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Éva Jakab

GUARANTEE AND JARS IN SALES OF WINE ON DELIVERY

I. The Problem

A lot of documents found in the papyri of Ptolemaic, Roman and Byzantine Egypt deal with sales of wine. "Sales on delivery" seem to be especially common in ancient wine trade. In recent years, this type of contract has been widely discussed by papyrologists and jurists. Most scholars deal with the nature and function of the transactions described in these texts.¹ The documents are dated during the winter- or springtime and dispose of the future wine of the next summer. The seller declares that he has received from the buyer the full price of a certain quantity of wine and promises to supply the new wine at the time of the coming vintage (in the month Mesore, July/August). Several documents also contain a special clause, in which the seller promises to exchange the wine if any is found sour, musty or unfermented. The sales of wine on delivery are famous for this clause and the most scholars give attention only to this clause by interpreting the legal contents of these agreements.

Pringsheim² explains this particular clause as follows: "the warranty extends from the delivery (at vintage time, in the month of Mesore [= 25. July –

¹ See R. S. BAGNALL, "Prices in 'Sales on Delivery'", *GRBS* 18 (1977) 85-96; H. HARRAUER, "Sechs byzantinische Weinkäufe", [in:] *P. Flor. VII*, ed. by R. PINTAUDI, Florence 1980, 109 ff.; H.-A. RUPPRECHT, "Vertragliche Mischtypen in den Papyri", [in:] *Mnème G. A. Petropoulos II*, Athens 1984, 273 ff.; N. KRUIT, "The Meaning of Various Words Related to Wine", *ZPE* 90 (1992) 265-276; A. JÖRDENS, *Vertragliche Regelungen von Arbeiten im späten Griechisch-sprachigen Ägypten* (P. Heid. V), Heidelberg 1990, 307 ff.; N. KRUIT, "Local Customs in the Formulars of Sales of Wine for Future Delivery", *ZPE* 94 (1992) 167-184; N. KRUIT, "Three Byzantine Sales for Future Delivery", *Tyche* 9 (1994) 67-88; G. THÜR, "Rechtsfragen des Weinkaufs", [in:] *Akten des 21. Internationalen Papyrologenkongresses Berlin*, Stuttgart 1997, 973 ff.

² F. PRINGSHEIM, *The Greek Law of Sale*, Weimar 1950, 494 f.

23. August]) until five months later (month Tybi [27. December – 25. January]) ... If before this term the wine has become bad it is to be exchanged for wine of good quality ... The purchaser returns the bad wine and the vendor has to deliver wine of the promised quality." Pringsheim means that the wine must be delivered in Mesore and understands this delivery without any doubt as a physical *traditio*; but the seller is liable for the good fermentation until Tybi and he must replace the sour or musty wine. Pringsheim also wonders about this strange clause of exchange because neither Greek nor Roman law knows such a legal provision.³ However, he tries to solve the problem dogmatically by proposing an invalid delivery⁴ and presuming that this particular clause is "probably connected with trade customs" and follows from "Roman classical law". But he proves neither the trade customs nor the possible parallels in Roman law. Pringsheim explains very well the legal nature of the sales on delivery⁵ but his survey of the sales of wine is scarcely complete.

Most editors of new papyri on the sale of wine indeed follow Pringsheim's theory. For instance, in his commentary to *P. Coll. Youtie* 93 Boswinkel states (p. 598): "Die Bedingung, daß der Verkäufer verdorbenen Wein ersetzen muß, findet man regelmäßig in den Verträgen ..." In their commentary to *CPR VIII* 60 (p. 155) Sijpesteijn and Worp write: "Eine Festsetzung des Termins, bis zum welchen die Qualität des Weines garantiert wird, fehlt." However, in this document I see no hint of a guarantee at all. Maehler edited three sales of wine on delivery in *BGU XII* (Nr. 2176, 2207, 2209) and summarizes the classical theory: "Der Käufer übernimmt also 'neuen', noch ungegorenen Wein (Most), die Gärung beginnt erst nach der Lieferung, also von August an, und dauert bis zum Januar, erst dann stellt sich heraus, ob die Qualität des Weines zufriedenstellend ist; andernfalls muß der Weinbauer die gleiche Menge ersetzen ... Daß die Gärung beim Käufer erfolgt ..., hatte vermutlich den Grund, daß nur er über die geeigneten Keller verfügte."⁶ One can find the same concept in the comment on *P. Xyla* 6 (pp. 49-50): "the seller agrees to replace the substance with that of better quality ... the delivery should occur in the summer month of Mesore ..." The buyer collected the wine at the vintage time, but "the testing would have been carried out by the end of the month of Phamenoth (26. March), by which time the wine would have been ready." Summing up, we can observe that the editors use without any criticism the traditional explanation: in every transaction the wine must have been actually delivered in Mesore.

