roman *transactio* (the renunciation of claims). For further differences between the analysed document and the Egyptian *dialyseis*, see: Buchholz, 'Außergerichtliche Streitbeendigung' (cit. n. 5), pp. 137–139; see also the mention in, *e.g*, Kreuzsaler, 'Die Beurkundung' (cit. n. 5), p. 21, n. 17; for the formulae of the dialysis see:

the most compelling aspects of this document is the fact that it sheds new light on the relations between the 'imperial law' and the possibly existing local legal tradition, as well as the relations between the state and private methods of dispute resolution in sixth-century century Petra. The protocol in question involves many technical terms of lawcourts which, as duly noted by the editors, seems to be derived from Roman law. The said catalogue includes above all the often-mentioned δηφησίων (*defensio*).[12] Additional words likewise translated from Latin include πρόκριμα (*praeiudicium*),[13] διαλαλία (*interlocutio*)[14] as well as ὁ περὶ τῆς ἐπερείας ὅρκος (*iusiurandum calumniae*).[15] Instances of such terms in the text demonstrate

A. Steinwenter, 'Das byzantinische Dialysis Formular', [in:] *Studi in memoria di A. Albertoni* I, Padova 1935, pp. 71–94.

[12] Ll. 78, 122, 123, 126, 140, 278, 409, 423, 428, 441, 442; Explanation and controversies regarding applied spelling see: Buchholz, 'Introduction, legal terminology in the Petra Papyri', *P. Petra* IV, pp. 1–8; for a more detailed, but partly outdated discussion see: Buchholz, 'Juristische Terminologie' (cit. n. 8), pp. 111–128;

[13] Ll. 395, 403, 496; for more information, literature and applicable sources concerning πρόκριμα and *praeiudicium* see: Buchholz, 'Introduction, legal terminology' (cit. n. 12), p. 5; see also: M. Kaser & K. Hackl, *Zivilprozeßrecht*, München 1996 (2 ed.), pp. 247–50.

[14] Ll. 93, 373, 427, 497; for the equation of the terms and literature see, *e.g.*, Buchholz, 'Introduction, Legal Terminology' (cit. n. 12), p. 5 (including attestations of the term in another Petra papyri: *P. Petra* 1.2, ll. 155, 203), and flowingly *LSJ*, *s.v.*; for the meaning investigation see: *DGE*, *s.v.*; for the *interlocutio* in Roman Law see: Kaser & Hackl, *Zivilprozeßrecht* (cit. n. 13), p. 495, 571, 608, *cf.* p. 585; for different examples of usage of term in Egyptian papyri see: *P. Lond.* V 1674, l. 45 (Antinoopolis, AD 570), *P. Oxy.* XLVI 3296, l. 10 (Oxyrhynchus, 291), *BGU* XVII 2692, l. 4 (Hermoupolis Magna, 6 cent.), *P. Oxy.* XVI 1837, l. 3 (Oxyrhynchus, 6 cent.), *P. Lond.* I 77, l. 69 (Hermonthis, 8 cent.).

[15] Ll. 494–495; For the discussion see: Buchholz, 'Juristische Terminologie' (cit. n. 8), pp. 114–118 and idem, 'Introduction, legal terminology' (cit. n. 12), p. 5 (with relevant literature and sources); for the provisions and legal commentary see, *e.g.*, *CJ.* 2.58.2.4; Kaser & Hackl, *Zivilprozeßrecht* (cit. n. 13), p. 631; by an oath against insulting treatment or abuse is clearly meant *iusiurandum calumniae*, which ordinarily preceded every lawsuit and since Justinian's reign also arbitration. The aim of this act was to guarantee by the parties that their claims were justified and that proceedings were not attempted at chicanery. In the case of *P. Petra* IV 39, as noted above, contrary to Roman law, those oaths were taken as a precaution before relevant oaths of innocence. One should not fail to notice that while oaths are mentioned in the analysed document on several occasions, the arbitration itself, contrary to its Egyptian counterparts, is not confirmed with an oath. This could be explained by stating that Petra seems to have followed Justinian's annulment in

beyond doubt that the parties and arbitrators had some, considerable, specific legal knowledge.[16]

These features, among many others, were already addressed by Maarit Kaimio in her legal commentary of the papyrus in question. Nonetheless, on closer examination, some aspects of her analysis give rise to controversy. In what follows these will be discussed and an alternative legal interpretation will be framed.

The main focus of the presented paper is the fragment concerning the division of the central courtyard (*μέσαυλον*) and the refuse pit (*κοπροδοχεῖον*) (lines 451–60) as well as the concluded deeds of sale that relate to those premises.

The document, drawn up in Kastron Zadakathon, modern Sadaqa, 25 km South-East of Petra, probably in 574 AD is a protocol describing at length the dispute that arose between two neighbours and its alternative resolution made by two arbiters.

The parties of the controversy are Theodoros, son of Obodianos[17] and Stephanos, son of Leonitos (both known from several other papyri from the Petra corpus),[18] who had their houses in Sadaqa situated next to each other. The dispute is said to have originated already in the times of the predecessors of Theodoros and Stephanos and, despite numerous attempts, remained unresolved. It involves several issues addressed in ear-

539 of his legislation of 529 regarding the necessity of confirming arbitration by an oath, an act which Egypt refused to acknowledge. In lines 504–523 it is, therefore, explicitly stated that – should the parties breach the given award – they would need to pay a penalty fixed by mediation.

[16] BUCHHOLZ, 'Juristische Terminologie' (cit. n. 8), pp. 111–128; IDEM, 'Zur juristischen Fachsprache in den Petra-Papyri: Die Begriffe *hyphos* und *plenaria*', [in:] GASTGEBER (ed.), *Quellen zur byzantynischen Rechstpraxis* (cit. n. 5), pp. 9–16; Also concerning the usage of Greek technical terms by jurists of the byzantine period: N. VAN DER WAL, 'Les termes techniques grecs dans la langue de jurists byzantins', *Subseciva Groningana* 6 (1999), pp. 127–141.

[17] For the life and family of Theodoros, son of Obodianos, see: Marjo LEHTINEN, 'Introduction, family of Theodoros', [in:] J. FRÖSEN, A. ARJAVA & Marjo LEHTINEN (eds), *The Petra Papyri* I, Amman 2002, pp. 9–10; A. ARJAVA & Marjo LEHTINEN, 'Introduction, updated family tree of Theodoros', [in:] A. ARJAVA, M. BUCHHOLZ & T. GAGOS (eds.), *The Petra Papyri* III, Amman 2007, p. 17; see also KAIMIO, 'P. Petra IV 39' (cit. n. 9), p. 46.

[18] *E.g.*, *P. Petra* IV 40, 41.

lier agreements concerning the division of the premises: the right to conduct water from each other's roofs, the accusation of theft of building materials and encroachment, as well as the promise of payment of two *solidi*. A significant cause of the disagreements between the parties was the fact that Theodoros merely owned the real estate in Sadaqa, but did not live there, residing permanently in Petra. It was during Theodoros' absence in Sadaqa that a part of his property has been damaged, due to his probable negligence,[19] and his neighbour, Stephanos, erected new structures on the premises as well as altered the water conduct system without Theodoros' knowledge and consent.[20] Other causes of controversy were the right of ownership over the outbuilding (*μάνδρα*), that appears to be the subject of conspicuous number of sales, and other old grievances that had been taken up anew.[21]

While a considerable part of the document is formulated in an objective style, it mainly consists of the parties' direct speech. Both Theodoros and Stephanos are given equal space to express their position and present their pursued rights in detail. However, due to the document's state of preservation and the fact that the statements of the parties are usually short, it is not always certain which of the two litigants has the floor at a specific moment. It seems that both the defendant and the claimant are granted room for providing argumentation supporting each aspect of the analysed case on four occasions.[22] The proceedings begin with Theodoros' speech as the plaintiff. It appears from the document that the first statement of each party had been submitted to the arbiters in writing. It was probably followed by regular, somewhat more casual, oral presentations,

[19] *Cf.*, *e.g.*, ll. 231–233; however, Theodoros claims that Stephanos was somehow obliged to take care of Theodoros's premises in case of his absence and that Stephanos had failed to carry out his duty properly (ll. 102–109; 218–222).

[20] *Cf.*, *e.g.*, ll. 58–69, 133–142; 187–197; 384–389, 399–416; 460–475; as also noted by the editors in the commentary: Kaimio, 'P. Petra IV 39' (cit. n. 9), p. 51.

[21] *Cf.* ll. 163–187; also signalized in the commentary: Kaimio, 'P. Petra IV 39' (cit. n. 9), pp. 55–56.

