JOSÉ LUIS ALONSO (SAN SEBASTIAN)

ONE EN PISTEI, GUARANTEE SALES, AND TITLE-TRANSFER SECURITY IN THE PAPYRI[1]

I. Real Security as Sale

One of the simplest ways to secure a debt is to surrender property to the creditor. Since the security is usually given when the debt is contracted, and the debt is usually contracted as a money loan,[2] the security may quite naturally appear as a sale, the money that we borrow acting as price for the property that we give in guarantee. Formalising the security as a sale, rather than resorting to a specific ad hoc type of transaction, is an example of how legal invention tends to build on previously existing institutions, as if following a law of simplicity that Rudolf von Jhering labelled 'juristische Ökonomie'.[3] Beyond this simplicity, the procedure is also extremely safe for

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[2] Whatever the origin of the debt, its monetary nature is taken for granted in many legal traditions: for Roman law, cf. the term ‚pecunia debita' in the formula pigneraticia (Lenel 1927: 254) and Serviana (Lenel 1927: 490).

[3] Jhering 1865: 229-234. Most often, keeping the form of an act or -as in our case- its apparent cause, while changing its actual purpose. Rabel's category of the ‚nachgeformte Rechtsgeschäfte'

the creditor, who acquires, as a buyer, full rights on the property. It is not surprising that legal historians have tended to assume its presence in most legal traditions as a natural occurrence.[4] The German scholarship speaks here of Sicherungskauf or, more often and somewhat imprecisely, of Sicherungsübereignung.[5]

The purest expression of this phenomenon is the security formalised as a sale with immediate effect, so that the creditor acquires the property at the time of the contract, with the explicit or implicit agreement of returning it upon payment:[6] But the sale may also be explicitly or implicitly understood as suspended, effective only upon default.[7] Such suspended sale differs from forfeit-hypothec only in its

succeeded in finally fully dissociating this phenomenon from the category of the ‚Scheingeschäfte', tainted by the stigma of the simulation: Rabel 1906 and 1907. The question whether these were or not ‚simulated transactions' had been central in the tortous German path towards the admission of title-transfer security (Sicherungsübereignung): infra ad n. 254.

[4] Among innumerable examples, cf. Manigk 1909a: 2311: ‚Die Tatsache, daß in vielen ursprünglichen Rechten ein Eigentumspfand bekannt war, ohne daß an eine gegenseitige Beeinflussung dieser Rechte zu denken ist, muß in erster Linie betont werden. Es ist natürlich, daß jedes Volk das Institut des Eigentums, ehe andere Rechte geschaffen sind, zu allen möglichen Zwecken benützt', to which he adds references to the old Germanic tradition, the Frankish law, the Pre-Islamic Arab law and the Shia legal tradition. For the Lombard carta and contracarta, cf. infra n. 61. Manigk's emphasis is all the more remarkable given the controversies around title-transfer security in late nineteenth and early twentieth century Germany: infra XI ad n. 254.

[5] Infra nn. 23-24. Strictly speaking, the terms are not synonymous. In the late nineteenth century German legal discourse, the notion of Sicherungsübereignung arose in truth together with the so-called ‚Abstraktionsprinzip', for securities perfected by abstract cession, without the need to formalise the transaction as a sale and to turn the loan into its price. Once the term asserted itself, legal historians have tended to use it somewhat unscrupulously for any form of title-transfer security, even if under the traditional form of a guarantee sale.

[6] So, the Roman fiducia cum creditore; so also, possibly, the atypical (at the present state of our sources) BGU IV 1158 = MChr. 234 (9 BCE Alexandria), infra VI. Immediate acquisition is theoretically conceivable with automatic resolution upon payment, i.e., without the need for a re-transfer of the property: the Fayum sale-loan deeds have been commonly (although, in my opinion, wrongly) understood this way: infra III.

[7] Among suspended sales, a distinction is still necessary depending on whether default (a) is by itself sufficient to make the creditor acquire, or (b) merely allows him to take unilaterally the necessary steps to become owner (v.gr. registration or tax payment), or (c) just to compel the debtor to surrender his rights on the property. The dichotomy between ‚c' and ‚a'-b' can be expressed in terms of ‚ius in personam' vs. ‚ius in rem', but does not depend on these Romanistic notions. In the native Egyptian tradition, for instance, ‚c' was made possible by the Demotic distinction (Keenan, Manning & Yiftach-Firanko 2014: 53-58, with lit.) between document of sale („document for silver") and document of cession („document of being far"): and, indeed, it is possible that, in the absence of the latter, Spiegelberg's Thebaid ‚Kaufpfandverträge' (infra II) worked as in ‚c'. Yet another factor made such dichotomy possible: the Ptolemaic requirement of agoranomic katagraphê for land acquisition, that allowed for a distinction between ‚real' and merely ‚obligational' sale: cf. BGU XIV 2398 = BGU X 1974 (213 BCE Tholthis), and, on it, Keenan, Manning & Yiftach-Firanko 2014: 313-315.

formulation. Their effect, instead, is virtually identical:[8] after forfeit, the position of the creditor is that of a buyer. Hence some crucial stipulations common to sale and forfeit-hypothec: most notably, bebaiosis.

The common hypothesis that hypothecation may be genetically related to this type of suspended sale [9] is thus perfectly understandable. Even leaving aside such hypothesis, it is clear that the line between real securities and sale can easily be blurry - and, with it, also the legal situation of the object before default: who is the owner of something that has been, in a way, sold, even if conditionally?

In legal systems that tend to isolate the form of legal transactions from their economic context, the debtor would undoubtedly be still the owner, if the act is not formalised as a proper sale with immediate effect. That is certainly the case of the hypothecary debtor in classical Roman law. In legal systems that are, instead, more sensitive to the economic context than to form, it may seem natural to treat the creditor as owner from the beginning, since he has already paid for the object: this is Fritz Pringsheim's Surrogationsprinzip.[10]

In fact, we should not assume that both answers are incompatible. In some cases, the most accurate analysis may be that the owner's faculties are divided between debtor and creditor: the debtor may have lost some of them (the possession, the right to the produce, the right to sell, for instance); some may be merely suspended, some may correspond to the creditor, whose position may be in certain respects equated from the beginning to that of an owner. This is what, since Paul Koschaker, we call 'functionally divided ownership'.[11]

Different from this idea of functionally divided property, but related to it, is the notion of relative ownership.[12] Relative ownership exists in those legal systems where, in

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[8] Differences between suspended sale and hypothec may arise in the way forfeit is enforced, in those systems that require the creditor to go through a specific execution procedure: this was the case of the hypothecary creditor in Egypt (infra n. 15); we tend to assume that the suspended sales of the native Egyptian tradition (infra II-IV) did not require such execution procedure, but in truth the assumption is sustained only by an argument a silentio, and the tax equivalence of these sales and hypothecs might suggest otherwise: cf. in particular the case of P. Chic. Haw. 9, infra n. 41, where we have tax evidence of epikatabolê.

[9] An overview for different legal traditions already in Rabel 1907: 364-370.

[10] Pringsheim 1916. For Seidl's related ‚notwendige Entgeltlichkeit', Wolff 1975.

[11] Koschaker 1928: 130, 133-134, 146-147; Koschaker 1931: 46-61; Koschaker 1938: 255-266. Long before him, and usually forgotten, cf. already, for the Roman fiducia, Manigk 1909a: 2295 (‚beschränktes Eigentum für beschränkten Zwecken'). The idea was far from new: cf. the Medieval notion of dominium directum and utile. Since the late thirties (Kaser 1939), Max Kaser has championed the application of this construction to various archaic Roman institutions (overview in Kaser 1971: 38), particularly servitudes and real securities: Kaser 1971: 143-145, with lit; for real securities, Kaser 1976. The construction has been met with scepticism as far as Roman law is concerned, particularly in Italy: cf. Kaser 1971: 143-144 nn. 7-9, 18, Kaser 1976: 258 n. 158.

[12] On the necessity to neatly distinguish between both, cf., partially correcting himself, Kaser 1976: 258 n. 158.

order to obtain protection as owner against someone, it is enough to prove that one has a better right than him.[13] As a result, I may be protected as owner in front of A, even if I would not be acknowledged as such in front of B. This construction is also conceivable for real securities: the creditor may be treated as owner in front of the debtor, even though the debtor would be still protected as owner in front of a third party.

This constellation of ideas has marked the discussion of Greek real securities in the recent past: enough here to recall the debate within the Symposion on the relation between hypothec and πρᾶσις ἐπὶ λύσει, and on the question of who must be considered owner of the asset.[14] What I propose is to see now what the papyri can offer in this direction.

In Egypt, several concurring factors left little space for these phenomena of functionally divided and relative ownership, and, as far as hypothecation goes, for the Surrogationsprinzip itself. The Ptolemaic execution system, adopted also by the Roman administration, was open for all creditors directly upon default, and comprised a special, simplified version for hypothecary creditors.[15] These therefore claimed as creditors, not as owners, even though after default they became such through the s.c. epikatabolê.[16] Before default, the Surrogationsprinzip and the idea of a functionally divided ownership could have underlain the debtor's loss of potestas alienandi,[17] but this was quite clearly not the case in Egypt, for reasons connected to taxation and registration: the difference between the initial telos hypothêkês and the telos epikatabolês, required upon default for forfeit, was a perpetual reminder that the creditor did not in fact become owner in any way until the latter tax was paid; registration, required both for acquisitions and for hypothecs, made the distinction between both even neater.[18]

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[13] In Roman law, this was the case of the archaic vindicatio through sacramentum in rem: both litigants solemnly affirmed to be owners, and the judge was expected to condemn the one whose legitimation resulted more precarious, even if someone else had a better right than his opponent: cf. Kaser 1971: 124-125, with lit.

[14] Thür 2008; Harris 2008. Cf. also Harris 1993, 1988, 2012.

[15] On the execution procedure, still fundamental Jörs 1915, 1918, and 1919. A summary: Rupprecht, in Keenan, Manning & Yiftach-Firanko 2014: 259-265. On its application to real securities, Mitteis 1912a: 158-165, and Rupprecht 1997b, with lit.

[16] On epikatabolê, Schwarz 1911: 119-125; Mitteis 1912a: 163-165. The institution is attested only in Egypt, where it was performed, we read in a Ptolemaic contract, ‚according to the diagramma' (P. Tebt. III 1 817, 182 BCE Krokodilopolis, l. 19-20). A new study would be necessary.

[17] On the debtor's surrender of potestas alienandi in the papyri, Alonso 2010: 14-15, and infra nn. 93, 94, 153. For classical Roman law, Max Kaser has presented the limitations of the debtor's potestas alienandi as remnants of archaic functionally divided ownership: Kaser 1976: 29-55, passim.

[18] For the agoranomic registration of hypothecs, P. Enteux 15 = P. Lille II 31 (218 BCE Magdola); for the distinction between such registration and the sale katagraphê, cf. the public announcement in P. Köln V 219 (209 or 192 BCE Arsinoites). The distinction is absolutely neat also regarding the Roman bibliothêkê enktêseôn: cf. the 89 CE Edict of Mettius Rufus, in P. Oxy. II 237 VIII ll. 31-32: κελεύω οὖν πάντας τοὺς κτήτορας ἐντὸς μηνῶν ἓξ ἀπογρά|ψασθαι τὴν ἰδίαν κτῆσιν εἰς τὴν τῶν ἐνκτήσεων βιβλιοθήκην καὶ τοὺς δανειστὰς ἃς ἐὰν ἔχωσι ὑποθήκας.