However, in recent years a few efforts have been made to find a more sophisticated explanation for the particular clauses of the wine sales. In 1980

³ PRINGSHEIM, *Sale* (cit. n. 2), 495.

⁴ PRINGSHEIM, *Sale* (cit. n. 2), 496: "... the seller is not required to exchange bad for good wine, his delivery is invalid, the obligation not performed".

⁵ PRINGSHEIM, *Sale* (cit. n. 2), 268 ff.

⁶ See *BGU XII*, p. 85, similar also p. 139.

Harrauer reconstructed the texts of six sales of wine on delivery from the Byzantine period and proposed to pay more attention to the characteristics of single *nomoi* in the formula of these documents.⁷ Jördens⁸ and Kruit⁹ offer a wide survey from this point of view. The typical clauses used in drawing up a document could be helpful for supplementing a destroyed instrument, but explain very little the legal and economical contents of these agreements.

In 1992 Kruit suggested a new interpretation for a special kind of wine sales. Discussing "the meaning of various words related to wine,"¹⁰ he especially paid attention to the *μόνιμος* clause of two Ptolemaic loans.¹¹ He doubts the usual translation "wine which will keep"; comparing the terminology with some demotic documents¹² he suggests the new translation "to be kept, or be laid up, staying in one's place, stationary."¹³ Some Oxyrhynchite sales of wine for future delivery contain a similar clause, which promises *καλλονή παραμονή* of the sold wine.¹⁴ Kruit decided to translate *παραμονή* also in these agreements as "keeping, storage" of the wine. Basing his statements on the few sales cited above Kruit emphasizes that in these documents "not the 'keeping' in the sense of "durability" is guaranteed, but the storage; ... and the removal of the wine has to be dated some months after Mesore ... In Mesore the wine will be handed over by the borrower to the lender and put aside in a fermentation vat for some months."¹⁵

As a result of his new translation of *παραμονή* Kruit observed that in these transactions the wine must be stored by the seller for the whole time of the fermentation.¹⁶ The main idea seems to be very good. However, it explains only a small group of sales of wine (those with *παραμονή* clause). In the summary of his paper Kruit seems to argue for a broad application of his theory.¹⁷ This conclusion cannot stand. Any connecting argument between the new

⁷ HARRAUER, "Sechs Weinkäufe ..." (cit. n. 1), 109 ff.

⁸ JÖRDENS, *Vertragliche Regelungen ...* (= *P. Heid.* V), 307 ff.

⁹ KRUIT, "Local Customs" (cit. n. 1), 167 ff.

¹⁰ KRUIT, "The Meaning ..." (cit. n. 1), 265 ff.

¹¹ *P. Amh.* II 48; *P. Grenf.* II 24, see KRUIT, "The Meaning ..." (cit. n. 1), 269 ff.

¹² KRUIT, "The Meaning ..." (cit. n. 1), 270 cites first of all *P. Dem.* 29.

¹³ KRUIT, "The Meaning ..." (cit. n. 1), 271.

¹⁴ KRUIT, "The Meaning ..." (cit. n. 1), 271 N. 24 quotes only a few documents with this clause: *P. Flor.* I 65, *P. Lond.* V 1764, *P. Mich.* XI 608 and *SB V* 8264; with some doubt he adds also *P. Köln* V 192.

¹⁵ KRUIT, "The Meaning ..." (cit. n. 1), 274.

¹⁶ Kruit used in his paper, following BAGNALL, "Price ..." (cit. n. 1), 87 ff., the terminology of loans (borrower and lender), but I think it is better to decide for a sale; see RUPPRECHT, "Vertragliche Mischtypen ..." (cit. n. 1), 274 ff. and 283; H.-A. RUPPRECHT, *Einführung in die Papyruskunde*, Darmstadt 1994, 119.