[22] Theodoros' speeches: 1. ll. 90–142; 2. 201–*c.* 271; 3. 334–*c.* 348; 379–*c.* 389; Stephanos' speeches: 1. ll. 145–198; 2. ll. 272–*c.* 334; 3. ll. 350–*c.* 377; 4. ll. 391–449; *cf.* Kaimio, 'P. Petra IV 39' (cit. n. 9), p. 47.

which could be inferred from the use of the direct speech and the absence of any reference to writing. Subsequently, the final award of the arbiters is given.

In the award issued with the assent of both parties,[23] the space that is not precisely defined by a noun, is divided between Theodoros and Stephanos, so that Theodoros receives the area from the eastern doorpost of Stephanos' outbuilding and extending to the east (as the old foundations of his structure were treated as the boundary) while Stephanos obtains the area outside the door towards the west, north and south. Additionally Theodoros receives one third of the refuse pit in the northern part, while Stephanos receives the other two thirds extending to the south.[24]

The most intriguing issue, however, addressed in the verdict, as well as the main subject of the dispute seems to have been the ownership of the structure referred to in the award as the outbuilding (*αὐλίδριον*, elsewhere in the text also called *μάνδρα*).[25] It was situated in the northern part of the courtyard, which is said to had been taken over by Stephanos from his

[23] *Cf.* ll. 449–451: *καὶ πολλῆς φιλονικίας γεν[ο]μένης ἔδ̣ο̣ξεν αὐτοῖς ὧδε π̣ε̣ρ̣ὶ̣ τού̣[τ]ων τέλος κ̣ατὰ συναίνεσιν ἀμφοτέρω̣ν τῶν μ̣[ϵ]ρ̣ῶν ὥσ̣τ̣[ϵ τὸ]ν̣ ϵὐλαβέστ(ατον) Θϵόδωρον Ὀβοδι̣α̣[ν]ο̣ῦ̣ κτλ.* – 'and after lots of contention, they finally, with the assent of both parties, came to the decision over these matters that the most reverend Theodoros, son of Obodianos'.

Despite the concerns expressed by the editors, this ascertainment need not seem perplexing if one considers it a reference to the *compromissum* concluded between the parties. In *P. Petra* IV 39 the abovementioned clause is located in the opening formula of the decision, contrary to the classical structure (as duly noted by the editors) of settlements through mediation (*μεσιτεία*), where the ascertainment of parties' consent usually comes at the end of the issued decision [*cf.* for instance *P. Mich.* XIII 659, ll. 54–57]. It should be noted that by concluding a *compromissum* the parties declared their wish to resolve their controversy through arbitration and consequently, no further approval of issued award was required, since the declaration of acceptance of future *sententia* was already expressed in *compromissum*. Although in *P. Petra* IV 39 the *compromissum* is not expressed explicitly, its existence may be detected in lines 52–58; *cf.* KAIMIO, 'P. Petra IV 39' (cit. n. 9), p. 47.

[24] Ll. 451–460; *cf.* KAIMIO, 'P. Petra IV 39' (cit. n. 9), p. 51.

[25] *Cf.*, *e.g.*, ll. 74, 91, 133, 256, 381; other terms applied probably in reference to the *mandra* (as a whole or fragmentarily) or to the premises that *mandra* formed a part of: *oikos*: *e.g.*, l. 97; *aulidrion*: *e.g.*, ll. 70, 74, 136, 239, 270, 277, 323, probably 420, 422–423; *aule*: *e.g.*, ll. 262–263, 416; *oikesis*: *e.g.*, l. 94, *topos*: *e.g.*, probably ll. 122 and 126 [reconstructed by the editors], ll. 132–133.

sister and her husband – Gregoria and Kassisaios, probably in connection with a process of eviction.[26] Theodoros claimed the structure to be his by right, pleading his father's old deed of sale,[27] as well as a transaction (probably a sale) by Kassisaios and Gregoria,[28] and a previous decision: διαλαλία.[29] However, in the verdict it is clearly assumed that the outbuilding belonged to Stephanos.

The meaning of the term *mandra* proposed by the editors is a stable, perhaps also comprising living quarters, based on: Geneviève Husson, *Oikia. Le vocabulaire de la maison privée en Égypte d'après les papyrus grecs*, Paris 1983, pp. 162–163; Calogera Liliana Gagliano, 'A proposito di ἐν μάνδρᾳ in P. Oxy. 984', *Aegyptus* 80 (2000), pp. 99–115, esp. pp. 100––101; for the organization of courtyard houses in Petra and the Nagev towns in reference to the stables linked to the houses see: B. Kolb, *Die spätantiken Wohnbauten von ez Zantur in Petra und der Wohnhausbau in Palästina vom 4–6. Jh. n. Chr.*, Mainz 2000 (*Petra-Ez Zantur*. II 2. *Ergebnisse der Schweizerisch-Liechtensteinischen Ausgrabungen, Terra Archaeologica* IV. *Monographien der Schweizerisch-Liechtensteinischen Stiftung für Archäologische Forschungen im Ausland*), pp. 291, 293–295; Y. Hirschfeld, *The Palestinian Dwelling in the Roman Byzantine Period*, Jerusalem 1995, pp. 259–260; *cf.* also: *P. Oxy*. VI 984 (Oxyrhynchus, 91–92), *P. Lond.* V 1694, l. 23 (Aphrodito, 6 cent.), *P. Hib.* II 211, l. 6 (Hibeh, 250 BC), *SB* XXIV 16218.10 (Arsinoite, 6–7 cent.); for detailed information regarding occurrence of the term *mandra* as well as analysis of its usage in the context of *P. Petra* IV 39 see: J. Kaimio, 'Introduction: Terms connected with the houses in 39 and other Petra Papyri', *P. Petra* IV, pp. 17–19.

[26] *E.g.*, ll. 396–400, 422–423, 467; The eviction could have taken place due to the fact that the premises sold to Theodoros by Kassisaios and Gregoria had been probably previously mortgaged to Stephanos. Therefore, Stephanos could have claimed the land and Theodoros as a losing party could only claim damages from the seller for the legal defects of a thing sold; for *evictio* in Roman Law see, *e.g.*, M. Kaser, *Das römische Privatrecht* I–II, München 1971–1975 (2 ed., *Handbuch der Altertumswissenschaft* X 3.3), II. *Die nachklassischen Entwicklungen*, pp. 390–392; as well as: D. Nörr, 'Probleme der Eviktionshaftung im klassischen römischen Recht', *ZRG RA* 121 (2005), pp. 152–188; *cf.* also: Buchholz, 'Juristische Terminologie' (cit. n. 8), pp. 119–120.

[27] *E.g.*, ll. 69–74; 119–133; 277–280.

[28] *E.g.*, ll. 140–142; 372–377.

[29] For the attestations of the term *dialalia*, see n. 14; The issues dealt with in our papyrus seem to be of a kind, for which the amicable means of dispute resolution seems simply a better fit than state litigation. It is indeed possible that at some point the local jurisdiction found itself involved in the lawsuit, as perhaps indicated by the *dialalia* evoked by Theodoros. In this case, certain provisional decision in favour of Theodoros would have probably been issued before the arbitration. However, Theodoros failed to present the proper documentation to the arbitrators. The decision that was eventually made to settle the dispute by means of arbitration, could have been induced both by concerns regarding the expenditures connected

Moreover, in the outcome of the conducted arbitration a number of other controversies was settled. As far as the spout is concerned, it was decided that Theodoros and Stephanos were entitled to conduct water from each others' roofs and Theodoros cannot object if Stephanos wished to erect any additional adjoining structure. Subsequently, the controversy regarding the alleged theft of building materials and encroachment was terminated by an oath due to the insufficiency of decisive evidence presented by the parties. Finally, the dispute over two *solidi* stemming from a former quarrel over a vineyard found its solution through an oath by Theodoros, confirming that he had never promised to pay anything.

Unfortunately, the document does not cite any argumentation for the applied solution regarding the division of the central courtyard and the refuse pit, as well as the controversy over the ownership of *mandra*.

In her legal commentary of *P. Petra* IV 39 Maarit Kaimio suggests that one of the reasons for the solution chosen by the arbiters was the fact that Theodoros was not able to produce all required documents proving his right to the premises in question, as stated in the protocol. The pertinent fragments read:

> (Stephanos words): He did not give to me, when I asked again about my outbuilding (*aulidrion*), the document of the agreement/release of claims (*apallage*)[30] on the defense (*defensio*) of the plot (*topos*) concluded between himself and Gregoria and her husband Kassisaios, nor did he produce it for you, the judges, who urge (one) to testify what is right.[31]

with the state trial, as well as problems with the evidence when facing lack of full documentation. It is also not unthinkable, that the entire case could have been of lesser importance for Theodoros, who lived in Petra, although undoubtedly wanted to protect his interests in Sadaqa as well; *cf.* Buchholz, 'Außergerichtliche Streitbeendigung' (cit. n. 5), pp. 145–146.