This paper will not further consider ordinary hypothecation and its relation to ownership, but will instead concentrate on title-transfer security, on Sicherungsübereignung. My aim is to determine whether a Greek tradition of Sicherungsübereignung is at all attested in the papyri - leaving aside the later, Byzantine material.[19] This may seem unnecessary, even eccentric. For longer than a century nobody has doubted that such tradition existed: it figures at length in Mitteis' Grundzüge and Chrestomathie,[20] where it is illustrated with wealth of sources, most of which had already been presented in the same sense by Ernst Rabel;[21] the material was reviewed again by Hans-Albert Rupprecht [22] and, in his study on ὠνὴ ἐν πίστει in Symposion 1985, by Johannes Herrmann, whose conclusions confirm those of Rabel and Mitteis.[23] And yet, an unprejudiced study of the sources renders, in my opinion, a very different picture, as I will try to show in the following pages.

Before confronting the sources, a short remark is necessary about the term Sicherungsübereignung itself, and the way in which it has been used in our context. Strictly speaking, Sicherungsübereignung implies immediate transfer of ownership, formalised or not as a sale. Yet, legal historians have tended to use the term also for guarantees that are formalised as sales but lack immediate effect, i.e. for conditional sales.[24] This is unfortunate. There may be cases where our information is insufficient

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Evidence of the registration of hypothecs as such (n.b. τῆς ὑποθήκης κατοχὴν ποιήσασθαι, in P. Oxy. XVII 2134, after 170 CE Oxyrhynchos, l. 24) arrives to the late third century: cf. P. Oxy. LXI 4120 (287 CE Oxyrhynchos). Especially illustrative of the way in which hypothecs were registered throughout the different stages of their execution is the diastrôma fragment in P. Oxy. II 274 = MChr. 193 = FIRA III 104 (97 CE Oxyrhynchos). All these documents come from Oxyrhynchos, but there is no doubt that hypothecs were registered as katochai also elsewhere: cf., for the Arsinoites, the hypothec cancellation in PSI XII 1238 (244 CE Tamais), ll. 14-16: ἄκυρόν τε εἶναι τὴν δηλουμένην τοῦ δανείου [συν|χώρ(?)]ησιν καὶ τὴν πρὸς αὐτὴν γενομένην διὰ τοῦ τῶν ἐγτήσεων βιβλιοφυλακίου τῶν | [δι' ὑποθή]κης ὑπαρχόντων κατοχήν.

[19] For the late Byzantine practice, Urbanik 2013.

[20] Mitteis 1912b: 257-262 (nr. 233-236); Mitteis 1912a: 135-141, categorically: "Daß diese Verpfändungsform dem gräko-ägyptischen Recht geläufig gewesen sei, ist seit langem die herrschende Meinung unter den Papyrologen"; and then, on the basis of BGU IV 1158 = MChr. 234 (infra VI): "so wird die Existenz derselben … zur vollen Evidenz erhoben".

[21] Rabel 1907: 355-364. Sceptical regarding these sources -rather than the phenomenon itself-, albeit not always convincing in his detailed analysis, Manigk 1909b: 306-328; discussion and rebuttal in Mitteis 1912a: 136-139.

[22] Rupprecht 1995: 429-435.

[23] Herrmann 1989: 322: "Das Rechtsinstitut der Sicherungsübereignung ist inzwischen urkundlich hinreichend belegt, so daß Zweifel hinsichtlich seiner Existenz unangebracht sind". Hermann's study, however, ends with a remarkable final paragraph, strikingly disconnected from his previous conclusions, and pointing to some of the misgivings that have guided my own research: „Andererseits kann nicht übersehen werden, daß die Entwicklung der one en pistei under dem Einfluß demotischen Rechtsvorstellungen stand, deren Wirkung derzeit jedoch schwerlich einer konkreten Beschreibung zugänglich ist". One is left to wonder whether a non-posthumous publication of his work would have led him to a different position altogether.

[24] The exception is here Mitteis 1912a: 135-141, who prefers the expression fiduziarische

to decide whether the creditor's acquisition is immediate or not; one may even imagine contracts that treat the acquisition as retroactive, so that the difference is blurred ex post,[25] or legal cultures where a neat distinction is not possible between a creditor who acquires ab initio and one who acquires under suspensive condition - even though, as I have argued, this was not the case of Ptolemaic and Roman Egypt. But none of these possible uncertainties justifies the terminological inaccuracy of extending the term Sicherungsübereignung to something that is not an Übereignung, a title transfer. This inaccuracy conflates into one concept phenomena that are diverse and not necessarily related: security by immediate property transfer, in whatever way it may be formalised, on one hand, and securities formalised as suspended sales on the other. One of the guiding lines of this paper will be to keep them separate.

II. Demotic Guarantee Sales

Securities formalised as sales are not infrequent in the papyri.[26] Most of them, though, are not Greek, but Demotic or bilingual.[27] These documents are well known since Spiegelberg's studies at the beginning of the twentieth century.[28] They attest a strong native Egyptian tradition of guarantee sales. This has methodological

Eigentumsübertragung, and keeps it restricted to the cases where he believes there was immediate acquisition. Unfortunately less rigorous, Sethe-Partsch 1920: 680 (‚bedingte Sicherungsübereignung'), and Schwarz 1937: 251-253, passim (‚suspensiv bedingte Sicherungsübereignung'), even if he emphasises (251) the importance of distinguishing between this and the cession under resolutive condition. Within such tradition, it is only natural that Rupprecht 1995: 429-435, groups as Sicherungsübereignung cases (sub c) that he characterises as ‚aufschiebend bedingte Kaufvertrag' (precisely those that we will examine infra II-V). Cf. also Rupprecht 1997a: 874 n. 31. This unfortunate terminological choice is due to the trivial fact that modern German law -as most modern legal systems- knows no form of suspended guarantee sale: its potential niche is already taken by ordinary hypothecation. The closest institution, the so-called Eigentumsvorbehalt, is not a useful parallel: it is also a suspended sale, but under the condition that the buyer pays the price; in our case, instead, the price has been paid, and functions in fact as a loan, the sale being made under the condition that the seller returns it.

[25] An example: the Lombard ‚conditional investiture' when formulated under suspensive condition, cf. Brunner 1894: 621. Within our material, cf. the menein contract (infra V) P. Oslo II 40 A (150 CE Oxyrhynchos): the offspring that from the moment of the contract may be born to the slave given as security shall belong to the creditor, as if the slave had been sold to him with immediate effect (ll. 12-13: [δεσ]πόζειν αὐ[τ]ῆς καὶ τ[ῶν ἀ]πὸ τοῦ νῦν ἐσομέν[ω]ν ἐξ αὐτῆς ἐκγόνων ὡς ἐὰν πράσεώς | [σοι γε]νομένης), and yet, before the term arrives, both the slave and the possible offspring are treated as still belonging to the debtor, since he undertakes not to alienate them (ll. 15-18: οὐκ ἐξόν\|[τος] μοι, \ἐ/ὰν μὴ πρότερον ἀποδῶ τὰς δραχμὰς ἑξακοσίας καὶ τοὺς τόκους, πωλεῖν \| [οὐδὲ] ὑποτίθεσθαι οὐδ' ἄλλως καταχρηματίζειν τὴν δούλην Ἰσαροῦν οὐδὲ τὰ ἐσόμενα \| [ἐξ αὐ]τῆς ἔκγονα).

[26] An overview, from which the following pages will depart in crucial respects, in Rupprecht 1995: 430-435.

[27] On security for debt in the Demotic papyri, Pierce 1972: 110-132, Manning 2001; Markiewicz 2005. On the scarce traces of securities in the Pharaonic sources, Jasnow 2001.

[28] Spiegelberg 1909, 1913.

implications: when we confront the Greek materials, we must be particularly alert to distinguish, in the measure that the documents allow, between the Greek tradition and the mere continuation of the Egyptian practice in a new language.[29] For this very reason, we must briefly review the Demotic materials, despite the author's lack of linguistic competence: by a fortunate coincidence, much of the decisive information will actually come from the Greek subscriptions and tax receipts.

The Demotic tradition consists in combining a sale with a loan. This is done in a remarkably varied and ingenious array of forms (cf. also III-IV). The most straightforward we find in the Thebaid, in a group of documents that Spiegelberg baptised as 'Kaufpfandverträge'.[30] These documents begin as simple acknowledgments of debt, but to this a sale is immediately added, in the usual form of the 'document for silver', for the case that the borrower does not pay in time.[31] Consider, as an example, P. British Mus. inv. 10525 (284 BCE Thebes):[32]

> |1 ... You have a claim against me (in the amount) of 9 silver kite, making 4.5 statêrs you have given me, and I will repay you by the last day of year 22, third month of shemu. |2 If I do not pay you the silver kite, making 4.5 statêrs, mentioned above by the last day of the third month of shemu, you have caused my heart to agree to the price for (the sale of) my house that is built and roofed, which is in the northern district of Thebes ...

It seems quite clear that this is not a title-transfer security, but a suspended sale, effective only if the debtor defaults. Only then will the creditor be entitled to claim it as his own, as we read in ll. 3-4:

> |3 ... I have given it to you; it's yours, your house, which is built and roofed, as already specified above. I have no claim whatsoever |4 against you regarding it. No one at all including me will be able to exercise authority over it except you, from the first of the month of Mesorê, year 22 onwards.[33]

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[29] Cf. Rupprecht 1995: 430: ‚Wie kaum sonst in einem Bereich der Papyrologie verwischen sich hier die Grenzen zwischen griechischen und ägyptischen-demotischen Urkunden'.

[30] Spiegelberg 1909. Cf. also Rabel 1909: 79-81, and Partsch, in Spiegelberg 1913: 17-18.

[31] P. BM Glanville p. 10-14 = British Mus. inv. 10523 (295 BCE), P. BM Glanville p. 34-38 = British Mus. inv. 10525 (284 BCE), P. Phil. dem. 15 = Cairo inv. 89368 (259 BCE), P. Schreibertrad 14 + RevEg 5 = Louvre inv. 2443 (249 BCE), P. Phil. dem. 21 + SB VI 8968 = Cairo inv. 89372 (237 BCE), P. Phil. dem. 22 + SB vi 8970 = Cairo inv. 89373 (234 BCE), P. Phil. dem. 23 = Cairo inv. 89374 (230 BCE), P. Hauswaldt 18 = Berlin Äg. Mus. inv. 11337 (212-211 BCE), RecTrav 31 (1909) 95-98 + SB I 4281 = British Mus. inv. 10824 (159 BCE), all from Thebes, except the Edfu P. Hauswaldt 18.

[32] Tr. M. Depauw & J. G. Manning.

[33] The clause, in truth, formulates as merely postponed in time an acquisition that was intended and had been previously formulated as conditional. Incisively, Rabel 1909: 81: ‚Wir werden uns dies alles am besten so zurechtlegen, daß die beabsichtigte suspensiv bedingte Übereignung sich dem Urkundenverfasser als eine bloß aufschiebend befristete unbedingte

Even upon default, the creditor's acquisition seems to have formally depended on the debtor's issuing of a yet another document: the document of cession (so-called 'document of being far'), whereby sellers in general surrendered their rights over the property: cf. P. Hauswaldt 18, where the secured loan, at the right side of the papyrus, was followed upon default by a cession deed, written one year later on the left side of the same papyrus.