¹⁷ KRUIT, "The Meaning ..." (cit. n. 1), 274 f.

translation of παραμονή and the interpretation of all wine sales on this model is missing. The very brief comparison with the rules of Roman law¹⁸ does not make his theory more credible. For a wider perspective we must consider all possible documents with sales of wine for future delivery.

Kruit's theory suggests the following questions: What about other sales of wine on delivery which do not contain any παραμονή or μόνιμος clause? Was the wine kept by the seller for a longer time also in these cases? How do we explain the agreements which do not mention any guarantee? Neither Kruit nor other scholars give a satisfactory answer to these questions.

II. Suggestions for a solution

Let us drop the literature and try to explain the legal contents of these transactions. The guarantee clause is a remarkable feature of wine sales on delivery. But do we find it in every sale on delivery? After collecting all documents in relatively good condition¹⁹ I must say that a large number of them were formulated without any guarantee. This fact points out a completely new aspect for the interpretation of these documents.

The sales of wine on delivery should be considered to be composed of two major groups: (a) sales with guarantee and (b) sales without guarantee.

a) A remarkable example for the first type of sale is BGU XII 2209 (Herm. 614): Aurelios Abraamios declares that he has received from Flavios Victor the full price²⁰ for 120 *metra*²¹ of wine and promises to supply the "finest and best new wine" (ἐν οἴνῳ νέφ κ[αλλι]στῶ καὶ ἐ[ὐα]ρέστῳ) at the coming vintage of the month Mesore. In addition, the seller declares his readiness to replace the wine (ὁμολογῶ ἀλλάξαι σοι) if any will be found ὄξος ἢ ἀποίητος ἢ ὀζόμενος (sour, musty or unfermented²²) up to the month of Tybi²³ (Dec./Jan.). The document was drawn up on the 12th of the month Hathyr (8th of November) and provides delivery in the month Mesore (Jul./Aug.) of the coming year. All together, I have found 30 documents of this type in relatively good condition, fit for further interpretation.²⁴

¹⁸ KRUIT, "The Meaning ..." (cit. n. 1), 275 f.

¹⁹ For a more detailed presentation see É. JAKAB, "Wo gärt der verkaufte Wein? Zur Deutung der Weinlieferungskäufe in den gräco-ägyptischen Papyri", [in:] *Symposion 1997* (in print).

²⁰ In some documents the price received is exactly specified, in others not, cf. KRUIT, "Local Customs" (cit. n. 1), 168 f. For prices in wine sales generally see L. CASSON, "Wine Measures and Prices in Byzantine Egypt", *TAPA* 70 (1939) 1-16; Z. M. PACKMAN, *Chr. d'Ég.* 100 (1975) 285-296.

²¹ See RUPPRECHT, *Einführung* (cit. n. 16), 31 f.

²² For the meaning of these special words see KRUIT, "The Meaning ..." (cit. n. 1), 265 ff.

²³ Most documents promise this deadline, cf. H. HARRAUER - P. J. SIJPESTEIJN, *Chr. d'Ég.* 57 (1982) 296 ff.; JÖRDENS, "Vertragliche Regelungen ..." (cit. n. 1), 316 f.

²⁴ *P. Amst.* I 48 (Herm. VIp); *P. Ant.* I 42 (Antin. 542) = *CPJ* III 508; BGU XII 2207 (Herm. 606);

b) For the second type of sale (without guarantee) SB XVI 12486 (Herm. 470)²⁵ can be cited: Aurelios Phoibammon acknowledges that he has received from Claudia Theonilla the full price for 250 *knidia*²⁶ of new wine, must (ὄμολογῶ εἰληφέναι ... παρὰ σοῦ ... τιμῆς οἴνου νέου μούστου) and says to deliver it at the time of the coming vintage in the month of Mesore. There is no hint about quality or replacing accidentally turned wine. The document was written on the 3rd of the month Phaophi (30th of September) and states the readiness of the seller to supply the new wine of the coming year. After eliminating the Ptolemaic²⁷ and very fragmentary deeds I have found altogether 13 documents of this type.²⁸

There are good reasons to explain the legal and economic contents of both types of selling wine on delivery in accordance with the above mentioned major difference. Therefore I propose to check first of all: is there a guarantee for good quality and exchange in the sale? This point of view seems to be new. Until now, no scholar paid attention to the fact that several sales of wine contain a guarantee clause but others not.