[30] The translation of the term *apallage* offered by the editors is an agreement, though it should be noted that the term *apallage* in a legal context could also mean a release of claims, or a discharge, see, *e.g.*, *LSJ*, *s.v.*; in the context of contract of marriage *cf. e.g.*, *P. Ryl.* II 154, l. 29 (Arsinoite, 66).

[31] Ll. 277–280: *ὅτι οὐκ ἔδ[ω]κε ἐμοὶ ἐπειρομένῳ [π]ερ[ὶ] τοῦ ἐμοῦ α[ὐλιδ]ρ[ίου τὸν χάρτην τῆς γενομένης ἐπὶ δηφενσίωνι τοῦ τόπου ἀπαλλαγῆς μεταξὺ [αὐτοῦ] καὶ Γρηγορίας καὶ Κασσίσου τοῦ αὐτῆς ἀνδρὸς οὔτε ὑμεῖν τοῖς δικαστα̣ῖς μαρ[τυρεῖν τὸ] δίκαιον παραινοῦσιν ἑτοί[μα]στο κτλ.*

> (Stephanos words): ... to present to me the provisional decision (*dialalia*), in order to make manifest [the sale] made by Kassisaios and [his] wife Gregoria, nor did he [manifestly show] that after it was made, it was [included in the decision] given to you ...[32]

The second reason given by Maarit Kaimio is the supposition that Stephanos could prove his ownership by the *praescriptio longi temporis*, because, as he claims, the structure was in possession of his family for about fifty years. Let us consider the second argument more thoroughly.

Although admittedly *longi temporis praescriptio* may come to mind in this situation,[33] a closer examination of the document suggests other motives lay behind the case. It should be noted that the text does not hint at any point that *longi temporis praescriptio* was invoked. According to the provisions of the Roman law, gaining ownership of land required a period of ten years of undisturbed and started in good faith possession of this land – if the parties are from the same province (i.e. are in direct vicinity) – and twenty years, if the parties come from different provinces.[34] After forty years, according to the Constantine's law on the acquisition of prescriptive possession by the length of tenure, the right to the land should come irrespectively of the legality of the inception of possession that, moreover, is not to be investigated.[35] It is true that

[32] Ll. 373–376: δι[α]λα̣λ[ίαν] μο̣ι π̣ροφ̣έ[ρειν] ἵνα φανηροθ̣[ῇ] [ἡ πρᾶσι]ς γεναμέ̣[ν]η π̣αρὰ Κασσισαίου καὶ Γρηγορ[ίας τῆς αὐτοῦ] [γυ]ναικὸς μηδὲ γε[ν]ὰμένην ἐν τοῖς με̣τ̣ὰ ὑ̣μ̣[ῶν διατυπωμένο]ι[ς] φ[ανε]ρῶς [ἀπ]έ[δειξεν] κτλ.

[33] As the defending party refers to the period of time during which the disputed premises were in the possession of his family. Unfortunately, this vagueness of the passage is too enigmatic to allow any certain conclusion. Stephanos' remark could very well have been mentioned in passing, and not necessarily referring to a legal institution.

[34] *Cf. CJ*. 7.33.12.

[35] *Cf.* for instance the P. Columbia inv. no. 181 (19) + 182 (a hearing before the *defensor civitatis* about the ownership of some property in Karanis in the year 339) where there is a reference made to the provisions introduced by Constantine concerning *longi temporis praescriptio*. *cf.* V. Arangio-Ruiz (ed.), *Fontes Iuris Romani Anteiustiniani* (*FIRA*) III, *Negotia*, Firenze 1943, pp. 318–328, with relevant literature and sources; see also, *e.g.*, C. J. Kraemer (jr.) & N. Lewis, 'A referee's hearing on ownership', *TAPhA* 68 (1937), pp. 357–387; for the principal sources on *longi temporis preaescritpio* see esp. p. 358, n. 3; see also IIDEM, 'Constantine's law on *longissimi temporis praescriptio*', *PapCongr.* v, pp. 245–248; papers:

Stephanos makes a remark that the parcel was in his family's possession for about fifty years,[36] however at no moment does he directly refer to the *longi temporis praescriptio* as such, it thus cannot be safely stated that the remark of the defending party does necessarily indicate the mentioned institution.[37]

An alternative interpretation of Stephanos' statement will be signalised later in this article. As we can see, a *longi temporis praescriptio* does not really provide an answer to the legal controversy outlined in the document. Instead, it is the conspicuous number of sales mentioned in the texts that might provide a more suitable explanation.

A close analysis of the *P. Petra* IV 39 brings to mind a practice of conditional surrender of the debtor's property to the creditor serving as a security. This form of guaranteeing creditors is known to many legal cultures in Antiquity, such as for instance Roman *fiducia*, considered the prototype of Roman system of real securities, as well as its Graeco-Egyptian counterparts. The Ptolemaic and Roman documents provide us with information about the so called 'purchase on trust',[38] also used as way of

U. Wilcken, 'Urkunden-Referat' *AfP* 13 (1939), p. 242–243; L. Wenger, 'Juristische Literaturübersicht VIII (bis 1939)', *ibidem*, pp. 257–259, and idem, 'Verschollene Kaiserkonstitutionen', *Historisches Jahrbuch der Görres-Gesellschaft* 60 (1940), pp. 353–390, esp. p. 359; on the institution of *longi temporis praescriptio* in Roman Law *cf.* J. Partsch, *Die longi temporis praescriptio im klassischen römischen Rechte*, Leizig 1906, pp. 49–56; *cf.* R. Taubenschlag, *Das römische Privatrecht zur Zeit Diokletians*, Kraków 1923, p. 172, n. 9.

[36] Ll. 152–154: *ἐπὶ τοῦ παρόντος ἀνοέτ̣ως̣ κ̣α̣ὶ ἀδίκω[ς] ἐνήγαγε̣ν πρὸ̣ς ἐμὲ δ̣ί̣κ̣η̣ν ἐ̣π̣ὶ διακίου οἰκημάτων αὐτοῦ ὡς ἂν εἰς σ̣ήμερον ἔχει δίκαιον με̣τ̣ὰ π̣εντή[κον]τ̣α ἔ̣τ̣η περίπ̣ο̣υ ἐμοῦ ἐν καθέξει γεγ[ον]ό̣τος κτλ.* – 'At the moment, he has unreasonably and unjustly sued me over the right belonging to his house, claiming that he still today has (this) right, after I have been in possession (of it) for about fifty years.'

[37] Contrary to the abovementioned P. Col. inv. no. 181 (19) + 182 (cit. n. 35) that left no doubt whether *longi temporis praescriptio* was being referred.

[38] *ὠνὴ ἐν πίστει*, *cf.* most recently: J. Herrmann, 'Zur *ὠνὴ ἐν πίστει* des hellenistischen Rechts', [in:] G. Thür (ed.) *Symposion 1985. Vorträge zur griechischen und hellenistischen Rchtsgeschichte*, Köln – Wien 1989, pp. 317–335, with relevant literature and sources; previously on the matter *e.g.*, G. A. Gerhard & O. Gradenwitz, '*ὠνὴ ἐν πίστει*', *Philologus* 63 (1904), pp. 489–583; L. Mitteis & U. Wilcken, *Grundzüge und Chrestomatie der Papyruskunde* II 1. *Juristischer Teil*, Leipzig 1912, pp. 135–141; R. Taubenschlag, *The Law of Greco-Roman Egypt in the Light of the Papyri 332 BC–640 AD*, Warszawa 1955, pp. 270–274; contribution to

securing obligations in form of a transfer of ownership.[39] What is both essential and perplexing is that, in certain cases, the deeds of Byzantine legal practice provide examples of transfers of debtor's property to the creditor serving as a guarantee for a parallel loan agreement, which does not refer directly to the sum lent or to the loan itself. This latter type of documents differs significantly from the 'purchase/sale on trust' mentioned earlier, which is usually accompanied by a corresponding loan document[40] that reveals the mock character of concluded sale. Due to this fact it is usually the interpretation of other documents connected with the analysed one that enables us to reconstruct the whole context of undertaken transactions, and allows us to assume that we are dealing with guarantees rather than typical deeds of sale.