That the creditor acquires only upon default must have been clear to everyone involved also for fiscal reasons:[34] in the tax receipts for these contracts we see, in fact, that the rate was that of a hypothec, 2%, rather than the full sale enkyklion of 5%.[35] And, in fact, these tax receipts refer to the Demotic conditional sale purely and simply with the term ὑποθήκη.[36]

With the publication of the Chicago Hawara papyri in 1998, a different model of Demotic 'Kaufpfandvertrag' came to light, this time from Fayum. Here, instead of one document with a loan and a conditional sale, we have several separate documents. First, a sale, contracted as always through a 'document for silver', but this time seemingly formulated as immediately effective. Cf. as example P. Chic. Haw. 7 A (245 BCE):

> |1 ... You have caused my heart to agree to the money for my one-third share of this house ... |4 ... Yours is the one-third of this aforesaid house upon its southern part, below and above, together with the aforesaid one-third of my bench, |5 which is on its western (side), the measurements and neighbours of which are written above, from today onward. No one in the world, myself included, shall be able to exercise control over them except you from today onward ... You may make any alterations on them with your (work-)men and your materials in proportion to your aforesaid one-third share from today onward also. ...

The impression that the sale is here meant to be immediately effective is reinforced by the fact that in this case the 'document for silver' was allegedly given together with the document of cession. This second document has not survived in our case, but it is mentioned in yet a third document executed by the parties, P. Chic. Haw. 7 B, where the true nature of the transaction is disclosed:

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darstellt, von der aber der Gläubiger nur unter Bedingung Gebrauch machen darf'.

[34] Rightly underlined by Markiewicz 2005: 156. Cf. already Schwarz 1911: 35.

[35] Cf. P. Lond. III 1201 (p. 3) = MChr. 180 (161 BCE Hermonthis) and P. Lond. III 1202 (p. 5) = SB I 4281 (159 BCE Hermonthis). In the first case, for instance, the loan amounts to two talents and 1800 dr., that is, 13.800 dr. A 5% sale *enkyklion* would have been 690 dr., while the tax receipt is for 276, exactly the 2% imposed on hypothecations. The Demotic part of the papyrus reveals that the sale had been executed on Phaophi 2nd, and the loan had matured on the last day of Pachon, three months before the tax receipt: quite obviously, the hypothecary tax was paid only when the creditor needed to act against the debtor.

[36] P. Lond. III 1201 (p. 3) = MChr. 180 (161 BCE Hermonthis), l. 2; P. Lond. III 1202 (p. 5) = SB I 4281 (159 BCE Hermonthis), l. 2. Cf. already Rabel 1909: 81-82.

> |5 ... There are |6 a document of payment and a document of cession for the one-third of a house and a |7 bench in Hawara, so as to make two documents. I have put them in your hand |8 upon agreement because you have given to me 1 silver (deben) and 6 kite, in staters, 8 staters, |9 being 1 silver (deben) and 6 kite again. ... |12 ... They increase amounts in the aforesaid period |13 to 1 silver (deben) and 2 kite, in copper at the rate of 24 obols to 1 stater, making in all, |14 the principal and interest, 2 silver (deben) and 8 kite. ... |16 ... [I]f it happens that I have not given to you these 2 silver (deben) and 8 kite |17 aforesaid by the end of the two years aforesaid, I have no |18 claim in the world against you with respect to the aforesaid documents and the |19 legal rights which they convey. If, however, it happens that I have given to you these 2 silver (deben) and 8 kite aforesaid |20 by the end of the period aforesaid, you shall give back to me the aforesaid documents and the |21 legal rights which they convey. ... [37]

Only through this document we learn that the sale was not a simple sale, that the 'seller' was in fact borrowing money: he had received one silver deben and 6 kite to return in two years, at an interest rate of 37,5 % per year (1 further silver deben and 2 kite after the two years), and it was for this reason that he produced for the creditor the documents of sale and cession. Importantly for us: he accepts that, if he does not pay in time, he shall have no claim on those documents and the rights they convey; but, if he pays, he shall recover them, with the rights they convey. This would seem to confirm our first impression, that, unlike the Theban examples, this is a sale under resolutive, not suspensive condition.

The impression is misleading, though. There is another document to consider: P. Chic. Haw. 7 C, the Greek receipt attesting that the tax for the transaction on the house was paid by the creditor. There, a price of 20 drachmas[38] is taxed at 2 1/2 obols,[39] i.e. at the 2%,[40] which was the ratio of the telos hypothêkês, sales being taxed at a 5%. This means that, whatever the parties believed as to who was the owner in the

[37] Tr., as for 7A above, by G. R. Hughes & R. Jasnow, in their edition of P. Chic. Haw. A similar document: P. Mich. inv. 4526 (184 BCE Philadelphia)

[38] The amount poses a puzzling problem. There is no doubt that the receipt refers to the transaction in P. Chic. Haw. 7 A and B: the parties are the same (Sochôtês son of Pauês, in the receipt, is the Greek version of Sobekhetep [Sbk-ḥtp] son of Pawa [Pa-wꜣ], in the Demotic documents), the date is the same, and 7C was found rolled up within A and B (cf. the ed., p. 46). Yet, the sum declared for the tax, 20 dr., is substantially lower than the actual amount owed by the ‚seller' (2 deben and 8 kite, i.e. 56 dr.); lower, in fact, even than the amount formally received as ‚price' (the loan of 1 deben and 2 kite, that is, 32 dr.). The only possible explanation, that the tax was not calculated on the basis of the loan but of the estimated value of the security, goes against all the rest of our evidence: cf. for instance the already mentioned (supra n. 35) P. Lond. III 1201 and 1202, and also P. Oxy. II 243 (79 CE).

[39] The 1/4 obol ἀλλαγή added to that amount is the 10% agio added to the tax (calculated in silver) when the payment is made in copper.

[40] The exact 2% of 20 dr. being 2.4 obols.

meantime, it is certain that legally it was not the creditor: the creditor would acquire only upon default, once he paid the 5% of the telos epikatabolês.[41] This has such practical relevance, that it seems in general unlikely that the parties in these sales may not have been aware of it. That in our case they were aware, and excluded themselves an immediate acquisition by the creditor is suggested by the fact that the title deeds -those of the seller and those of his parents before him-, whose conveyance appears as essential in 7A l. 6, were in fact not given to the creditor: as we read in 7C ll. 5-7, he received only the document of payment and the document of cession, and it is only these documents that he promises to return upon payment (ll. 17-21). At any event, this sale was de iure as suspended as that of the Theban examples: again, not a title-transfer security, but, in effect, identical to a hypothec, and taxed accordingly.

III. Bilingual Fayum Sale-Loan Deeds

A different way of combining sale and loan is documented in a group of early Roman bilingual documents from Soknopaiu Nesos [42] and from the grapheion of Tebtynis.[43] The document is laid out in two columns: in the second, the loan contract;

[41] This is confirmed by P. Chic. Haw. 9, together with P. Carlsberg 34, 36, 46, 47 and 48. In P. Chic. Haw. 9 (239 BCE), the son of the debtor of our P. Chic. Haw. 7 concluded a similar transaction on the same property in favour of the mother of the previous creditor. The document would have seemed an ordinary sale, were it not for P. Carlsberg 34, dated to the same day, an annuity contract between the same parties, and P. Carlsberg 36, dated several years later (233 BCE), where the debtor forfeits the property to the creditor. Also in this case the tax receipts are preserved, and they confirm that these transactions were treated and taxed as hypothecations: P. Carlsberg 46 (239 BCE) is the receipt for the payment of the telos hypothêkês (2%), on the same day of the two initial contracts; P. Carlsberg 47 (237 BCE?) is the receipt for the payment of the telos ananeôseôs (2%) for the renovation of the mortgage two years later; P. Carlsberg 48 (236 BCE), one year later, is the receipt for the payment of the telos epikatabolês (5%). It is notable that the epikatabolê did not lead here to execution, but to the voluntary surrender of the property by the debtor, although with a puzzling three year hiatus between both.

[42] Most of them edited as P. Dime III by Sandra Lippert and Maren Schentuleit. More or less complete examples of this type of transaction are numbers 7 (= BGU III 911, 18 CE), 10 (27 CE), 11 (29 CE), 19 (= SB I 5109 = P. Ryl. II 160 d + P. Ryl. dem. 45, 42 CE), 22 (= BGU XIII 2337, 45 CE), 23 (= SB XII 10804, 47 CE), 27 (= P. Zauzich 39, 54 CE), 31 (= BGU III 910, 70 CE). The editors conjecture as securities also P. Dime III 8 (23 CE), where the loan part is missing (cf. infra n. 45), and P. Dime III 10 (27 CE), also without a loan, but with the sale cancelled by strokes. The same type of security is cancelled in P. Vind. Tandem 24 (50 CE). Also to this group belong P. Ryl. II 310 descr. (33 CE), P. Leconte 4 descr. (Pap.Congr. XV, 25) (41-54 CE), the Greek antigraphon P. Ryl. II 160 c (32 CE), and the entirely Greek PSI XIII 1319 = SB V 8952 (76 CE).

[43] Published in the fifth volume of the Michigan papyri and in the eighth of the Italian Society: P. Mich. V 328 (29-30 CE), P. Mich. V 329 dupl. 330 (40-41 CE), PSI VIII 908 (42-43 CE), P. Mich. V 332 dupl. PSI VIII 910 (before 48 Tebtynis), P. Mich. V 335 dupl. PSI VIII 911 (before 56 CE). All of them (as many other contracts from the Tebtynis grapheion published in P. Mich. V) are ‚incomplete', with most of the papyrus sheet left blank and only the subscriptions written at the bottom. On this phenomenon, infra in text sub ‚c'.

in the first, the sale; both without any mention of the other.[44] One could cut out the papyrus in two, and nobody would know anymore that the sale was connected to a loan, that it was a real security. This apparent oddity is perfectly understandable, if we assume the point of view of the creditor: if the debtor fails to pay, the creditor will have, in fact, as proof of his ownership, a perfectly independent, ordinary sale document. [45]

The bilingualism of these documents follows a constant pattern. The sale is typically drawn up in Demotic, and comprehends both the sale proper, in the usual form of 'document for silver', and the cession, whereby the seller surrenders all his rights on the property, as 'document of being far'. Under them, a Greek subscription summarising both the former (as prasis) and the latter (as apostasion). The loan, instead (also with subscription) is only in Greek. The reason for these language choices is not difficult to imagine: if the debtor defaults, the sale document is destined to the family archive, while the loan contract is destined to court.[46] This suggests that upon default, unlike in the older Demotic 'Kaufpfandverträge' (supra II),[47] the creditor could choose between keeping the property or claiming the loan, which carries the usual praxis-clause granting execution on the person and the entire property of the debtor.[48] And this in turn suggests that, despite the appearances —a sale contract formulated as entirely unconditional, and accompanied by a cession-apostasion—, the sale had no immediate effect, contrary to what is commonly assumed.[49]

In fact, our documents contain further information that confirms this impression:

a) Those that carry a label in the verso, are labelled as hypothecs.[50] In the anagraphic

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[44] For the overall structure, cf. Lippert-Schentuleit 2010: 11-12, and 12-58 for a detailed analysis of the clauses.

[45] This is the editors' hypothesis for P. Dime III 8 (23 CE), in its present condition just a sale, with the suspicious peculiarity that the papyrus was cut out at the right side, as betrayed by the lost ends of the lines of the Greek subscription.

[46] Similar phenomena are still common in bilingual societies where a language required or perceived as convenient for acts involving the administration coexists with another traditionally dominant in the family sphere. Thus, in the Basque country it is not infrequent that, while mortgages are drafted in Spanish, the property deeds for the same assets are executed in Basque. I owe this insight to my former student Xabier de la Mota.

[47] In those, forfeit appears as inexorable upon default, so that the creditor's right is reduced to the security. This seems true even when guarantors are given together with the security, as in P. Hauswaldt 18: cf. infra n. 151 i.f., and Sethe-Partsch 1920: 595.