The use of a guarantee seems to be not at all a characteristic of some *nomoi*: The documents with guarantee (30 altogether) are left from several *nomoi* (Herm. 12, Oxy. 7, Herakl. 4, Antin. 1, Justin. 1, Apoll. 1, Ars. 1 and unknown 3). Without doubt the *nomos* of Hermopolites is most often represented, but there are several documents from other *nomoi* too. Therefore the guarantee cannot be a special clause of single *nomoi*. The documents without guarantee (13 altogether) also seem to be not characteristic for individual *nomoi* (Herm. 4, Ars. 3, Oxy. 3, Thin. 3, Theog. 1, unknown 1). The slight deviations from the standard language and terminology do not offer any explanation for using or

BGU XII 2209 (Herm. 614); P. Col. VIII 245 (Oxy. VIp); P. Coll. Youtie II 93 (Herakl. VIp), vgl. BL VII 38; P. Edfu I 3 (Poll. 619), see ZPE 49 (1982) 92; P. Flor. I 65 (Justin. 570/71), see BL II² 58, VII 50; P. Lond. V 1764 (? , VIp); P. Mich. XI 608 (? , VIp); P. Mich. XV 748 (Oxy. VIIp); P. Rein. II 102 (Oxy. VIp), vgl. BL VII 170; P. Ross. Georg. V 39 (Ars. VIp); PSI X 1122 (? , VIp), BL III 228, BL V 126; SB V 8264 (Oxy. 523), BL IV 82, VII 198; SB VI 9593 (Herakl. VI-VIIp), BL VII 211; SB XVI 12401 (Herm. 590); P. Lond. III 998 + 999 (Herm. 538) = SB XVI 12488 (Harrauer 2); CPR IX 25 (Herm. V-VI) = SB XVI 12489 (Harrauer 3); P. Herm. 33 (Herm. VI) = SB XVI 12490 (Harrauer 4); SB XVI 12491 (Herm. VI-VIIp; Harrauer 5); SPP XX 144 (Herm. 638) = SB XVI 12492 (Harrauer 6); SPP XX 136 (Herakl. 541) = SB XVI 12639; SB XVI 13037 (Herm. 522); P. Stras. 696 (Herm. VIp); Tab. cer. 8 (Oxy. 669); Tab. cer. 11; P. Xyla 6 (Herm. VIp); P. Wisc. I 11 (Oxy. VIIp); VBP IV 55 (Herakl. VIp).

²⁵ For the reconstruction of the text see HARRAUER, "Sechs Weinkäufe ..." (cit. n. 1), 109-126.

²⁶ See RUPPRECHT, *Einführung* (cit. n. 16), 31f.

²⁷ CPR XVIII 5 and 30 are to leave aside because of their very early date. For the legal type of these documents see THÜR, "Rechtsfragen des Weinkaufs" (cit. n. 1), 973 ff.

²⁸ BGU XIII 2332 (Ars. 374); CPR VIII 60 (Herm. V-VI); P. Lond. II 390 (Ars. VI-VIIp); P. Lond. III 1001 (Herm. 539); P. Oxy. XLIX 3512 (Oxy. 492); PSA 23 (Ars. 82); PSI XII 1249 (Oxy. 265); PSI XII 1250 (Oxy. 265); P. Rein. II 101 (? , 198-202); SB I 4504 (Thin. 613); SB I 4505 (Thin. 606); SB XVI 12486 (Herm. 470); P. Stras. I 1 (Herm. 434/5).

refusing the guarantee. So we shall leave aside the idea of "typical forms of single *nomoi*" and look for other possible solutions for our problem.

The possible dividing of the documents into two major groups (with and without guarantee) presumes that delivery, transportation and storage were regulated on different terms. For sales without guarantee it seems very likely that the wine was actually delivered in Mesore: the buyer had to take it away immediately at vintage time. He wanted to buy must, unfermented grape juice, and produce his wine by himself. This kind of transaction is well known both in ancient and modern times.²⁹

This suggests the next question: How to explain the sales with guarantee? Every jurist is puzzled by a sale on the very remarkable terms that the sold thing must be physically delivered although the seller is bound by the guarantee to replace it in case of future alteration. This very guarantee of good quality and exchange seems to presume a different explanation for this model. There are good reasons to consider that this clause had but one goal: to enable the buyer to taste the wine after fermentation and to reject it if it was sour, musty or unfermented. The clause about tasting and rejecting refers to the practice of keeping the wine for the whole time of fermentation in the cellar of the seller.³⁰