Such reasoning could be used here because some late antique papyri have been identified as evidencing of this practice. For instance, such relations were found in *P. Dubl.* 32 and 33, and 34, as well as in other documents found in the archive of Kako and Patermouthis.[41] The former group con-

the discussion, *cf.* E. Rabel, 'Nachgeformte Rechtsgeschäfte', *ZRG RA* 28 (1907), pp. 311–379, at 355; A. B. Schwarz, 'Sicherungsübereignung und Zwangsvollstreckung in den Papyri', *Aegyptus* 17 (1937), pp. 241–282; for more information concerning guarantees and securities in the papyri, see, *infra*, n. 83.

[39] On this matter: *cf.* J. Urbanik, 'Tapia's banquet hall and Eulogios' cell: transfer of ownership as a security in some late Byzantine papyri', [in:] P. Du Plessis (ed.), *New Frontiers: Law and Society in the Roman World*, Edinburgh 2013, pp. 151–174, with information concerning the evolution of the 'purchase on trust' in mainland Greece (*ὠνὴ ἐπὶ λύσει*/ *πρᾶσις ἐπὶ λύσει*) and the figure of Demotic 'mortgage'; in the latter aspect see also: F. Pringsheim, *The Greek Law of Sale*, Weimar 1950, pp. 117–118; on the figure of demotic mortgage most recently see: T. Markiewicz, 'Security for debt in the Demotic papyri', *JJurP* 35 (2005), pp. 141–167, esp. pp. 156–158; and 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 démotique et copte* (*P.L. Bat.* xxiii), Leiden 1985, pp. 45–59.

[40] *Cf.*, *e.g.*, *PSI* viii 908 (Tebtynis, 42–43), *PSI* viii 910 (dup. *P. Mich* v 332, Tebtynis, 48), *PSI* viii 911 (dup. *P. Mich* v 335, Tebtynis, 56), *P. Mich.* v 328 (Tebtynis, 29–30), for more examples see: Pringsheim, *The Greek Law of Sale* (cit. n. 39), p. 119 and n. 1, Herrmann, 'Zur *ὠνὴ ἐν πίστει*' (cit. n. 38), pp. 317–335 with literature, and Urbanik, 'Tapia's banquet hall' (cit. n. 39), p. 152, n. 6.

[41] Urbanik, 'Tapia's banquet hall' (cit. n. 39), pp. 153–166.

sists of three deeds of sale from the early sixth century.[42] They all concern sales of a monastic dwelling in Labla, on the outskirts of Arsione.[43] According to P. *Dubl.* 32 (7 September 512) and *P. Dubl.* 33 (9 July 513) a certain monk – Eulogios son of Iosephos – sold his *monasterion* twice, in each case to a different person. A surprising feature is that those two transactions took place within the same year. A plausible answer to these phenomena comes with the lecture of a third document, that is *P. Dubl.* 34 (24 August 511), which is a settlement of claims – *dialysis* – and predates both of the sales. According to this document two monks – Eulogios and a person who is most probably the party from *P. Dubl.* 33 – settle their rights and claims to a hermitage at Labla, where they live. Connecting this settlement with the two later agreements allows us to reconstruct the probable chain of fictitious sales serving as a security for a loan.

The archive of Kako and Patermouthis[44] also provides presumable examples of similar practice. Those documents shed light on some of the affairs that took place between Pathermoutis and his troublesome mother-in-law Aurelia Tapia. A deed of sale between Tapia as one party, and her son-in-law Patermouthis with her daughter Kako as the other,[45] seems at the first glance to constitute *datio in solutum*. However, some nine years later Tapia sold a part of those premises again to a completely different person.[46] This example, together with several other documents[47] which certainly concern a single case, reveal the mechanism of mock sales, and, as I believe, provide a very convincing image of how they actually functioned.

[42] For more information concerning the set of documents consisting of three deeds of sale published in *P. Dubl.* 32, 33 and 34 see: B. C. McGing, 'The Melitian monks in Labla', *Tyche* 5 (1990), pp. 67–94.

[43] Urbanik, 'Tapia's banquet hall' (cit. n. 39), pp. 153–154, with further literature.

[44] For the newest bibliography on the archive, see Leuven Trismegistos database of the papyrus archive, and its description by Karolien Geens: 'Archive of Flavius Patermouthis, son of Menas' at *Leuven Homepage of Papyrus Collections:* ≪http://www.trismegistos.org/arch/archives/pdf/37.pdf≫.

[45] *P. Münch.* I 9 + *P. Lond.* V 1734 [protocol] = *Pap. Eleph. Eng.* D40, 30 May 585.

[46] *P. Lond.* V 1733 = *Pap. Eleph. Eng.* D49, 6 March 594.

The question that I would like to pose is whether it is possible that such transfers of property, serving as a way of securing the previously concluded agreements, could underlie the controversy dealt addressed in *P. Petra* IV 39. In this case, however, it is the occurrence of some particularities herein, rather than the context of the whole *archive*, that gives ground to considerable doubts.

Such hypothesis is not entirely unproblematic, especially considering the fact that large parts of the document concern a dispute over servitudes. One proposed reconstruction of events might be as follows:

With regard to the controversy over the outbuilding (αὐλίδριον) Theodoros produced a written deed of sale, prepared seventy years earlier by Obedos,[48] son of Ichmallos for Obodianos, and father of Theodoros.[49] The document confirmed the right of ownership of the outbuilding located in front of his house.

> [the said most God-pleasing Theodoros] presented a written deed of sale made in Kastron Zadakathon for his most blessed father Obodianos seventy years ago [by the] most blessed Obedos, son of Ichmallos, stating that he has [the right to the] said stable or [outbuilding] in front of his house complex (aule).[50]

[47] *Cf. P. Lond.* V 1729 (= *FIRA* III 68, 12 March 584), *P. Münch.* I 11 (= *Pap. Eleph. Eng.* D45, 7 October 586); *P. Münch.* I 12 (= *Pap. Eleph. Eng.* D46, 13 August 590); for detailed analysis and convincing reconstruction of the events see: Urbanik, 'Tapia's banquet hall' (cit. 39), pp. 158–166, with reference to other documents from Kako and Patermouthis Archive of a similar type; Moreover, for an overview of dispute resolution through arbitration, which includes the archive of Kako and Patermoutis see: Urbanik, 'Compromesso o processo?' (cit. n. 5), pp. 377–400; Palme, 'Antwort auf Jakub Urbanik' (cit. n. 5), pp. 401–410; and: Kreuzsaler, 'Die Beurkundung' (cit. n. 5), pp. 11–26, with further literature.

[48] Also mentioned in *P. Petra* III 22, where he is also already dead.

[49] Most recently on the relation between Obodianos and Theodoros, as well as on context of Petra papyri in general: Jaakko Frösén (Helsinki), 'From carbonized papyri to the Monastery of Saint Aaron at Petra – The "last will" of Mr. Obodianos, P. Petra Inv. 6a' – paper presented at the 27th International Congress of Papyrology in Warsaw, July/August 2013.

[50] Ll. 70–74: [ὁ μὲν εἰρημένος θεοφιλέστ(ατος) Θεόδωρος] ἐνεφάνισεν ἔγγραφον ὠνιᾳ[κὸ]ν ἐν Ζ[αδακάθων κάστ]ρ[ῳ γενάμενον] ε[ἰς τ]ὸν μ[α]κ̣α̣ρ(ιώτατον) Ὀβ̣ο̣δ̣ιανὸν αὐτοῦ πατήρα

Additionally, in order to support his claim Theodoros presented a written memorandum made through Sergios, a bishop, concerning a suit between himself and Kassisaios the Son over their rights referring to the said *mandra*.[51] The question about the probable content of this document will be addressed later.

Another explicit mention of the sale agreements referring to the outbuilding appears in a citation of Stephanos' speech, in which he attempts to prove that his father bought the disputed premises at least twice from two completely different persons.

> The said most God fearing Stephanos, too, presented two deeds of sale made to his most blessed father Leonitos, the one (made) fifty three years ago [by] the most blessed Leonitos, son of Abdallos, the other forty-[three] years ago by the most blessed Petros, [son of Ioannes].[52]

What needs to be stressed is the fact that the document of sale, which presumably concerned the discussed *mandra*,[53] seems to include a guarantee of Theodoros' right of entrance and exit.[54]

The complexity of the matter gains a new level when Leonitos, father of Stephanos, somehow forfeits the possession of the land in a dispute, or

[ἀ]πὸ ἐνια[υτῶ]ν ἑβδομ[ήκοντα] [ὑπὸ τοῦ μακαρ]ιωτ[(άτου) Ὀ]βεδους Ἰχμάλλου περιέχον [ὥσ]τε αὐτὸν ἔχ[ειν τὸ] [δίκαιον τῆς] εἰ[ρ]η[μ]έ[ν]ης ἔμπροσθεν α[ὐ]λ[ῆς μά]νδρας ἤτοι [αὐλιδρίου·] κτλ.