[48] P. Dime III 7 = BGU III 911 (18 CE), ll. 21-24; P. Dime III 19 = P. Ryl. II 160d (42 CE), ll. 17-21; P. Dime III 31 = BGU III 910 (70 CE), ll. 26-27. A drastically shortened version of the praxis clause, in P. Dime III 27 = P. Zauzich 39 (54 CE), ll. 22-23, and PSI XIII 1319 = SB V 8952 (76 CE), l. 59.

[49] Cf. Markiewicz 2005: 156-157: ‚unconditional sale agreement that apparently immediately conveyed the security to the creditor'. Before him, in the same sense, Schwarz 1937: 252-253 (for P. Rylands II 160 c and d); Pierce 1972: 119-121.

[50] P. Mich. V 332 dupl. PSI VIII 910 (before 48 CE) ll. 31-32: ὑποθήκη Ὀρσεῦτος (πρὸς) Κ̣ρ̣ω̣νείω̣ν̣α̣. P. Mich. V 335 dupl. PSI VIII 911 (before 56 CE) ll. 18-19: ὑποθήκ(η) Πετεσούχ(ου) πρ(ὸς) Κρονί(ωνα) (δραχμῶν) υμη.

records of the grapheion also, where some instances of double transaction among the same parties refer unmistakably to our phenomenon, the contract that accompanies the loan is not designated as a sale, but as a hypothec or mesiteia [51] (the latter being the terminus technicus used by the grapheion instead of hypothêkê for ordinary hypothecations on catoecic land).[52] This phenomenon, as we have seen in the Demotic documents (supra II), strongly suggests that from the point of view of the grapheion, and certainly of the administration, also taxwise, these were not sales with immediate effect, but suspended sales akin to ordinary hypothecs.

b) In P. Mich. V 332 dupl. PSI VIII 910, bebaiosis secures the property from public debts not up to the date of the contract, but up to a later date: this later date, as one would imagine, and the right column confirms, coincides with the term set for returning the loan.[53] Only from that moment do public duties pass to the creditor: obviously, it is only from that moment that he is considered owner.

c) The documents from the Tebtynis grapheion are actually unfinished. The papyrus sheet was left blank, save for the subscriptions at the bottom: the subscription of the loan by the debtor, at the right; that of the sale, by the same debtor as seller, at the left. Missing are the contracts proper, the grapheion registration notes, and usually also the subscriptions of the creditor/buyer.[54] Three of the five extant sale-loan documents from Tebtynis have actually arrived to us in duplicate, both copies in the same unfinished state.

The phenomenon is not limited to our guarantee sales. Other forty-seven similar subscriptions from the archive, lacking the body of the contract, often in two or more copies, for all sorts of transactions, have been published in P. Mich. V and PSI

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[51] Cf. P. Mich. V 238 (46 CE) ll. 3-4: β ὁμο(λογία) Κρονίωνο(ς) πρὸ(ς) Ἀπολλώνιο(ν) μεσιτείας ἀρουρῶ(ν) β (δραχμαὶ) δ | δάνη(ον) Ἀπολλωνίου πρὸ(ς) τὸν αὐτὸ(ν) Κρονίωνα ἐπ' αὐτ̣ῆ̣ς ἀργ(υρίου) (δραχμῶν) τη (δραχμαὶ) δ. And later, in ll. 8-9: ὁμο(λογία) Θενκήβκιος πρὸ(ς) Παπνεβτῦνιν ὑποθή(κης) μέρο(υς) οἰκία(ς) (δραχμαὶ) δ | δάνη(ον) Παπνεβτύνε(ως) πρὸ(ς) Θενκῆβκιν ἐπ' αὐτ\ον/ ἀργ(υρίου) (δραχμῶν) ρ (δραχμαὶ) β. Only in the eiromena, where a fuller summary of the contracts is required, is the transaction described as ‚prasis kai apostasion': cf. the two first abstracts of P. Mich. V 241 (40-41 CE).

[52] This, for the same formal scruple that makes it more accurate to speak to speak of parachôrêsis instead of sale when it comes to catoecic land. A particularly clear confirmation of this double equivalence is the tetrad sale/parachôrêsis, hypothec/mesiteia in the models of P. Mich. II 122 (42 CE Tebtynis). On parachôrêsis, infra n. 115. For the fundamental identity between mesiteia and hypothêkê, cf. the sources collected by Manigk 1909b: 296-302.

[53] P. Mich. V 332 dupl. PSI VIII 910 (before 48 CE), col. 1, ll. 11-15: βεβαιώσω πάσῃ βεβαιώσι ἀπὸ μὲν δη|μοσίων τῶν ἐκ τῶν ἐπάνω χρόνων μέχρει μηνὸς Φαρμοῦθι <καὶ> αὐ|τοῦ τοῦ μηνὸς Φαρμοῦθι τοῦ εἰσιόντος ἐνάτου ἔτους Τιβερίου Κλαυδίου | Καίσαρος Σεβαστ̣ο̣ῦ̣ Γ̣ε̣ρ̣μ̣α̣ν̣ι̣κ̣ο̣ῦ̣ Α̣[ὐτοκ]ράτορος, ἀπὸ δὲ ἰδιωτικῶν καὶ | πάσης ἐνποιήσεως ἐπ̣ὶ̣ τ̣ὸ̣ν̣ ἅ̣π̣α̣ν̣τ̣α̣ [χρόν]ον. The month of Pharmouthi of the 9th year of Claudius is, as we read in col. 2, ll. 25-28, the term set for the loan: ἃς καὶ ἀποδώσωι ἐν μη|νὶ Φαρμοῦθι τοῦ εἰσιόντος ἐνάτου ἔτους Τιβερίου | Κλαυδίου Καίσαρος Σεβαστοῦ Γερμανικοῦ | Αὐτοκράτορος καθὼς πρόκιται.

[54] Out of the five preserved examples, the creditor's subscription figures only in PSI VIII 908 (42-43 CE), ll. 12-13, l. 23,

VIII.[55] The phenomenon cannot be addressed here in all its complexity.[56] Husselman's hypothesis,[57] that these original subscriptions were left at the grapheion ready to be completed upon request of any of the parties, as extra 'authentic' copies (ekdosima),[58] seems confirmed beyond any doubt at least for some of the documents by the annotation 'ekdosimon' at their top.

Many aspects of the phenomenon remain puzzling, though,[59] and it should not be excluded that different reasons may have operated in different cases. In our particular case, one may easily imagine how the grapheion could serve the interest of both creditor and debtor by initially keeping all, not just some of the copies of the

[55] Published in P. Mich. V and PSI VIII: together with our five cases of guarantee sale, there are thirty-seven ordinary sales, two leases, two divisions of property, a money loan, a dowry receipt, a receipt for rent, an apprenticeship contract, a contract for work and one for service.

[56] Depauw 2003: 105 and n. 239, connects it to the loss of legal value of the Demotic contract in early Roman times, so that ‚contractants may well have decided to omit it completely and just settle for the subscriptions only'. The hypothesis is untenable, taking into account that: a) the subsisting subscriptions were never collected by the parties; b) the main space on the papyrus was in any case reserved for the contract proper; c) the phenomenon is attested also for Greek contracts (cf. our own case, as far as the loan is concerned). Also untenable would be the hypothesis that these were transactions that the parties for some reason withdrew from: the subscriptions in P. Mich. V 273 dupl. PSI VIII 906 (46 CE) seem to correspond to what appears recorded two days later as a ratified sale in the anagraphic register P. Mich. II 123 recto (46 CE), col. 16, l. 17; and the subscriptions in P. Mich. V 325 (47 CE) correspond to the meriteia that has arrived to us complete in P. Mich. V 323, 324 and PSI VIII 903.

[57] P. Mich. V, pp. 3-11.

[58] BGU IV 1065 (98 CE Arsinoites), and P. Lips. I 3 = MChr. 172 (256 CE Hermopolis), as already noticed by Mitteis 1912a: 64 n. 1, are examples of such ‚authentic' copies, i.e. antigrapha with original subscriptions.

[59] Thus, for instance: sale documents are in general useful only for the buyer; no right comes from them to the seller, who declares to have already received the price; and yet, the greatest number of surviving copies, the quadruplicate P. Mich. V 269, 270, 217 and PSI VIII 907 (42 CE), concerns a sale with four sellers, for all of whom, it seems, copies had been prepared. It is true that when a sale is made by multiple sellers, each of them may be interested in having documentary evidence that the others consented, but such possible purpose seems here betrayed by the fact that two of the four copies (270-271) contain only the subscription of one of the sellers. For the same reason, it is puzzling that double unfinished copies survive of sales with only one seller and one buyer: cf. P. Mich. V 278-279 (30 CE); P. Mich. V 290 with PSI VIII 912 (37 CE); or P. Mich. V 267-268 (41-42 CE), and P. Mich. V 273 with PSI VIII 906 (46 CE), copies that, precisely because never completed, could not have been intended either for the catoecic register. It is unsurprising that these seemingly useless extra copies were never reclaimed, but one wonders why they were prepared in the first place. If such extra copies were made only when the parties paid for them, we would not expect to find them in cases where they are so patently useless. On the other hand, the hypothesis that the grapheion produced them in every case, raising the expense in papyrus and writing to at least twice of what would otherwise have been necessary, seems to make sense only if it was compulsory to do so, although our sources keep no trace of a Ptolemaic or Roman rule in that sense.

contract. The procedure would be the following: 1) until the term for the loan arrives, all copies are kept incomplete in the grapheion; 2) upon payment, there is no need to complete them: one wonders if this might not have been understood in the sense that no transaction had been made, so that there would have been no need to pay any sale or mortgage tax (although cf. 'a' supra); 3) upon default, the document can be completed without the cooperation of the debtor, who has already subscribed; 4) decisively: before the term arrives, the creditor does not have any copy, so there is no danger that he might cut out the sale part and try to enforce it:[60] the incompleteness of the document protects the debtor by literally suspending the sale.

All this is, at the present state of our sources, highly conjectural. We shall soon see, though (infra IV), that a similar practice of interrupted sales is actually attested in late Ptolemaic Pathyris. It is certain, in any case, in the light of 'a' and 'b' supra, that these Fayum double contracts were not sales with immediate effect, but suspended sales, akin to ordinary hypothecs. A sale that functions as conditional even if unconditionally formulated is a remarkable phenomenon, but not without parallel in legal history:[61] in our case, a clear precedent is the Demotic Fayum 'Kaufpfandvertrag' of the type attested in P. Chic. Haw. 7 (supra II i.f.).[62]

This exhausts the Demotic and bilingual material, and allows for a first conclusion: the native tradition of guarantee sales is no title-transfer security (Sicherungsübereignung) stricto sensu: these are merely forms of suspended sale,[63] analogous to a hypothec, labelled in Greek as such, and taxed (when ab initio) accordingly.

IV. Pathyrite Interrupted Sales

Yet another form of suspended guarantee sale would have gone unnoticed if Pieter Pestman had not paid attention to the oddities of a group of sale contracts

[60] Prima facie, this would seem to provide an explanation also for the mysterious notice written on the verso of P. Mich. V 328 (29-30 CE), l. 20: φύλαξον αὐτὸν ἕως Μεχὶρ εἵνα λάβῃς παρὰ τοῦ καταγεγραμήνου. Here, αὐτὸν seems referred, for αὐτὴν, to the document itself (οἰκωνωμία [sic], in the previous line). And the last word (largely conjectural) would seem to point to the moment when the sale is brought to katagraphê: one would think, after the debtor's default. Yet, the annotation cannot be understood in the sense that the document was to be kept in the grapheion until unpayment: the term for the loan, in fact, is Neos Sebastos (October-November) of the seventeenth year of Tiberius, while the document is to be kept only until Mecheir (January-February).