For the documents with a παραμονή clause Kruit came to a similar conclusion. I suggest that the seller was left with the wine in every sale on delivery with a guarantee clause until Tybi. The storage for the whole time of the fermentation seems to be very reasonable if we look at the sophisticated methods of making wine. Several passages of the agricultural writers show that the fermenting wine needed constant care.³¹ We have also a lot of evidence that the seller is mostly a winegrower;³² therefore he was actually the right person for controlling the good fermentation. The seller must look after the best conditions for the wine and keep it healthy up to the promised date (commonly the month Tybi, Dec./Jan.).

²⁹ See for a possible comparison Columella 12,19,1: "*ut expressum mustum perenne sit aut certe usque ad venditionem durabile*".

³⁰ For the similar Roman practice see Cato, *Agr.* 148, D. 18.6.1 Ulp.; D. 18.6.4 pr.-2 Ulp.; cf. M. HARDER, "Weinkauf und Weinprobe im römischen Recht", [in:] *Fschr. Bärmann*, Munich 1975, 17-30; B. FRIER, "Roman Law and Wine Trade: The Problem of 'Vinegar Sold as Wine'", *SZ* 100 (1983) 257-295; N. OLSZAK, "*Emptio ad gustum*: La vente à la dégustation de l'antiquité à l'article 1587 du Code Civil", *TR* 58 (1990) 361-387; M. TALAMANCA, "Considerazioni sul 'periculum rei venditae'", [in:] *Seminarios complutenses de derecho romano* 7 (1995) 217-296.

³¹ For the necessary care see Cato, *Agr.* 26,2 and 105,1-4; also Plin. nat. 14,124. 135 and Colum. 12,28,3. A good survey is given by J. J. ROSSITER, "Wine and Oil Processing at Roman Farms in Italy", *Phoenix* 35 (1981) 345-361.

³² See for example *BGU* XII 2209 and 2332; *P. Lond.* II 390; *P. Mich.* XV 748; *P. Oxy.* XLIX 3512; *SB* XVI 12488; *SB* XVI 12489; *SB* XVI 12639; and *P. Wisc.* I 11.

P. Stras. VII 696 (Herm. VIp) offers further evidence that the wine stayed with the seller. Although the first part of the document is destroyed, the passages left seem to confirm that it deals with a sale of wine on delivery. The object sold is, as usually, new wine of Mesore. After the guarantee of ὄξος ἢ ἀποίητος ἢ ὀζόμενος up to the month of Tybi the seller promises (ll. 7-11) to keep the wine in his *heliasterion* until an appointed date (καὶ ἐτοίμος ἔχω φυλάξαι τὸν προκείμενον οἶνον ἐν τῷ ἡλιαστηρίῳ). So in this agreement there is a guarantee until Tybi and in addition a longer storage of the wine by the seller. The longer, additional storage implies that in every transaction with a guarantee the wine stayed until the appointed date of the guarantee (Tybi) with the seller. We will do well to acknowledge that the longer storage in the cited document refers to a special method of making wine after the regular fermentation.³³ But this in no way weakens the main evidence that the wine at least until Tybi lays in the fermentation vats of the seller.

There can be but one problem with the new explanation. It seems contrary to the language of the documents designating the delivery as ἀποδώσω,³⁴ παραδώσω,³⁵ παρῆξω³⁶ etc. The common translation of these verbs is "to deliver, give, repay" and it is widely accepted among scholars that this means the physical delivery, the actual *traditio* of the merchandise. Probably we should keep the translation but not its legal interpretation.

III. The Jars

Before treating this problem I will point out an interesting detail of the sales of wine which makes the longer storage by the seller more credible. I think this is a new point. In some sales of wine there is a clause on the jars³⁷: often the buyer undertakes to make available his own jars. There seem good reasons to presume some connections between the jar clause and the storage of the wine. First, let us test the 13 sales without guarantee. In almost every document there is an explicit clause on the jars. In 7 instruments the buyer has to place the jars at the seller's disposal;³⁸ the instruments were written in different *nomoi*

³³ For the *heliasterion* see first of all P. Oxy. XIV 1631; also Strabo XVII 815; P. Rain. I 5; P. Oxy. VII 1014; P. Oxy. VI 985M; P. Ryl. 206,48; SPP XX 10,1. A good survey gives M. SCHNEBEL, *Die Landwirtschaft im hellenistischen Ägypten*, München 1925, 288. For the Roman market see Cato, Agr. 105,1-4 and K. D. WHITE, *Roman Farming*, Cambridge 1975, 425.