[51] *Cf. infra*, n. 69.

[52] Ll. 79–83: *ὁ δὲ εἰρημ[ένος] [θεοσεβέστ(ατος) Στέφανος καὶ αὐτὸς ἐνεφάνισε[ν] ὠνιακὰ δύο γενάμενα εἰς τ[ὸν] [μα]καριώτ(ατον) Λεόντιον τὸν αὐτοῦ πατήρ[α], ἓν μὲ[ν] ἀπὸ ἐτῶν πεντήκο[ν]τα τρει[ῶν] [ὑπὸ] τοῦ μακαριωτ(άτου) Λεονίτου Ἀβδάλλου, τὸ δὲ [ἄλ]λο ἀπὸ ἐτῶν τεσσαρά[κοντα τρειῶν] ὑπὸ τοῦ μακαριωτ(άτου) [Π]έτρο[υ] Ἰωάννου* κτλ.

[53] As also noted by the editors, see: Kaimio, 'P. Petra IV 39' (cit. n. 9), pp. 51–52.

[54] Ll. 83–85: *καὶ τὸν μ[ὲν ἕτερον ὠνια]κ[ὸ]ν ἀπὸ ἐτῶν πεντήκοντα τριῶν γεν[άμ]ενον περ[ι]έχον ἀξ [c. 6]σμὸν [ὥστε] [μὴ ἔχειν Θεόδωρο]ν ε[ἰ] μὴ εἴσοδον καὶ ἔ[ξ]οδον* κτλ. – 'the other deed of sale made fifty-three years ago stating... [that Theodoros had] only (the right of) entrance and exit', *cf.* R. Taubenschlag, 'Das Recht auf *εἴσοδος* und *ἔξοδος* in den Papyri', [in:] *Opera Minora* II, Warszawa 1959, pp. 405–418.

at least its part, only to regain it on the basis of a second deed of sale made to him by Petros, son of Ioannes.[55] Although the exact context and the casual nexus for the concluded transactions elude us, it should be noted that – contrary to the provisions of the previous document – the second deed of sale includes no apparent reference to any of Theodoros' rights.

In a speech that directly follows Stephanos' presentation of the deeds of sale, Theodoros points out that Stephanos *thinks that he still has the ownership of the mandra ... and the refuse pit as far as the street of the house complex, as when owned by the most blessed Petros, son of Ioannes.*[56] This phrase may indicate that the ownership that was an object of sale underwent a significant change since the time Petros performed his rights. According to Theodoros this right was no longer effective within the same scope and Stephanos deliberately interpreted the said deed of sale in a way that violated the rights of his neighbour.[57] This matter, however, seems not entirely clear, because if Petros had no will to pass the ownership of the *mandra* along with the disputed premises, what would be the sense of the later claims on the part of Theodoros' stating that he acquired the plot and the controversial structure from Kassisaios and Gregoria, who was Stephanos' sister? How could that be possible?

[55] Although the mention of all transactions (i.e. the former and later sale) concerning the disputed premises may seem superfluous while proving one's rights (the mention of latter should be sufficient), it seems to be a common practice in a settlement of claims (see, *e.g.*, the Kako and Patermouthis archive where the entire pedigree of each plot is meticulously presented, *cf. P. Münch.* I 1; 6; 7; 11; 14; for literature see, *supra*, n. 44).

[56] Ll. 91–92: *τ̣[ὸν ἐμ]ὸ̣ν ἀντ̣[ίδικον] ἐν τοῖς ὑ̣[πομνηστικοῖς ἐπιδοθεῖσι π̣αὰ̣ ἐμ[ο]ῦ̣ [ὡς] ἐξ ὑ̣σ̣τ̣[έρο]υ φρ[ον]τ̣ίζει ἔχει[ν] τ̣ὴ̣[ν ἐξουσ]ίαν τῆς μ̣ά̣ν̣δ̣ρ̣α̣ς [c. 8] [κ]αὶ τοῦ κοπροδ̣ο̣χ̣ίου μ̣έχρι τῆς αὐ̣λ̣ῆ̣ς ὁ̣δ̣ο̣[ῦ κα]θ̣ὸ̣ς κα̣τ̣έ̣χ̣[ε]τ̣ο̣ ὁ μ̣α̣κ̣α̣ριώτ(ατος) Π̣έ̣[τρος Ἰωάννου]· κτλ.* – 'my opponent in the [memorandum submitted] by me, that he thinks he still has the ownership of the stable... and the refuse pit as far as the street of the house complex, as when owned by the most blessed Petros, [son of Ioannes].'

[57] Ll. 94–97: *ἡ εἴσοδος διὰ] τῆς αὐτῆς θύρας ἧ̣κ̣ει καὶ κατὰ καινοτ̣ο̣μ̣[ίαν] ἐγένετο κ̣α̣ι̣ν̣ῷ̣ τ̣[ρόπῳ παρερμηνευόμ]ε[νον] π̣α̣ὰ̣ αὐτοῦ ὠν[ι]ακὸν γενόμεν[ο]ν εἰς τὸν π̣α̣τ̣έ̣ρ̣α̣ α̣[ὐτο]ῦ̣ [ὡς] [ἔχε]ι τὴν [ἐξουσία]ν̣ [τοῦ] ε̣[ἰ]ρ[ημ]ένου ο̣ἴκ̣ο̣υ ἔσοθεν τ̣ο̣ῦ̣ α̣ὐ̣[τοῦ] μ̣εσαύλου· κτλ.* – '[The entrance] is [through] the same door, and the deed of sale (made) to his father was [misinterpreted] by him in a new [way] causing damage, [so that] he has the [ownership] of the said house (oikos) inside the same central courtyard.'

The mere number of the conducted sales should leave us suspicious about their nature. It seems entirely possible that, at least in some cases, instead of deeds of actual sales, these were in fact records of transactions serving as securities for a loan. Expanded on this thought I propose a following reconstruction of events.

Since the first documented deed of sale was made to Obodianos seventy years before *P. Petra* IV 39, sometime after the year 504 and before the year 521, when the second sale mentioned in the protocol was probably concluded between Leonitos son of Abdallos and Leonitos father of Stephanos, yet another sale had taken place. Whether it was a real or fiduciary sale, however, is difficult to define. For the sake of this reconstruction let us for now assume its character was fictitious.

Suffice it to say that we lack the connection, direct or indirect, between Obodianos and Leonitos, son of Abdallos. What I would like to suggest is that the former sold the disputed premises to the latter in order to secure an obtained loan. This would have practically deprived Obodianos of his rights as the owner of the premises, including *mandra*, on behalf of Leonitos, son of Abdallos, leaving him only with the right of entrance and exit. As it is known from the examples of later land sales attested in the papyri, the owner in such situation usually presented the buyer with all documents that proved his rights to the sold premises.[58]

Leonitos, son of Abdallos, may have accordingly sub-mortgaged the 'purchased' property to Leonitos, son of Thanamounos. This liberty of disposal should not be alarming if one considers the character and form of the late antique real securities, which in practice equipped the pledgee/hypothecary with nearly full rights over the pledged property.[59] This deed of sale would be therefore the first mentioned in the Stephanos' speech proving his rights to the disputed property. Subsequently, Leonitos, son of Abdallos would have paid off the debt and regained his rights over the premises. Another interesting point referred to in the protocol, which is relevant for the reconstruction, is the problem of the potential survival of

[58] *Cf.*, *e.g.*, Urbanik, 'Tapia's banquet hall' (cit. n. 39), p. 157.

[59] *Cf. ibidem*, pp. 168–169, esp. nn. 67 and 71.

Theodoros' right of entrance and exit through *mandra* in the second deed of sale concluded between Petros, son of Ioannes, and aforementioned Leonitos, son of Thanamounos. Theodoros stated later that Leonitos had not obtained ownership over *mandra* as when owned by Petros, son of Ioannes.[60] It is quite likely that Petros somehow had a wider spectrum of rights, at least to Theodoros' mind. What could possibly made him think that?