[61] Rabel 1909: 81, points as parallel to the Lombard contracarta supplementing a formally unconditional carta venditionis. In that case, though, the condition seems to have worked as resolutive: in the contracarta, the creditor declares that the carta venditionis shall be null and void upon payment, cf. Brunner 1894: 624-625.

[62] Also in the Theban model, cf. supra n. 33, the condition is reformulated as if it were a mere time clause.

[63] In the same sense, Markiewicz 2005: 155, rightly points to the rule in the Code of Hermopolis, according to which if a debtor tries to sell a pledged house (a pledging likely conceived as arising from a guarantee sale), the creditor would not claim as owner, but would need to resort to a ‚public protest': Seidl 1967.

executed at the agoranomeion of Krokodilopolis and Pathyris, in the Pathyrite nome of the Thebaid, in the turn of the 2nd to the 1st century BCE. [64]

One example will suffice to show what he found. In BGU III 994, a Tathôtis, daughter of Phibis, declares to have sold a vacant plot to Taelolous son of Totoêtis for 5000 copper drachmas. In the very brief scriptura interior, we read (col. I, l. 1) that the transaction was executed in the fourth year of Cleopatra (III) and Ptolemy (IX), Mesorê 11th, that is, 113 BCE, Aug. 26th. In the scriptura exterior, instead, the date is the 6th year of the same reign (col. II, l. 2), Pauni 11th (col. II, l. 9), that is, 111 BCE, June 27th, almost two years later. Editing the papyrus, Schubart noticed the anomaly, and concluded that this second later date had to be wrong ('falsch'), since the same scriptura exterior attests (col. III, l. 10) that the enkyklion tax was paid in 113 BCE, less than a month after the initial date.

In the same direction would prima facie seem to point yet another circumstance. The execution of the document on the later date is attributed to the agoranomos Hêliodôros (col. II, l. 9). Our information about the Krokodilopolis and Pathyris agoranomeion is enough to know that this cannot have been the case, because by then Hêliodôros had been replaced as agoranomos by Sôsos.[65] This would seem to confirm Schubart's diagnosis of the later date as a mistake, were it not for the fact that, at the end of the body of the document (col. III, l. 9), it is not to Hêliodôros, but to Ammônios acting for Sôsos[66] that the execution of the document is attributed. We have to accept, therefore, despite Schubart, that the 111 BCE agoranomeion of Sôsos did actually somehow intervene in the execution of the document. Most tellingly: in the earlier date the enkyklion was not effectively paid, but merely deposited at a bank in a blocked account (θέμα),[67] with the banker acting as sequestrarius.

These peculiarities are not confined to BGU III 994. They reappear in other sales of this group, and, as Pestman realised, they can only mean that the document was executed in two stages: initially left incomplete, with the tax unpaid or deposited

[64] Pestman 1985a: 32, and 1985b, with a list in p. 46; adde SB XX 14393 (100 BCE), published in Bingen 1989. The earliest preserved contract is BGU III 994 and 996 (113 BCE), the earliest reference possibly P. Adler 2 (124 BCE). Most of the surviving contracts are dated to the turn of the century, between 101 and 99 BCE. When Rupprecht 1995: 431 gives a timespan from 145 to 88 BCE, that is the result of a misunderstanding of Pestman 1985b: 45, who refers there to all preserved agoranomic acts from Pathyris and Krokodilopolis. There is no evidence of Pathyrite agoranomic deeds after 88 BCE, i.e. after the new Theban uprising.

[65] Pestman 1985a: 12.

[66] The notarial network of the Pathyrite nome (Pestman 1985a: 9) included an agoranomeion in Krokodilopolis and a slightly later one in Pathyris (infra n. 80): the latter was formally subordinated to the former, so that the heads of the Pathryis office (as our Ammônios) were formally deputy-agoranomoi, acting on behalf of their Krokodilopolis counterparts (as Hêliodôros and Sôsos).

[67] Col. 3, l. 1, integrated (cf. Pestman 1985a: 38 n. 26), but cf. for instance P. L. Bat. XIX 6 = BGU III 995 (110 and 109 BCE), l. 30.

in a blocked account; in some cases, never completed, as we know because other documents prove that the seller retained the property, or, more revealingly, because on a later date an explicit renunciation (apostasion) of the buyer is preserved;[68] in other cases, completed only later —between four months and six years later—, sometimes together with a second document of cession in favour of the buyer.[69]

These instances of eventual renunciation, and the holding of the tax, show that the sale was not intended initially as unconditionally definitive (Pestman called these 'provisional sales', 'ventes provisoires'), [70] that some later event decided whether the sale would be completed, whether the buyer would acquire at all. This later event could only be, as Pestman rightly guessed, the return to the buyer of the money documented as price. This money was, in fact, a loan, secured by the sale, as occasionally confirmed by other documents referred to the same affair.[71]

Leaving the document initially incomplete was the way to suspend the effect of the sale, until the term set for the return of the money: upon payment, the document would be definitively left incomplete, the sale's ineffectiveness confirmed by an explicit renunciation; upon default, it would be completed at the request of the creditor, presumably without the debtor's cooperation being necessary any more, and only then would the tax be effectively charged. The tax was the full the 10% [72]

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[68] Thus, P. Grenf. II 28 (103 BCE) cancels the sale of P. Lips. I 1 (104 BCE); BGU VI 1260 (101 BCE) cancels an unpreserved sale. Cf. also P. dem. Adler 19 and 20 (93 BCE) in connection with P. Adler 15 (100 BCE). In P. Amiens 5 (90 BCE), cf. Chauveau 2002: 45-48, almost eight years pass between the sale and its (Demotic) cancelation. The most notorious document of this group is the epilysis in MChr. 233 (111 BCE), on which infra VIII; on the others, ibid. ad nn. 177-181.

[69] Together with BGU III 994, cf. 995 (110 and 109 BCE), BGU III 996 (113-112 and 107 BCE), P. Grenf. II 32 (101 BCE), and BGU VI 1259 (100 and 99 BCE), all of them completed months to years after the initial date: Pestman 1985b: 48-51. In P. Adler 14 (100 BCE) the seller surrenders the land sold a year earlier in P. Adler 12 (101 BCE); the lapse of time suggests that the transaction belongs to our group, although in this case there is no complete certainty: cf. the discussion in Pestman 1985b: 52-53.

[70] On Pestman's classification of these contracts as ὠναὶ ἐν πίστει, using the problematic expression of P. Heid. inv. 1278 = MChr. 233 (111 BCE), cf. infra VIII ad n. 189.

[71] P. Amh. II 47 (113 BCE), for instance, is the daneion secured by the sale documented in BGU III 996 (113-112 BCE): Pestman 1985b: 48. Cf. also the cession of land of Harkonnesis to Nahomsesis, in P. L. Bat. XIX 7B = SB I 5865 = P. Baden II 3 (109 BCE), with simultaneous cancellation of Harkonnesis' debt by Nahomsesis in P. L. Bat. XIX 7A = P. Gen. I 20, both completing the ‚provisional sale' executed months before in P. L. Bat. XIX 6 = BGU III 995 (110 and 109 BCE). Most obvious are the cases of BGU VI 1260 (101 BCE), where the sale cancellation is documented together with the repayment of the loan, and P. dem. Adler 20 (93 BCE), cancelling the sale securing the loan in P. Adler 15 (100 BCE), upon the borrower's heirs oath that the loan had been paid (P. dem. Adler 19, 93 BCE). The debts were usually documented as wheat loans, although their cancellation must have required the return of the money that figured as price in the sale document: these seem therefore to have been wheat loans to be returned in money; equivalent, from the point of view of their economic function, to wheat sales on credit.

[72] Thus, for instance, in BGU III 994 (113 and 111 BCE), col. 3, l. 14, for a ‚sale' price of

required in this period for ordinary sales,[73] since it was paid only for the final forfeit of the property. If the sale was cancelled, instead, the tax, paid also only in this later date, was reduced to a half: that is, the 5% of hypothecations,[74] confirming once more that these suspended sales were treated by the administration as hypothecs. And, in fact, just as the Demotic Kaufpfandverträge and the bilingual sale-loan contracts,[75] they are explicitly characterised as hypothecations. [76]

Unlike ordinary hypothecations, that required to pay both the initial telos hypothêkês (at this time a 5%) and, upon default, the telos epikatabolês (at the rate of the full sale enkyklion, i.e. 10%),[77] the parties here were spared from paying the former: one of the most striking advantages of this procedure, and quite possibly one of the motivations behind its creation, in what appears to us as an remarkable instance of the notarial system helping the parties save taxes.

Pestman's interrupted sales were executed in Greek as agoranomic contracts, but there is little doubt that this practice belonged to the Egyptian, not to the Greek tradition. It is, in fact, quite manifestly an agoranomic version of the native Egyptian tradition of suspended guarantee sales (supra II-III). The documents come, as Spiegelberg's Kaufpfandverträge, from the Theban region: this time, from Pathyris and the nearby Krokodilopolis. This is a predominantly native Egyptian area, scenario

5000 copper dr., the tax is 500. The final amount of 600 documented by the banker (l. 15; cf. Pestman 1985a: 38 n. 26) points to an agio of 20%, common since the end of the 2nd cent. BCE, instead of the previous 10%: Milne 1925: 270-273, Maresch 93-95.

[73] The 5% is attested for the last time in 137 BCE (SB I 4010, l. 3); in 131 BCE (BGU X 1925, l. 41), it is already 10%. For an overview on the enkyklion in this period in the light of the Pathyrite documentation, Pestman 1978b.

[74] Cf. BGU III 999, where the sale is dated to September 99 BCE, but the tax is paid only in May 98, at a rate of 5% (100 dr. for a price of 2000). P. Amh. II 51, l. 25, confirms that the sale was cancelled, since the same house appears a decade later as owned by the son of the ‚seller': Pestman 1985b: 51-52.

[75] Supra II n. 36, III nn. 50-51.

[76] Cf. especially ὑπέ|θετο in P. Heid. inv. 1278 = MChr. 233 (111 BCE), ll. 4-5 (infra VIII). More conjectural, ὑπέ[θετο] in P. Bad. II 4 (107-98 BCE), ll. 2-3, cf. Pestman 1985b: 56, and ὑπ[οτεθειμένων], in P. Adler 2, l. 7.

[77] Contrary to what Mitteis 1912a: 151 n. 3 supposed, the telos epikatabolês was not limited to the difference between the hypothecation tax paid already by the creditor and the full sale enkyklion. At the time when the sale enkyklion was a 5%, therefore, the epikatabolê amounted to the same full 5%, not merely to the 3% that rested after paying the 2% of the hypothecation, as Mitteis imagined. This we learn through P. Carlsberg 46 and 48 (= SB XVI 12342 and 12344, already considered supra n. 41), two tax receipts referred to the same hypothecation (executed as a Kaufpfandvertrag): in 239 BCE, for a loan of 40 drachmas, 4 obols were paid as telos hypothekês (the exact 2% being 4.8); three years later (during which a further 2% over capital and accrued interest was paid as telos ananeôseôs for the renewal of the hypothec: P. Carlsberg 47 = SB XVI 12343) the debt had grown through unpaid interest and prostimon to 160 dr. and, on these, 8 drachmas were still paid as telos epikatabolês: the full 5%, despite the previous tax payments. On these documents, cf. Bülow-Jacobsen 1982, and Jasnow's commentary to P. Chic. Haw. 9.

from 206 to 186 BCE of the great Egyptian uprising against the Ptolemies:[78] still in the early 1st century BCE a last great revolt will be launched from the region, ending with the destruction of Thebes in 88 BCE. In our contracts, the parties are overwhelmingly Egyptian. Their supplementary documents, like the apostasion or the oaths, are often drawn up in Demotic.[79] Most decisively: Egyptians are also the bilingual agoranomoi of Pathyris and Krokodilopolis that resort to this peculiar notarial practice,[80] like the Ammônios alias Pakoibis who completed the sale in our BGU III 994, as we know not only from their names, but also through the information that other sources provide about them,[81] and through their conspicuous linguistic idiosyncrasies.[82] As Katelijn Vandorpe has emphasised, "where information is available ... the new, Greek notaries appear to be local people, members of Egyptian families with a scribal tradition, who are (re)trained as Greek notaries".[83] The general willingness of these notaries to devise Greek versions of native Egyptian practices is well attested: enough here to recall the

[78] Veïsse 2004. During the revolt, two indigenous pharaohs ruled from Thebes, cf. Pestman 1995.