³⁴ See P. Rein. II 101; SB XVI 12486; SB XVI 12489; SB XVI 13037; SB XVI 12488; SB XVI 12639; P. Flor. I 65; P. Amst. I 48; P. Coll. Youtie II 93; P. Xyla 6; P. Lond. II 390; SB VI 9593.

³⁵ P. Stras I 1.

³⁶ SB XVI 12492.

³⁷ Again, see more detailed JAKAB, "Wo gärt der verkaufte Wein?" (cit. n. 19).

³⁸ CPR VIII 50; P. Lond. II 390; P. Lond. III 1001; P. Oxy. XLIX 3512; P. Rein. II 101; P. Stras. I 1; SB XVI 12486.

(Herm. 4, Ars. 1, Oxy. 1, unknown 1). It is absolutely certain that in these cases the buyer took the wine from the seller in his own jars. In 4 documents³⁹ the seller allocates the jars; but two and two of those 4 papyri show the same formulas respectively.⁴⁰ The seller's promise for delivering the wine "in new jars" and "with new jars" presumes a specific wine making method.⁴¹ Finally, only in 2 documents the parties failed to pay attention to the jars.⁴²

The summary shows that almost every sale without guarantee contains a clause about the jars. Usually it was the buyer who had to furnish his own jars for transporting home the fresh pressed grape juice. The clause on the jars confirms the theory that in sales without guarantee the must was to be taken away immediately after the pressing. It was absolutely necessary to regulate exactly which party has to allocate the jars. During the vintage work, the least delay or nonperformance could result in a bad situation. If the buyer has to transfer the wine into his own jars, clearly the fermentation will go on in his own wine cellar at his own risk. For this reason there is no hint of a guarantee in this kind of sale.

In the other group there are 30 sales with guarantee. Our presumption was in this case that the wine remained with the seller for the whole time of fermentation. Here, the guarantee until Tybi makes good sense: the buyer will come and take the wine up to this date; the guarantee enabled him to taste it and to refuse if it was sour, musty etc. The clause about the jars seems to confirm this theory very well. In 14 documents there is no hint at all about the jars;⁴³ in 2 further documents we can see the careful notice about the seller's providing the *kufa*.⁴⁴ The best explanation for the lack of the jar clause is the above proposed model of storing the wine by the seller during the fermentation. The seller takes care of the pressing, transferring the must into his fermentation vats and controlling its development thereafter. The buyer can come just when the wine is ready (in the month of Tybi) for tasting it. Until this deadline he does not need any jar; after tasting and approving the wine he can take care for his own jars to transport the ready wine.

On the other side, also in the sales under guarantee there are some 14 documents in which the buyer allocates the wine jars. How to explain them?

³⁹ SB I 4504; SB I 4505; PSI XII 1249; PSI XII 1250.

⁴⁰ PSI XII 1249 and 1250 are both from Oxyrhynchos and from the same year, A.D. 265; SB I 4504 and 4505 are both from the *nomos* of Thinites and from the years of A.D. 606 and 613. The drafting of the documents seems to be done in both cases upon the same formula.

⁴¹ See the notes 31, 45 and 46.

⁴² BGU XII 2332; PSA 23.

⁴³ P. Ant. I 42; BGU XII 2207; BGU XII 2209; P. Coll. Youtie II 93; P. Edfu I 3; P. Lond. V 1764; SB VI 9593; SB XVI 12401; SB XVI 12639; SB XVI 12490; SB XVI 12491; SB XVI 12492; VBP IV 55; P. Wisc. I 11.

⁴⁴ P. Ross. Georg. V 39; SB XVI 12488.