If we assume that after the repayment of debt by Leonitos, son of Abdallos, Theodoros' father also paid off his one, the problem of a potential shift in the scope of disposed rights does not seem that obscure. Had the right of entrance and exit been established on behalf of Theodoros' father in the first deed of sale made to Leonitos, son of Thanamounos,[61] it should have ceased to exist the moment the ownership was retransferred to him. According to the provisions of the analysed document, it seems therefore plausible that the deeds of sale that followed, contrary to their previous counterparts, did not include a relevant guarantee of Theodoros' rights. Such negligence could also explain Theodoros' struggle for their later recognition by pleading Stephanos' misinterpretation of the provisions of his second deed of sale.[62] Yet it cannot be ruled out that the change in the scope of rights in fact regarded the range of transferred premises, so that in the second sale *mandra* would no longer be included. However, in this latter scenario, as previously pointed out, Theodoros' subsequent purchase of the disputed parcel from Kassisaios and Gregoria would be rather difficult to justify.

What were then the rights that Theodoros claimed Stephanos has reluctantly violated? Was it the ownership over the *mandra* or perhaps the right of exit and entrance belonging to his house complex? Theodoros mentioned that the breach of his rights continued for fifty three years,[63] which, considered along with the occurrence of at least two sale

[60] Ll. 91–92; see n. 56.

[61] Ll. 83–85; see n. 54.

[62] Ll. 95–97; see n. 57.

[63] Ll. 228–229: *οὔτε δ' ἐτῶ̣ν [π]ε̣[ν]τ̣ήκοντα τρι[ῶν μέλει] [τῶ]ν̣ ἡμετέρων δικαίων κτλ.* – (Theodoros' words): 'nor has he for fifty-three years [cared] for my rights.'

transactions within this period, seems rather to indicate the infringement of the latter right. Consequently, such (presumed) violations could have influenced Theodoros' undertakings aimed at acquiring the contentious premises in future.

Answering to Theodoros' allegations, Stephanos claimed that the exclusive rights belonging to his adversary has in fact ceased to exist long since.

> (Stephanos words): At the moment, he (Theodoros) has unreasonably and unjustly sued me over the right belonging to his house, claiming that he still today has (this) right, after I have been in possession (of it) about fifty years ...[64]

Interestingly enough, Stephanos also claimed that the rights at dispute have been in the possession of his family for over fifty years. This statement, however, remains at variance with earlier assertion that Leonitos, father of Stephanos, bought the parcel in question for the second time from Petros, son of Joannes[65] forty-three years earlier. Even though these statements, *prima facie*, do not correspond with each other, a solution emerges if we consider that the transitions in the sphere of rights do not necessarily have to be followed by a corresponding change in factual use of the premises. Therefore, Stephanos' family could have remained in possession of the disputed *mandra* and continued to take care of it despite numerous transactions concerning its ownership.

Thus, if we indeed deal with the right of entrance and exit established on behalf of Theodoros' family, non-performance of this right for a considerable period of time (*non usus*), regardless the character of simultaneously concluded agreements, could in consequence lead to its expiration.[66]

[64] Ll. 152–154; see n. 36.

[65] Most interestingly herein referred Petros seems to be one of the neighbours of the parties of controversy and, at the time of arbitration, his family probably lived in the vicinity of Theodoros' and Stephanos' house complex, *cf.* line 309.

[66] For more information concerning land servitudes in Roman law and their expiration in the case *non usus* see *e.g.*, S. Solazzi, *Specie ed estinzione delle servitu prediali*, Napoli 1948, pp. 157–181; and, more recently, Fabiana Tuccillo, *Studi su costituzione ed estinzione delle servitù nel diritto romano. Usus, scientia, patientia*, Napoli 2009, pp. 97–188, esp. pp. 140–169.

Certainly, this in turn could also serve as a reason for Theodoros' purchase of the disputed parcel when such occasion arose. It seems that the possibility appeared after the death of Leonitos and acquisition of the disputed premises (probably through inheritance) by Gregoria and Stephanos, the children of Leonitos. Gregoria then may have decided to sell her share in the parcel to Theodoros. Needless to say, the nature of this transaction is also not beyond a shadow of doubt. Based on the provision of the protocol it seems plausible to believe that the sale concluded between Theodoros on one side and Kassisaios with Gregoria on the other could have also served as a security for a loan, or could have been somehow connected to the previously concluded transactions. The nature of this last sale – whether real or fiduciary – does not significantly affect the interpretation that follows.

To all appearances, Kassisaios and Gregoria guaranteed that the *mandra* (the outbuilding) was free from all liability by establishing a ***hypotheca generalis*** on their present and future property, a typical feature of many late Byzantine documents:[67]

The relevant fragment reads:

> (Theodoros words): ... that it was decided that Kassisaios and his wife Gregoria themselves should guarantee to me with their own risk and that of their property, with their heirs and successors, the said plot belonging to my house and the outbuilding, on the written securities made between myself and the said Kassisaion and his wife Gregoria.[68]

With the death of Kassisaios and Gregoria further controversies arose, probably partially initiated by the inheritance proceedings. Already in lines 75–79 Theodoros, while proving his rights to *mandra*, refers to the memorandum that was made through Sergios, priest and a bishop of

[67] *Cf.* Urbanik, 'Tapia's banquet hall' (cit. n. 39), p. 155.

[68] Ll. 127–131: *κ̣αὶ ὅτι ἐ̣δ̣ο̣ξ̣[ϵ]ν̣ αὐτοὺς Κ̣ασ[σίσα]ι[ον] κ̣[α]ὶ̣ [Γρηγο]ρ[ί]αν [τὴν] γ[υν]α̣ῖκ[α αὐ]τ̣ο̣ῦ̣ καθαροποιῆσαί μοι κινδύνῳ αὐτῶν καὶ π̣ραγμάτων αὐτῶν μετὰ κληρ(ονόμων) [α]ὐ̣τ̣ῶν διαδόχων τὸν εἰρημένον τ[ῆ]ς ἐμῆς οἰκήσεως τόπον καὶ τ̣[ὸ] α̣ὐ̣λ̣ί̣δ̣ρι̣ο̣[ν] τοῖς ἐγγράφοις ὀχυρωμένοις γϵ[νομ]έ̣νοις μεταξὺ μοῦ καὶ το[ῦ] ε̣ἰ̣ρ̣η̣μ̣έ̣[νου] Κασ[σι]σαίου καὶ Γρηγορίας τῆς α̣ὐ̣τ̣ο̣ῦ̣ γυ̣ν̣α̣ι̣κ̣ό̣[ς κτλ.*

Sauron, with the assent of Stephanos, that concerned a suit between Theodoros himself and Kassisaios the Son.[69] What especially hinders the comprehension of purpose and content of this settlement is the mention of some sort of *defensio*. It was stated by the editors that probably two different *defensiones* are involved in the protocol.[70] The first one surely must refer to a deed of sale concluded between Theodoros and the couple Kassisaios and Gregoria, and seems to be a classic guarantee against eviction.[71] In few cases, however, the term *defensio* is applied with regard to the mediation of Sergios.[72] The usage of this word here seems rather peculiar. Perhaps after the demise of Kassisaios and Gregoria, Theodoros tried to make his rights known to the heirs and ensure they are most thoroughly secured for the future. This would be comprehensible if Stephanos' family had *mandra* in their factual possession for the whole time. Undoubt-