[79] P. dem. Adler 20 (93 BCE), P. Amiens 5 (90 BCE): on these, infra VIII ad nn. 177-179. It is perhaps no coincidence that these Demotic documents are dated to the years (96-90 BCE) in which we have no evidence of agoranomic activity in Pathyris and Krokodilopolis: for this hiatus, Pestman 1985a: 10-11, passim.

[80] The agoranomeion had been introduced in Krokodilopolis and Pathyris ca. 141 and 136 BCE (Vandorpe 2002: 107), not long after the establishment of military garrisons in both towns: the institution of the agoranomeion intending no doubt to serve the interests of the soldiers (potential land buyers, because not kleruchs, but misthophoroi), and also as a further instrument of hellenisation in the problematic region: cf. Vandorpe 2011: 298-303; Monson 2012: 125-126. Yet, it was crucial for the function of those serving at the agoranomeion to be bilingual, which in practice meant Hellenised natives. Cf. Pestman 1978, with the eloquent title „un avant-poste de l'administration grecque enlevé par les Égyptiens", and his overview of their activity in Pestman 1985a. Cf. already Fogolari 1921, and, more in general, Messeri Savorelli 1980, Clarysse 1985 and 1993, Arlt 2009. For Pathyris' archives, Vandorpe and Waebens 2009, especially pp. 93-94, on the archive of the archeion.

[81] A well documented case is that of Hermias, agoranomos in Pathyris between 106 and 98 BCE, and, as far as the interrupted sales go, involved in BGU III 996, 997, 998, 999, BGU VI 1259, 1260, P. Adler 12, 14, P. Amh. II 47, P. Grenf. II 28, 32, P. Lips. I 1. Notorious for his limited command of the Greek grammar (infra n. 82), we ignore his Egyptian name, but we know that his father was a Patseous who would use in Greek the name Asklêpiades, and who appears in 127-126 BCE as agoranomos in Krokodilopolis. Hermias' cousin was our Ammônios alias Pakoibis, agoranomos in Pathyris between 114 and 109 BCE: among the extant examples of interrupted sales, he completed our BGU III 994, initiated and completed BGU III 995, and executed the cancellation (epilysis) preserved in MChr. 233, on which infra VIII. Ammônios' father, Areios alias Pelaias, was agoranomos in Pathyris between 131 and 113 BCE. A family tree in Pestman 1989: 148, cf. also Pestman 1985a: 12-13; for the roots of the family in the local scribal tradition, Vandorpe 2011: 300-301.

[82] For the grammatical anomalies of these notaries, cf. already Calderini 1921, and now, extensively, Vierros 2003, 2007, 2008, 2012: ‚phraseological transfers' from the Egyptian language.

[83] Vandorpe 2011: 300.

coexistence of the Greek diathêkê with the agoranomic version of the native Egyptian deeds of division (dosis, meriteia, synchôrêma), first attested precisely in the Pathyrite nome.[84] In the case of our sales, the singular notarial technique used to suspend their effect, leaving the execution of the document itself temporarily unfinished, is certainly alien to the Greek tradition, and has only Demotic parallels.[85]

Summarising: the Pathyrite phenomenon discovered by Pestman is a form of guarantee sale, but not of title-transfer security; leaving the sale deed initially incomplete and holding the payment of the tax served to effectively suspend the sale; through this notarial technique, the native bilingual agoranomoi of Krokodilopolis and Pathyris allowed the Egyptian population to keep, also in their Greek agoranomic transactions, the native tradition of suspended guarantee sales, reviewed supra in II and III. These suspended sales were taxed as such only upon default: upon payment, merely as hypothecs, confirming once more that the Ptolemaic administration (as later the Roman) viewed them as a mere form of hypothecation.

V. Menein *Contracts*

The native practices that we have reviewed are the main types of guarantee sales attested in the papyri for the Ptolemaic and Early Roman period. As a form of 'Sicherungsübereignung' is commonly mentioned a slightly later group of Greek contracts:[86] the so-called 'menein' contracts, a model of loan with security attested so far only in Oxyrhynchos, from the late first to the early third century.[87] This type of contract, very stable in its formulation, is distinguished by the peculiar way in which the security is introduced. As an example, let us consider P. Oxy. XXXIV 2722 (154 CE):

> ἐὰν δὲ μὴ ἀποδῶ καθὰ γέγραπται συν|[17] χωρῶ μένειν περὶ σὲ τὸν Θῶνιν Ἡφαιστᾶτος καὶ ἐκγόνους |[18] καὶ τοὺς παρὰ σοῦ μεταλημψομένους ἀνθ' οὗ ἐὰν μὴ ἀποδῶ |[19] μετὰ τὴν προθεσμίαν τὴν κράτησιν καὶ κυρείαν εἰς τὸν |[20] ἀεὶ χρόνον τῶν ἐπιβαλλόντων μοι μερῶν πάντων ... |[23] ... οἰκίας ...
>
> If I do not repay as is written, I |[17] concede that there shall remain to you, Thonis son of Hephaistas and to your descendants |[18] and sucessors, in exchange for

[84] Yiftach-Firanko 2002. The earliest preserved example comes from the agoranomeion of Hermonthis in the Pathyrites: BGU III 993 (127 BCE Hermonthis), cf. ll. 8-9. Misleading, the traditional Romanistic label ‚donatio mortis causa'.

[85] Pestman 1985: 46 n. 5. Cf., even if as a mere conjecture, supra III sub ‚c'.

[86] Cf. for instance Rupprecht 1995: 434-435, under the rubric ‚Sicherungsübereignung' (p. 429) together with ὠνὴ ἐν πίστει (infra VIII), Pathyrite interrupted sales (supra IV) and ‹Kaufpfandverträge› (supra II). Cf. already Schwarz 1937: 248-258, passim.

[87] Only six examples of this type of contract have been published to date: P. Oxy. Hels. 31 (86 CE), P. Oxy. III 506 = MChr. 248 (143 CE), P. Oslo II 40 A and B (150 CE), P. Oxy. XXXIV 2722 (154 CE), P. Coll. Youtie I 50 (2nd cent. CE). To these, two important documents must be added, that illustrate the execution of such guarantees: P. Oxy. III 485 = MChr. 246 (178 CE), and PSI XIII 1328 (201 CE).

whatever I may fail to return |[19] after the term, the power and dominion for |[20] all time over all the shares falling to me ... |[23] ... of a house ...

The clause is formulated in very similar terms in all preserved examples. Characteristic is the use of the verb μένειν. The term would seem to suggest that upon default the creditor merely keeps a position that he already had, i.e. that from the beginning the property was in his kratêsis and kyreia, that this is a title-transfer security agreement; an impression reinforced by the fact that the debt secured in this way is once referred to as ἐπὶ κυρίᾳ instead of ἐπὶ ὑποθήκῃ.[88] And yet, such conclusion would be wrong. The evidence against it is overwhelming:

a) If the debtor defaults, the creditor does not simply 'keep' the security: he needs to claim it, following the same execution procedure that would be necessary for a hypothec. In P. Oxy. III 485 = MChr. 246 (178 CE), in fact, such execution procedure, indistinguishable from that of a hypothec, is inchoated on the basis of a menein-contract:[89] an injunction for payment (diastolikon) is served upon the debtors "in order that they may be informed and may make repayment to me or else may know that I shall take the proper proceedings to which I am entitled for entry upon possession (embadeia), as is right".[90]

b) The use of the embadeia procedure reveals that, at least in the case of P. Oxy. III 485, the creditor was not in possession of the security.[91] For the other attested cases, the lack of antichretic arrangements makes such possession equally unlikely.[92]

c) All preserved menein-contracts include an explicit agreement that it shall be unlawful for the debtor to sell or hypothecate or otherwise dispose of the security:[93]

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[88] P. Oslo II 40 B (150 CE) ll. 63-69 (referring to 40 A [150 CE], a previous menein-contract over a slave between the same parties, copied on the same papyrus): μὴ ἐλαττουμένου σου | τοῦ Ἀπίωνος τοῦ καὶ Πετοσοράπιος ἐν | τῇ πράξει ὧν ἄλλων ὀφείλω σοι κάτ᾽ ἕτερον | χειρόγραφον δισσὸν δραχμῶν ἑξακοσίων | κεφαλαίου καὶ τῶν τούτων ἀπὸ τοῦ ἐξῆς | μηνὸ[ς] Θὼθ τόκων ἐπὶ κυρίᾳ δούλης | μου Ἰσαροῦτος ὃ καὶ εἶναι κύριον. Yet, see ἐφ᾽ ὑποθ(ήκῃ) in P. Oxy. XXXIV 2722, l. 69, infra n. 112.

[89] The contract is summarised in ll. 12-26; the security, in inequivocal terms, in ll. 19-23: δηλωθέντος (i.e. χρηματισμός) ἐὰν μὴ ἀπο|δῷ ἐν τῇ προθεσμίᾳ μένειν περὶ ἐμὲ καὶ τοὺς παρ᾽ ἐ|μοῦ μεταλημψομένους ἀντί τε τοῦ κεφαλαίου καὶ ὧν | [ἐὰ]ν μὴ ἀπ[ο]δοι τόκων τὴν κράτησιν καὶ κυρείαν | τῆς ὑπαρχούσης αὐτῇ δούλης Σαραπιάδος.

[90] Tr. Grenfell & Hunt, ll. 32-34: ἵν᾽ εἰδῶσι καὶ ποιήσωνταί μοι τὴν ἀπόδοσιν | ἢ εἰδῶσι χρησόμε[νόν με] τοῖς ἁρμόζουσι περ[ὶ ἐ]μβαδεί|ας νομίμοις ὡς κ[αθή]κει. The property in question is in this case the slave Sarapias, cf. n. 89.

[91] The executive nature of the embadeia procedure makes it unlikely that it could be used merely to manifest and formalise the creditor's choice to keep the security; such use is, in any case, never attested in the sources.

[92] This, in the contracts referred to immovable property: P. Oxy. Hels. 31 (86 CE), P. Oxy. III 506 (143 CE), P. Oslo II 40 B (150 CE), P. Oxy. XXXIV 2722 (154 CE), P. Coll. Youtie I 50 (2nd cent. CE). Even clearer is the situation in P. Oslo II 40 A (150 CE), where we would expect provisions concerning food and clothing if the slave had been taken by the creditor.