Two documents (*P. Flor.* I 65 and *PSI X 1122*) make the impression that the seller does not have enough jars for his harvest; in these contracts the jar clause is uncommonly formulated. In *PSI X 1122* the seller promises to pick up the wanted jars at the buyer, while *P. Flor.* I 65 refers to two different amounts of wine. The main object sold are 360 *sekomata* of wine (6/7), at the end of the document a further 4 *knidia* and 4 *moustaria* are mentioned (18); the seller states he will transport these 8 jars to the buyer at his (the seller's) own risk (18/19). The guarantee until Tybi refers only to the 360 *sekomata* of wine. The combination of both delivery terms is remarkable. For the last 8 jars, which are to be delivered immediately, there is no guarantee regarding deterioration; without doubt these jars contain fresh pressed grape juice. It is also remarkable that there is a reference to the transportation of the 4 *knidia* and 4 *moustaria* but no hint about how to deliver the main amount sold. This is further evidence that for the fermentation time the 360 *sekomata* remained with the seller. Why does the buyer allocate the jars for this amount? There are some wine making methods which require pouring the wine after the first short fermentation from big vats into smaller *amphorae*; probably this was the intent of the parties by agreeing on using the jars of the buyer.⁴⁵ Other receipts of wine-making require a longer storage in new jars; they seemed to influence *P. Amst.* I 48, *P. Xyla* 6 and *Tab. cer.* 11.⁴⁶ In a couple of documents the jar clause is only supplemented; it should be necessary to think again about these lines. Some documents of this group (sales with guarantee) show a strong deviation from the standard; for these sales is characteristic that the form-sheet is mixed with special terms of loan (*P. Col.* VIII 245).⁴⁷

Summing up, it can be stated that the greater part of sales with guarantee do not deal with the jars. We must acknowledge that there are some exceptions, but these can be explained either by special methods of wine making or by economic needs. There is some reason to believe that in these cases also the wine stayed with the seller for the fermentation.

The particular clause on jars seems to back our presumption regarding the legal and economical reason for the sales of wine on delivery. As we have already seen, the purchaser was – except in the case of buying – interested in ready, well fermented wine. The quality of the wine due to the successful fermentation is guaranteed by the seller until Tybi: the buyer had the right to claim an exchange if the wine was sour or musty.

⁴⁵ See similar in *P. Stras.* VII 696.

⁴⁶ See *Colum.* 12,29: *addito mustum in amphoram novam.*

⁴⁷ See for example *P. Col.* VIII 245; the editors gave the title "Loan of Money with Repayment in Kind Sales on delivery", see p. 176.

IV. Further remarks

It is worth observing that the very date of the guarantee (until the month of Tybi, Dec./Jan.) seems to be derived from the common schedule of the wine making process. This is an additional indication that the wine was kept for the whole time of the fermentation with the seller. The ancient authors teach us that continually good care was very important for successful fermentation.⁴⁸ One of the wine papyri indicates that this experience was indeed well known in everyday practice all over the ancient Mediterranean world: *P. Oxy.* XIV 1673 is a letter dated the 1st of the month Tybi (the end of Jan.). Presumably shortly before writing the letter Hermes checked the wine vats in the wine cellar under his care. He poured some wine from the big fermentation vats (ληνοί) into smaller jars (see ll. 1-19). After successful fermentation he was parting the well smelling wine, τὰ εὐώδη; but on some vats he reported a sad alteration. Furthermore he did not touch some other vats because of a deadline of the 5th of Tybi (τὰς δ' ἄλλας ληνοὺς οὐκ ἐνέκλισα, τῶν ἐγδοχέων λεγόντων ἐκδέξεσθαι ἕως ε Τῦβι μέχρι ἂν τὸ εὐώδες ἀ[π]οκατασταθῆι καὶ γνωσθῆι ἀκριβῶς). Hermes' letter makes clear that the new wine was filled up about the end of January. At that time the wine that had been sold was transferred from the big fermentation vats into smaller jars. The quality of the wine was to be ascertained only at this date. There is no explicit evidence, but it seems clear that there were already sold wines in the untouched ληνοί. After the deadline mentioned (5th of Tybi) it may be suspected that the purchaser would come to taste and perhaps take away his wine.

One thing is also clear: it makes no sense to guarantee against οἶνος ὄξος, ὀζόμενος and ἀποίητος until Tybi if the buyer would not come to taste it at this date.⁴⁹ It is highly likely that the date of the guarantee depends on the fermentation time. This is an additional indication that the sold wine was kept in the cellar of the seller.