[69] Ll. 75–79: [*περὶ δὲ c.* 12]*ε*[. .]*αι* [. . . .]*ιν βο*[*ρινὴ*]*ν τῆς οἰκ*[*ήσεω*]*ς ἐ*[*νεφάνισεν ἔγγρα*]*φον ὑπομνησ*τ[*ικὸν τοῦ θ*]*εο*φι[*λεστ*(*άτου*) *Σεργίου πρεσβυ*(*τέρου*)] *καὶ χωρεπι*-[*σκ*]*όπου Σαυρον δίκ*[*η*]*ς τῆ*[*ς*] *μ*ε[*ταξὺ αὐτοῦ καὶ Καssσισαίου υἱοῦ ?*] *μετὰ δηφε*ν*σίονος γενο*μ*ένης συμ*[*φωνήσει ἀμφοτέρων τῶν μερῶν καὶ*] *μετὰ συναινέσεως τοῦ εἰρη*[*μ*]*ένου* [*θεοσεβ*]*ε*σ*τ*(*άτου*) *Σ*τ*ε*[*φάνου*] *κτλ.* – '[Concerning] ..... the northern of the house he [presented] a written memorandum (made) [through] the most God-pleasing [Sergios, priest] and country bishop of Sauron?, of a suit between [himself and Kassisaios the Son?] with the defense made with the consent [of both parties and] with the assent of the said most God-fearing Stephanos'; *cf.* also lines 119–126: *πᾶν ἐνεπέδωκα τ*[*ὸ*] *ἔγγρ*[*αφον*] *ὑμῖν* [*μ*]*ετὰ τοῦ ὠνιακοῦ καὶ τὸν γενάμ*[*ε*]*νον μεταξὺ μοῦ καὶ Κα*[*σσισαίου υἱοῦ*] [*ἔγγραφον μ*]*ε*[*τὰ τοῦ θ*]*ε*[*ο*]*φ*[*ι*]*λ*[*ε*]*στ*(*άτου*) *Σεργίου χωρεπισκ*[*ό*]*που καὶ τὴν γεν*[*αμένην μεταξὺ*] [*μοῦ καὶ αὐτοῦ ἀπαλλαγὴν μ*]*ετὰ δηφε*ν*σ*[*ίονος το*]*ῦ Κ*[*α*]*σσισ*[*αίου τόπου c.* 6] [*c.* 18] . [.] . *δ*ε[.]*ο* . *ε*[. .]*ο τοὺς χ*[*άρτ*]*ας τῆ*[*ς δη*]*φ*[*ενσίονος c.* 8] [*c.* 14] . [.]*ο μηθὲν τ*[*ῆ*]*ς τε μεταξὺ μ*[*οῦ καὶ Κ*]*ασσι*[*σαίου υἱοῦ*] [*ἀπαλλαγῆς γεν*]*αμέ*[*ν*]*η*[*ς διὰ το*]*ῦ εἰρημένου θε*[*οφιλεστ*(*άτου*) *Σεργίου*] [*τῆ*]*ς τε ἐν ὑστ*[*έρῳ δ*]*εφη*[*νσίονος το*]*ῦ εἰ*[*ρημένου τόπου c.* 14] *κτλ.* – 'I have submitted to you the whole written memorandum together with the deed of sale, as well as the [written (contract)] made between myself and Kassisaios [the Son] with the most God-pleasing Sergios, the country bishop, and the past [agreement/release of claims] including the defense of the [plot] of Kassisaios ..... the [documents] of the [defense] ..... nothing of the [agreement/release of claims] concluded between myself and Kassisaios [the Son] through the said most God-pleasing [Sergios] nor of the later defense [of the said plot]'.

[70] *Cf.* Buchholz, 'Introduction, legal terminology' (cit. n. 12), p. 2.

[71] *E.g.*, ll. 119–133, 140–142.

[72] *E.g.*, ll. 75–79, 119–126.

edly, in this settlement some general provisions regarding the water conduit from Theodoros' spout, which was perhaps connected with the *mandra*, are adopted,[73] but its exact content is uncertain. Thus, the interpretation of the term *defensio* as a security against eviction, other sort of guarantee or plain ascertainment of guarantor's action in this context is problematic.

It seems, however, that at the end of the day the disputed property was not completely free from liability, since Stephanos – as he claims – could remove Theodoros through the procedure of *evictio*. Therefore, the property was possibly somehow mortgaged to him before the transaction with Theodoros. In his last speech before the arbiters, Stephanos points out that he is entitled to demand the possession of Theodoros' property and to obtain the outbuilding, which, he maintained, has been pledged to him as defence.[74] Moreover, he states that the heirs of Kassisaios and Gregoria defend him. This could be easily explained by the fact that if the deed of sale made between Theodoros and Kassisaios and his sister was not lost, the heirs of Kassisaios and Gregoria, in case of *evictio*, would be liable to pay the required penalty (twice the amount of the price) to the buyer, who lost what he had purchased. In this case, obviously, taking the side of their uncle gives them an opportunity to escape liability.

The final clause of the issued award leaves open the possibility for Theodoros to initiate proceedings provided that his claims concerning the existence of documents proving his right to the contentious premises turn out to be true. As was duly noted by the editors, under Roman law the decision obtained through arbitration could not be conditional or partial, since in that case the prerequisite of reaching the final settlement between the parties would not be fulfilled. It has been, however, recently pointed out by Kreuzsaler that cases of similar 'conditionality' of issued

[73] The settlement made through Sergios probably regulated the mutual use of the spout; *cf.* ll. 350–377, 368–370, 430–435, 460–468; moreover, it should be noted that in this context Theodoros has raised again the problem of his right of passage to the said plot: *cf.* ll. 378–389.

[74] Ll. 422–423: χ̣[ω]ρ̣ῆ̣σ̣α̣ι [αὐ]τ̣ὸ̣ς̣ τ̣ὸ̣ν̣ εἰ̣ρημέ̣ν̣[ο]ν̣ [αὐ]λ̣[ί]δ̣[ριον] τὸν εἰς δηφενσίωνά μοι ὑποκείμενο̣ν̣ κτλ. – (Stephanos words): 'to cede myself the said outbuilding which has been pledged to me as defense'.

awards are in fact attested and although seemingly at variance with the provisions of Roman law, those awards may have still been accepted by the parties and therefore become legally binding.[75]

In order to correctly interpret this passage one needs to realise that we deal here with two separate claims that should not constitute a *bis in idem*. In the award the ownership of the disputed *mandra* is given to Stephanos, and Theodoros' right to claim what is due to him by the successors of Kassisaios and Gregoria is being secured. The provision outlined in the decision seems nothing else than a guarantee that ensures the eventual pursuance of his rights as buyer stemming from concluded obligation. The question of ownership could not be addressed due to the fact that Stephanos has previously effectively executed his rights to the disputed premises through the procedure of *evictio*, while on the part of Theodoros remained the right to claim damages on the basis of sale agreement concluded with Kassisaios and Gregoria. Since the subject matter of such proceedings would be the liability of the seller for the legal defects of sold object and not the right of ownership, which undoubtedly was addressed in the arbitration presented in *P. Petra* IV 39, the final decision could only concern the monetary compensation amounting to double value of the object of transaction (*in duplum*) in accordance to the Roman law of sale.[76]

The analysis presented herein is made difficult by the vagueness of the wording of the document in determining the controversial premises in precise nouns. There is no certainty as to which parts of land are the subject of the consecutive deeds of sale. Since the sale agreements are discussed in the part with reference to the ownership of the structure located opposite Theodoros' house in the central courtyard, it would seem reasonable to assume that they pertain to this very facility. However, it cannot be ruled out that what is meant here are the purchases that combine separate plots of land, which only jointly constitute premises of

[75] *Cf.* Kreuzsaler, 'Die Beurkundung' (cit. n. 5), pp. 22–23 with literature and reference to the discussion on the subject; *cf.* also *D.* 4.8.19.1 (Paulus, 13 *ad edictum*) and *D.* 4.8.37 (Celsus, 2 *digestorum*) and the explanation proposed by Jakub Urbanik with which I concur: Urbanik, 'Compromesso o processo?' (cit. n. 5), p. 384, n. 21.

[76] *Cf. e.g.*, *D.* 21.2.1 (Ulpianus, 28 *ad Sabinum*); *D.* 21.2.2 (Paulus, 5 *ad Sabinum)*.

the quarrelling parties. Respectively, the parcel, whose ownership is probably the defining subject of the dispute (*i.e.*, *μάνδρα*, *αὐλίδριον*, *αὐλή*, *οἶκος*, *οἴκησις*)[77] is characterised in the papyrus in most diverse terms, which, unfortunately raise many doubts.

The scenario outlined above could be substantiated by other persisting (despite the lapse of time) controversies tackled in the protocol. During the proceedings Stephanos brought up an old grievance from the time of his father and claimed that Theodoros was obliged to pay Leonitos a sum of two *solidi*. This matter is connected with a dispute that arose between Theodoros and Leonitos over a vineyard (*ἄμπελος*).[78] Regrettably, the document does not offer any details concerning this matter. The decision issued by the phylarch Abu Karib[79] was probably in favour of Theodoros, granting him ownership of the vineyard, as he graciously agreed to pay two *solidi*.[80] The development of the controversy is rather obscure. Since Theodoros was unable to pay the promised sum, Stephanos presumably proposed an alternative solution consisting of some sort of pledge or other type of security, related the ruins belonging to Theodoros. This passage, however, is badly preserved and does not allow a safe reconstruction. Stephanos remarked that Theodoros should have prohibited him from building structures in proximity of this house twenty years ago (lines 174–177), which Theodoros had apparently neglected. The mention of another pledge gives an impression that we are actually dealing with a sequence of debts and securities between the two