[93] P. Oxy. XXXIV 2722 (154 CE) ll. 34-38: καὶ μέχρι ἀποδόσεως οὐκ ἔξεσταί μοι τὰ αὐτὰ

a non alienation clause, like that of hypothec or hypallagma, revealing that, as in those cases, the debtor is still considered owner and therefore a priori in the position to alienate.[94]

d) In the case of immovable property, the contract typically includes a clause authorising the creditor to have a katochê recorded in the bibliothêkê enktêseôn.[95] Registration as owner is therefore out of the question: the creditor is not yet owner, but mere holder of a katochê on property that still belongs to the debtor, and it was on the folium of the debtor as owner that such katochai were recorded in the diastrômata kept by the bibliophylakes[96].

e) A constant feature of these contracts is the agreement that, if the debtor does not pay, the creditor can still choose between owning the security or executing the debt.[97]

μέρη | τῶν ἐνγαίων οὐδὲ μέρος πωλεῖν οὐδὲ ὑποτίθεσθαι οὐ|δ' ἄλλως καθαχρηματίζιν κατ' οὐδένα τρόπον οὐδὲ ἀπο|γράφεσθαι ἐπ' αὐτῶν οὐδένα ἢ πᾶν τὸ ὑπεναντίως πρα|χθησόμενον ἄκυρον εἶναι. Similar formulations in P. Oxy. Hels. 31 (86 CE), ll. 20-22, P. Oxy III 506 (143 CE), ll. 39-42, P. Oslo II 40 A (150 CE), ll. 15-18, P. Oslo II 40 B (150 CE), ll. 47-49. The fragmentary P. Coll. Youtie I 50 (2nd cent. CE) breaks at the point where the non alienation clause would follow. The formulation is close to that attested for hypothecs such as P. Strasb. I 52 (151 CE Hermopolis), ll. 9-10, P. Flor. I 1 = MChr. 243 (153 Hermopolis), ll. 8-9, P. Bas. 7 = MChr. 245 = SB I 4434 (117-138 Arsinoites), ll. 15-16, and P. Erl. 62 (2nd cent., unknown provenance), ll. 12-13, attested also in some Fayum hypallagmata (P. Vindob. Worp. 10 [143-4, Soknopaiu Nesos], ll. 13-16, P. Lond. II 311 [p. 219] = MChr. 237 [149 CE Herakleia], ll. 17-18) and hypallagmatic non alienation agreements (P. Mich. IX 566 [89 CE Hiera Nesos], ll. 14-19, P. Athen 21 [131 CE Karanis], ll. 17-18).

[94] The non alienation clause may be understood as an expression that the hypothecation itself deprives the debtor of his potestas alienandi, rather than as a stipulation without which he would retain it: cf. for each of these possibilities Rabel 1909: 79-86 (‚Erklärung aus dem Wesen des derivativ erworbenen Rechts'), 87-96 (‚Erklärung aus mangelhafter dinglicher Stellung des Gläubigers'). The first hypothesis is out of the question regarding hypallagma (this, in fact, consists merely in the non alienation agreement, which cannot therefore not be included), but would explain why the non-alienation clause is occasionally (infra n. 153 i.f.) missing in ordinary hypothecations. From this point of view, it may be of some significance that, unlike hypothecs, all preserved menein contracts include an explicit non-alienation agreement.

[95] P. Oxy. XXXIV 2722 (154 CE), ll. 38-41: ἐξόντος σοι διὰ σεαυτοῦ ἀπὸ τοῦ | νῦν ὁποτὰν αἱρῇ κατοχὴν τούτων ποιήσασθαι διὰ τῆς τῶν | ἐνχρήσεων βιβλιοθήκης ἄχρι ἀποδῶ σοι τὸ κεφάλαιον | καὶ τοὺς τόκους. In similar terms, P. Oxy. III 506 (143 CE), ll. 49-51, and P. Oslo II 40 B (150 CE), l. 50. Leaving aside P. Oslo II 40 A (150 CE), where the security is a slave, and the incomplete P. Coll. Youtie I 50 (2nd cent. CE), the clause is lacking only in P. Oxy. Hels. 31 (86 CE), an antigraphon that omits other typical elements, v.gr., the precise location of the house given as security.

[96] Wolff 1978: 235-238.

[97] P. Oxy. XXXIV 2722 (154 CE), ll. 41-50: αἱρέσεως καὶ ἐγλογῆς οὔσης περὶ σὲ τὸν | Θῶνιν Ἡφαιστᾶτος ἐὰν βούλῃ μετὰ τὸν χρόνον μὴ δι|καιοπραγμουμένου μου τῷ κεφαλαίῳ καὶ τόκοις κυρι|εύειν ἀντὶ τούτων τῶν αὐτῶν μερῶν τῆς οἰκίας | ἐπὶ τοῖς προκειμένοις ἢ τὴν πρᾶξιν ποιήσασθαι τοῦ τε | αὐτοῦ κεφαλαίου καὶ τῶν ὠνομασμένων καὶ τοῦ ὑπερ|πεσόντος χρόνου ἴσων δραχμιαίων τόκων ἑκάστης μνᾶς | κατὰ μῆνα ἕκαστον ἔκ τε ἐμοῦ καὶ ἐκ τῶν

This freedom of choice is formulated explicitly and with remarkable emphasis, and is in fact what most radically distinguishes these contracts from hypothec proper, where execution against the debtor is limited to certain cases (breach of contract regarding the asset, or its loss by accident or eviction). What we know about the execution of menein contracts confirm this free choice: fortune in fact has preserved for us an example of each possibility.[98] No such choice would be left for the creditor if he owned the security from the beginning.

f) Significant also is the fact that in P. Oxy III 506 = MChr. 248 (143 CE), l. 39, the debtor assures that the property shall be free from public burdens of all sorts not 'until now', but 'up to the time of the creditor's ownership': μέχρι τοῦ τῆς κυρείας χρόν[ου]. It is obvious from these words that such time has not arrived. Until then, public burdens and taxes fall upon the debtor, precisely because he still owns the land.

All in all, there is little doubt that the creditor did not acquire before the term arrived and the debtor defaulted.[99] How then can we account for the use of the verb

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μερῶν τῆς | οἰκίας καὶ ἐκ τῶν ἄλλων τῶν ὑπαρχόντων μοι πάντων | καθάπερ ἐγ δίκης. Similar formulations in the other contracts: P. Oxy. Hels. 31 (86 CE), ll. 23-26; P. Oxy. III 506 (143 CE), ll. 43-49; P. Oslo II 40 A (150 CE), ll. 18-22; P. Oslo II 40 B (150 CE), ll. 52-62. The clause is missing only in the incomplete P. Coll. Youtie I 50 (2nd cent. CE). Considering this freedom of choice, the simultaneous emphasis that the security is adquired ‚in lieu of capital and interest' (l. 44: ἀντὶ τούτων, already also in the pignoration clause, l. 18, ἀνθ' οὗ ἐὰν μὴ ἀποδῶ; similarly in all preserved contracts: P. Oxy. Hels. 31 [86 CE], l. 12 and -reconstructed- l. 24, P. Oxy. III 506 [143 CE], ll. 21 and 44, P. Oslo II 40 A [150 CE], ll. 9 and 19, P. Oslo II 40 B [150 CE], ll. 37 and 56, reconstructed in P. Coll. Youtie I 50 [2nd cent. CE], ll. 4-5) has been seen as a paradox, because generally understood to imply substitutive pledge (‚Ersatzpfand') and therefore to exclude any further debtor's liability (so-called ‚reine Sachhaftung'): Schwarz 1937: 258-259 and n. 1. In truth, this coexistence rather suggests that the traditional interpretation of the ἀντί-formula is misguided (also when it comes to hypothec, where it is equally ubiquitous): the formula is quite likely not meant pro debitore but pro creditore; it does not denote an ‚Ersatzpfand', but merely underlines the foundation of the creditor's right; it is, in this sense, one of the few remnants of the Surrogationsprinzip (supra I) in the hypothecarian practice of the papyri.

[98] P. Oxy. III 485 = MChr. 246 (178 CE) is a case of execution through embadeia, limited to the security, cf. supra in text sub ‚a'; in PSI XIII 1328 (201 CE), instead, also on the basis of a menein contract (cf. ll. 36-39: δηλωθέν|τ[ος, ἐὰ]ν̣ μὴ ἀποδοι, μένειν περὶ ἐμὲ καὶ τοὺς παρ' ἐμοῦ | [μ]ετ[αλη]μ̣ψ̣[ο]μένους τὴν κράτησιν κ[αὶ κ]υρείαν τοῦ ὑπάρ|[χ]οντ[ος α]ὐτῷ τρίτου μέρους ... ἀρουρῶν κτλ), the creditor chose the longer route of enechyrasia (that would yet require a second procedure of embadeia to be put in possession of the assets) in order to extend the execution beyond the land given as security, to the rest of the debtor's property: [β]ούλομαι τὴν πρᾶ|ξιν ἀ̣ν̣ύσασθαι καὶ δέον ἡγοῦμαι ἐπὶ [τοῦ] διαλογεισμοῦ σ̣υ̣ν̣|κρεῖναι γραφῆναι τοῖς τοῦ Ὀξυρυνχείτου στ[ρα]τηγῷ καὶ ξενικῶν | πράκτορι συντελεῖν μοι τὴν πρᾶξιν τοῦ προκειμένου κεφαλαίου | κ[αὶ] τ̣ῶ̣ν̣ τόκων ἐκ τῶν προκειμένων καὶ ἐξ ὧν ἐὰν ἄλλων | παρ[αδεικ]νύω τοῦ̣ ὑπ[ο]χρέου εἰς ἐνεχυρασίαν ἐπὶ τῶν τόπων | ὑ[παρ]χόντων καὶ ἑ[τ]έρων ἀπαραποδίστως (ll. 58-64). On this important document, in extenso, Schwarz 1937.

[99] This does not exclude agreements that add to the acquisition a certain retroactive effect: one such agreement, referred to the offspring of the slave given in security, in P. Oslo II 40 A

'menein'? The answer is, I believe, quite simple. Menein can refer to something that stays now as it was in the past, but also to something that from a certain moment will remain unchanged. In our case, the verb appears explicitly referred to the future: kratêsis and kyreia are to remain with the creditor for ever -εἰς τὸν ἀεὶ χρόνον- from the time when the payment falls due -ἀπὸ τοῦ τῆς ἀποδόσεως χρόνου, μετὰ τὴν προθεσμίαν-. Quite unequivocal in this respect, P. Oxy. III 506 = MChr. 248 (143 CE), ll. 19-23:

> εἰ δὲ μή, [σ]υνχωροῦσι ἥ τε Θατρῆς καὶ Τετεώ|[20]ρ[ιο]ν μένειν περὶ τὸν δεδανεικότα καὶ τοὺς παρ' αὐτοῦ μεταλημ|[21] ψομένους ἀντί τε τοῦ κεφαλαίου καὶ ὧν ἐὰν μὴ ἀπολάβῃ τόκων |[22] ἀπὸ τοῦ τῆς ἀποδόσεως χρόνου τὴν κράτησιν καὶ κυρείαν εἰς τ[ὸ]ν |[23] αἰεὶ χρόνον τῶν ὑπαρχόντων αὐταῖς ἐξ ἴσου περὶ τὴν αὐτὴν Πέλα (i.e. ἀρουρῶν)
>
> If they fail, Thatrês and Teteô|[20]rion concede that the lender and his assigns |[21] in place of the principal and of all the interest which he may not receive, |[22] shall from the time when the payment falls due keep the power and dominion, |[23] for ever, out of the land owned by them in equal shares near the said Pela ...[100]

These expressions, εἰς τὸν ἀεὶ χρόνον, ἀπὸ τοῦ τῆς ἀποδόσεως χρόνου or μετὰ τὴν προθεσμίαν, qualify μένειν in most preserved contracts.[101] Menein does not mean that the kratêsis and kyreia remain with the creditor *as before*, merely that they shall remain with him *from that time,* and *for ever.*

That menein, despite being in these contracts to all likelihood a present infinitive,[102] must be referred to the future,[103] i.e. to the moment when the debtor

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(150 CE), cf. supra n. 25.