Hermes' letter helps in answering our last question: How to explain the clause of exchange in the wine documents? From line 11 on Hermes reports about the developing of wines which he already filled up. In several ληνοί there seems to be οἶνος ὄξος, and Hermes suggests selling it immediately. Wine with some sour taste even now is drinkable but it should not be kept for a longer time.

It looks very much as if the fermentation ληνοί were signed with the name of the purchaser immediately after the filling at the vintage. Hermes must have known exactly that he had to take care for the first and second vat; all the others – and we do not know how many – had to wait until the 5th of Tybi. If the

⁴⁸ See above note 31.

⁴⁹ As a similar process see the Roman *degustatio*, for example in D. 18.6.1.2 Ulp. 28 Sab. and Cato, *Agr.* 148.

buyer was not satisfied with the quality of his wine on that day, we may conclude that Hermes had to offer the already filled 30 jars, which he proved to be excellent.

However, the wine was exchanged (ἀλλάξαι) in the most literal sense.⁵⁰ Not the ready wine but the fresh must was to supply. With the verb ἀποδώσω the seller promised to deliver the fresh grape juice from the vintage in Mesore.⁵¹ The contract was fulfilled at that time; the buyer became owner of the must. It was a special kind of sale if the seller took care of the fermentation; this required an additional guarantee until a reasonable deadline. Quite certainly it determined the price too: If the parties agreed upon storage and fermentation by the seller this must have been paid by the purchaser.

The above described legal construction (delivery in a legal sense by each type of sale in Mesore) limits the risk of the seller to a reasonable degree. The sold goods were "delivered", the contract was fulfilled. The seller was liable only for the explicitly mentioned faults of fermentation (for οἶνος ὄξος, ὀζόμενος and ἀποίητος).

V. Summary

Papyrologists and jurists have commonly understood sales of wine on delivery as transactions on a single legal and economic model. The sellers dispose of the future wine very early, sometimes a year before the vintage. They receive the full price in advance and promise to supply the new wine at the vintage. Until now almost all scholars have emphasized, that the new wine had to be handed over immediately after the pressing. The purchaser – they think – moved the new wine in July/August; the fermentation was carried out in his own cellar. Nevertheless the seller promised the warranty in a particular clause for the good fermentation and quality commonly until Tybi (Jan.). The seller has to replace the accidently turned wine.

However, this legal construction seems to be unreasonable. Although the legal and economic contradictions are strong, until now only N. Kruit has doubted this traditional interpretation and suggested a new solution for a small group of wine sales, those with the παραμονή clause.

Above I have tried to give a new interpretation for the legal and economic background of wine sales on delivery. After collecting all documents of this type, it seems to be reasonable to speak of two major groups: sales with a guarantee clause and others without any guarantee. These two groups make the legal interpretation easier. For the sales without guarantee it seems very likely that the wine was actually delivered in Mesore. On the contrary, in the sales

⁵⁰ Against PRINGSHEIM, *Sale* (cit. n. 2) 495: "legally the conception of exchange is incorrect".

⁵¹ The remarkable terminology "from the vintage of the coming year" means that the contract cannot be fulfilled, if the vintage is destroyed (for example by bad weather).

with guarantee the wine stays for the whole time of the fermentation in the cellar of the seller. Sophisticated methods of wine making required special knowledge and experience in the ancient world also.

The flowing must needs vessels, immediately. After treading or pressing the must flowed either directly into large fermentation jars or first into a reservoir and then into jars.⁵² Some documents contain an interesting clause on the jars: sometimes the purchaser undertakes to make available his own jars, sometimes the seller specifies that he will give the necessary (new) jars. There seems to be a direct connection between the jar clause and the guarantee (the storage of the wine). In almost all documents without guarantee the purchaser has to provide the jars. It is more credible that the purchaser took away the must immediately after the pressing. And this fact reasonably explains the lack of guarantee. In the sales with guarantee it is the seller who has to take care of the *kufa*. In many of these documents we do not find any clause on the jars. It is quite clear that the seller used his own fermentation vats for the wine making process. However some documents of this group include a particular clause on the jars. We can explain the exceptions by special methods of wine making or economic needs. With these new interpretations I hope to have shown some connections between wine processing and the legal contents in the agreements of wine sales on delivery.

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⁵² For this processing see ROSSITER, "Wine and Oil Processing" (cit. n. 31), 346 f.