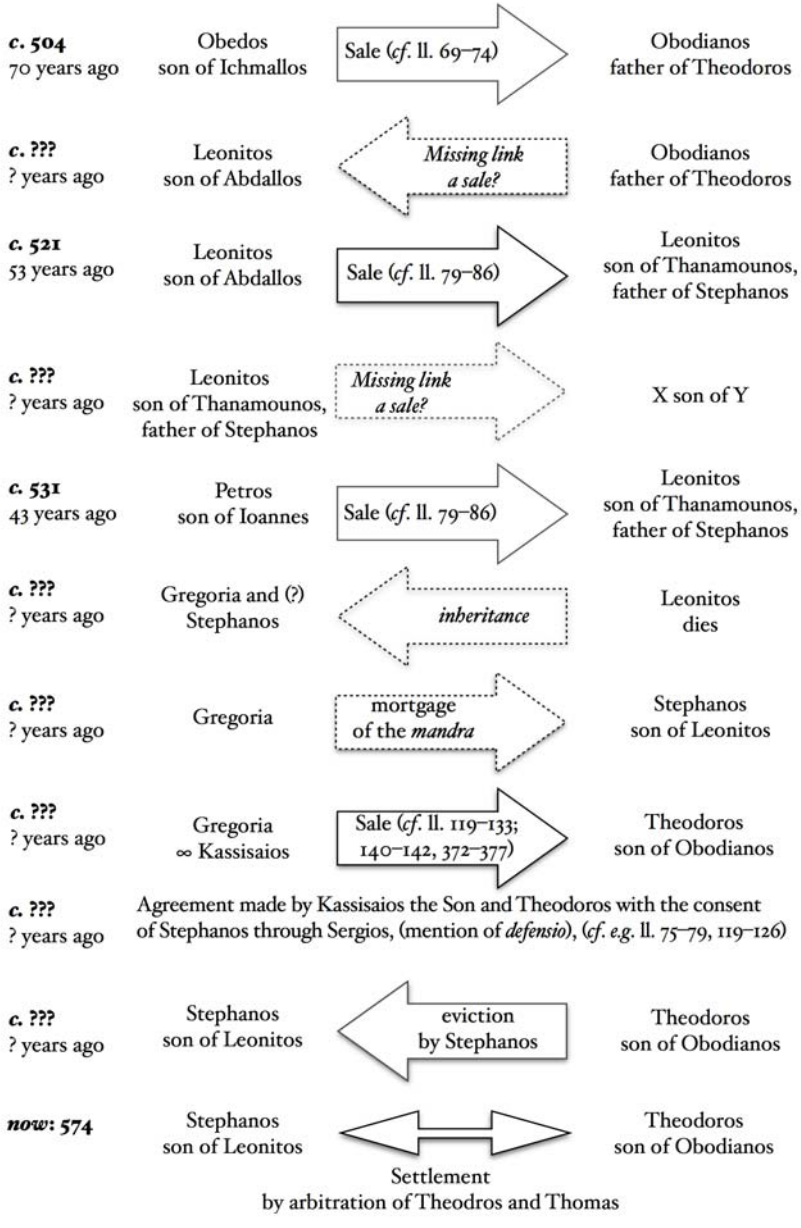
[77] *Cf.* n. 25; see also: Kaimio, 'Introduction: Terms connected with the houses' (cit. n. 25), pp. 9–10.

[78] *Cf. e.g.*, ll. 165, 488, 493.

[79] On the probable appearance of this person in the historical sources see: Kaimio, 'P. Petra IV 39' (cit. n. 9), p. 46.

[80] Ll. 163–166: *μάλλειστα ἐμοῦ ἐνκαλήσαντος μετὰ ὄν[τος] ἐν ζωῇ τοῦ πατρός μου καὶ μετὰ θάνα̣τ̣ον αὐτοῦ ὅτι ἡνίκα ἐβο̣ύλ[ευσεν] [ὁ] φυ̣λαρχο[ς] Ἄβο̣υ Χήρηβος ἐπαρῖν τὴν [ἄμ]πελον ̣συνετάξα̣τ̣[ο ὅπως] ὑπὲρ εὐνοίας καὶ ἀσμ[ε]νισ[μο]ῦ τοῦ τ̣[ε]λ̣ευταί[ου τε]ί̣ση νομίσματα δύο· κτλ.* – 'Above all, as I accused together with my father, when he was still alive, and after his death, that when the phylarch Abu Cherebos determined that (he) should take the vineyard, he agreed for the sake of the goodwill and gratification of the last-mentioned to pay two solidi.'

P. Petra IV 34:
a putative history of the property subject to the dispute



families. Stephanos could have presumed that he obtained Theodoros' permission to erect a building adjoining the old foundations in lieu of debt-repayment, especially when a pledge was established in his favour and Theodoros took no care of the discussed premises. Stephanos must have made some general constructional alterations related not only to the mentioned area, but also to the water conduit and the refuse pit, which Theodoros did not approve and which could have led to the arbitration described in the papyrus.

The proposed interpretation attempts to present a possible background of the controversy provided in *P. Petra* IV 39 and seems to be without prejudice to the available data. It explains the multiple ownership changes of the parcel within a rather short period of time, as well as the possible differences in the scope of ownership right of the agreements' parties, both in cases that include and exclude the right of entrance and exit of Theodoros' family. Yet, due to the fact that the protocol does not provide any direct information that could explain the conspicuous number of sales mentioned, the explanation presented above should only be perceived as tentative. If even part of this, admittedly disputable reconstruction is correct, it may indicate that the analysed controversy stems from the confusion which was possibly caused by a sequence of fiduciary or fictitious sales.

Additional question that emerges on this occasion and remains open is whether the figure of pledge in the late Antique times does necessarily have to follow the pattern of the classical Roman law figures of *pignus* and *hypotheca*.[81] Or is it more a question of each particular case, in which the interest of the creditor and debtor is weighed in order to establish a form of real security that suits the parties best? It should be considered that ordinary people, not acquainted with dogmatic legal patterns, sought solutions which would will appear to protect their rights in best possible manner.[82] Transfer of ownership treated as a security for credit[83] seems to

[81] For the figure of *pignus* and *hypotheca* in classical Roman law see a collection of studies of M. Kaser, *Studien zum römischen Pfandrecht*, Napoli 1982 (*Antiqua* 16), *passim*.

[82] *Cf.* Urbanik, 'Tapia's banquet hall' (cit. n. 39), p. 170, n. 72.

[83] For more information concerning the system of real securities for debt in the law of papyri see: A. B. Schwarz, *Hypothek und Hypallagma. Beitarg zum Pfand- und Vollstreck-*

be in accord with this idea as well as in line with views expressed by contemporary studies on legal anthropology and legal consciousness in late Antiquity.[84] This potentially opens up an entirely new chapter of Byzantine securities that, along with the Byzantine legal practice that frequently fails to make a clear distinction between conventional and possessory pledge,[85] contributes to the studies on the figure of *pignus*, *hypotheca* and other types of guarantees applied in the Empire in late Antiquity.

Marzena Wojtczak

Chair of Roman Law and the Law of Antiquity
Institute of History of Law
Faculty of Law and Administration
University of Warsaw
Krakowskie Przedmieście 26/28
00–927 Warsaw 64
Poland

e-mail: *marzena.e.wojtczak@gmail.com*

ungsrecht der griechischen Papyri, Leipzig 1911, *passim*.; recently on the subject: J. L. Alonso, 'The *alpha* and *omega* of *hypallagma*', *JJurP* 38 (2008), pp. 19–52; idem, 'The *bibliotheke enkteseon* and the alienation of real securities in Roman Egypt', *JJurP* 40 (2010), pp. 11–54; for the general overview see: H. A. Rupprecht, 'Die dinglichen Sicherungsrechte nach der Praxis der Papyri. Eine Übersicht über den urkundlichen Befund', [in:] R. Feenstra *& al.* (eds.), *Collatio iuris Romani. Études dédiées à Hans Ankum à l'occasion de son 65e anniversaire* Amsterdam 1995 (*Studia Amstelodamensia ad epigraphicam, ius antiquum et papyrologicam pertinentia 35*), p. 425; remarks on Byzantine practice and doctrine: A. Steinwenter, *Das Recht der koptischen Urkunden*, München 1955, pp. 26–30, esp. p. 29.

[84] Gagos *&* van Minnen, *Settling a Dispute* (cit. n. 2), pp. 30–48; F. Thiesen, 'Die Sicherungsübereignung und ihre römischrechtlichen Grundlagen in der Klassik. Betrachtungen des deutschen gemeinen Rechts des 19. Jahrhunderts', *Tijdschrift voor Rechtsgeschiedenis* 67 (2001), pp. 119–138, p. 119.

[85] *Cf.* Urbanik, 'Tapia's banquet hall' (cit. n. 39), p. 153, n. 10.