[100] Tr. Grenfell & Hunt. Even if we chose to refer ἀπὸ τοῦ τῆς ἀποδόσεως χρόνου to the immediately precedent ἐὰν μὴ ἀπολάβῃ rather than to μένειν, it would still be true that the forfeit clause as a whole postpones μένειν to the moment of the unpayment.

[101] Together with P. Oxy. III 506 (143 CE), cf., for εἰς τὸν ἀεὶ χρόνον, P. Oxy. Hels. 31 (86 CE), l. 13, P. Oslo II 40 B (150 CE), l. 38, P. Oxy. XXXIV 2722 (154 CE), l. 20; ἀπὸ τοῦ τῆς ἀποδόσεως χρόνου, P. Oxy. Hels. 31 (86 CE), l. 12 (conjectural); μετὰ τὴν προθεσμίαν, P. Oslo II 40 B (150 CE), l. 37, P. Oxy. XXXIV 2722 (154 CE), l. 19 (although in this last case the expression seems rather referred to the preceding ἀποδῶ). Only the more concise P. Oslo II 40 A (150 CE) lacks both temporal references.

[102] Rightly edited as μένειν, and not μενεῖν: cf. the aorist and present infinitives of the forfeit clause, equally dependent on συνχωρῶ: καὶ τάξασθαί σε | διὰ σεαυτοῦ ἐὰν αἱρῇ τὰ ὑπὲρ τούτων τέλη καὶ δεσπόζ<ε>ιν | αὐτῶν ὡς ἂν πράσεώς σοι γενομένης καὶ τὰ περιεσόμενα | ἀποφέρεσθαι καὶ ἑτέροις πωλεῖν καὶ χρᾶσθαι ὡς ἂν αἱρῇ | μηδεμιᾶς μοι ἐφόδου καταλειπομένης (P. Oxy. XXXIV 2722, 154 CE, ll. 25-28).

[103] Leaving aside reported speech, the future form of the infinitive is rare if not with μέλλω, ἐλπίζω, etc. In our menein-contracts, the non-alienation clause too, unequivocally referred to the future, is built with present infinitive: οὐδὲ μέρος πωλεῖν οὐδὲ ὑποτίθεσθαι οὐ|δ' ἄλλως καθαχρηματίζ<ε>ιν κατ' οὐδένα τρόπον οὐδὲ ἀπο|γράφεσθαι ἐπ' αὐτῶν οὐδένα (P. Oxy. XXXIV 2722, 154 CE, ll. 35-37).

defaults, is confirmed by the subscription of the debtor in P. Oxy. XXXIV 2722 (154 CE): after promising to return interest and capital, the debtor proceeds: εἰ δὲ μή, κυριεύσει τῶν αἰπιβαλλώντων |[62] μοι μερῶν πάντων ... |[65] ... οἰκίας. The shift between contract and subscription from infinitive to personal form fully discloses the future meaning of the verb.

In fact, the same construction that singularises our contracts, μένειν εἰς τὸν ἀεὶ χρόνον τὴν κράτησιν καὶ κυριείαν, reappears, unequivocally referred to the future, in parachoretic sales of catoecic land,[104] and in applications to acquire public property:[105] all these are cases where the acquirer had no previous kratêsis or kyreia,[106] so that menein can mean nothing else but permanence in the future, and appears in fact connected to εἰς τὸν ἀεὶ χρόνον,[107] or, even more unequivocally, to ἀπὸ τοῦ νῦν.[108]

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[104] PSI VI 704 (2nd cent. CE, unknown provenance): the document is executed as a synchôrêsis, whereby a Sempronia Thermoutharion sells three arouras of catoecic land to a soldier, Marcius Iulius Sempronius, the price being paid by the half brother of the latter, Marcus Iulius Marianus. The effect of the parachôrêsis is formulated in the same terms of our menein contracts, in ll. 24-27: [με]|νιν οὖν περὶ τὸν Ἰούλιον Σεμπρώνιο̣ν [καὶ τοὺς παρ' αὐτοῦ] | πᾶσ̣α̣ν̣ τὴν κράτησιν καὶ κυρίαν ἀναφα[ιρέτως εἰς τὸν] | ἀεὶ χρόνον, διοικοῦντα περὶ αὐτῶν̣ [ὡς ἐὰν αἱρῆται]. For the nature of parachôrêsis, cf. infra n. 115.

[105] Cf. the application to acquire a house formerly belonging to Claudia Isidora, presented to the Idios Logos on behalf of the city of Oxyrhynchos in P. Oxy LXX 4778 (ca. 238 CE) ll. 25-29: the proposed amount shall be paid ἐφ' ᾧτε μένε̣ι̣ν̣ [τ]ῇ Ὀξυρυγ'χε̣[ιτῶν πόλει] | εἰς τὸν ἀεὶ χρόνον τὴν τούτων κρ[άτησιν] | καὶ κυρίαν ἀνα[φ]αίρετον καὶ ἐξέστω̣ [αὐτῇ χρῆ]|σθαι καὶ οἰκονο̣μεῖν περὶ αὐτῶν ὡ[ς ἐὰν βού]|ληται. A similar formula in P. Bub. I 1 (after 224 CE Bubastos) col. 13, ll. 6-7: καὶ μένει\ν ἐ/μοί \τε/ καὶ ἐκ'γόνοι[ς καὶ τοῖς παρ' ἐμοῦ μεταλημψομένοις τὴν |7 τούτων κράτησιν καὶ κυριείαν ἐπὶ τὸ]ν ἀεὶ χρόνον κυρίως καὶ βεβα[ίως].

[106] The same is true in PSI X 1115 (152 CE Tebtynis), where Kronios, on marrying his sister Tephorsais, receives in prosphora a third share of a slave from their mother Prôtarous: kratêsis and kyreia shall remain with Tephorsais (n.b. from now onwards, since the slave was her mother's), with Kronios the power to keep and administer it: οὗ τὴν κράτησιν καὶ κυρια μένιν περὶ τὴν | Τεφορ[σ]άιν [κ]αὶ [το]ὺς παρ' αὐτῆς καὶ ἐξουσίαν ἔχιν [ο]ἰκονομῖν περὶ αὐτοῦ | ὡς ἐὰν αἱρῆται (ll. 14-16). A similar formulation of the position of husband and wife over the prosphora, also granted by the bride's mother, in PSI X 1117 (after 138, Tebtynis), ll. 30-34: ὧν κ̣ρ̣ά̣τ̣η̣σ̣ι̣ν̣ | καὶ κυρεί(αν) μένειν παρὰ τῇ Θεναπύγχει | [καὶ το]ῖς παρ' αὐτῆς καὶ ἐξουσί(αν) ἔχι(ν) ἀπογρά(φεσθαι) | τ[α]ῦτα διὰ τῆ(ς) τῶ(ν) ἐγκτή(σεων) βιβλ(ιοθήκης) καὶ α.... |[.....] υτω( ). εαν αιρη( ): here, despite kratêsis and kyreia remaining with the wife, the husband has a right of registration in the bibliothêkê enktêseôn.

[107] Cf. supra in n. 104, PSI VI 704, ll. 26-27; in n. 105, P. Oxy. LXX 4778, l. 26, and P. Bub. I 1, l. 7.

[108] This, in P. Ross. Georg. II 30 (151-152 CE Memphis or Delta?), a fragmentary document that mentions a sum of money and a hypothec, and whereby some property is surrendered in these terms: ὥστε μένιν |8 περὶ αὐτὴν Ταθρῆν καὶ τοὺς παρ' α<ὐ>|9τῆς μεταλημψομένους τὴν τῆς |10 ἐξεσταμένης αὐτῇ κάθοτι πρόκ(ειται) |11 σιτικῆς κατοικικῆς ἀρούρης μιᾶς |12 κράτησιν καὶ κυρίαν ἀπὸ τοῦ νῦν δ[ι]ὰ |13 παντὸς οἰκονομοῦσαν περὶ αὐτὴν |14 ὃ ἐὰν αἱρῆται καὶ ἀποφερομένην εἰς |15 τὸ ἴδιον τὰ ἐξ αὐτῆς περιγεινόμ(ενα) |16 ἀπὸ τοῦ ἐνεστῶτος πεντεκαιδε|17κ[ά]του (ἔτους), ἀφ' οὗ καὶ τάσσεσθαι τὰ ὑπὲρ |18 αὐτῆς κατ' ἔτος δημόσια καὶ

All this confirms the general assumption[109] that the menein contracts did not bestow kratêsis and kyreia on the creditor until the debtor defaulted.[110] Since Schwarz, who first identified them as a special type of security, it has been common to present them as cases of suspended property gage, 'suspensiv bedingte Sicherungsübereignung'.[111] At this point, it is convenient to underline once more (supra I i.f.) the importance of avoiding this oxymoron, that extends the term 'Sicherungsübereignung' to something that is not an 'Übereignung', and confuses into one category two unrelated phenomena: securities by immediate property transfer, on one hand, and, on the other, suspended sales, whose effect is akin to that of an ordinary hypothecation, to the point that, as we have seen in the previous paragraphs (II-IV), they were tagged in Greek as hypothekai, and treated as such by the administration, also taxwise.

This equivalence between suspended sale and hypothec finds a manifestation also in the menein material. The contracts themselves seem to avoid the term hypothec (and depart radically from the hypothecary model in the sense explained supra sub 'e'); and yet, the best preserved example, P. Oxy. XXXIV 2722 (154 CE), is labelled on the verso as 'cheirographon ... under hypothec'.[112] On the other hand, the forfeit clause typically includes in these contracts an explicit analogy with a sale: καὶ δεσπόζ<ε>ιν αὐτῶν ὡς ἂν πράσεώς σοι γενομένης (P. Oxy. XXXIV 2722, l. 26-27).[113]

τελέσ|19ματα πάντα τῆς βεβαιώσεως ἐξα|20κολουθο[ύ]σης αὐτῷ τῷ ὁμολογοῦν|21τι πᾶσῃ [βεβ]αιώσει ἐφ' οἷς ἄλλοις περιέχ(ει). We ignore if this was a mere sale or a datio in solutum, and, in the latter case, whether it refers to property previously pledged, by hypothec or even menein agreement. In any case, the formulation of the cession echoes very closely that of the menein contracts.

[109] Cf., together with Schwarz infra in n. 111, Rupprecht 1995: 434-435 (‚Erwerb der vollen Rechtsstellung ... bedingt durch die Nichtrückzahlung').

[110] Less clear are the steps that allowed the creditor to acquire upon default, cf. Schwarz 1937: 256-257. An automatic acquisition does not seem compatible with the free choice between security and general praxis that the contracts emphasise (in text sub ‚e'): in this sense, Rupprecht 1997b: 300. Yet, the epikatabolê necessary for the hypothecary creditor (Schwarz 1911: 119-125; replaced by metepigraphê for catoecic land, Rupprecht 1997b: 294-295) is never mentioned in the menein-contracts. Rupprecht suggests that in its place the creditor's choice may have sufficed, as expressed in the diastolikon announcing execution through embadeia on the security, rather than through enechyrasia on the remaining property. This is unlikely: acquisition (by epikatabolê in the case of hypothec) was a pre-requisite for the diastolikon-inchoation of the embadeia procedure, and therefore could not result from it. In any case, the tax payment with which epikatabolê was associated must have had its equivalent in the menein contracts.

[111] Schwarz 1937: 250-255, passim.

[112] Ll. 68-70: σενπώθου Χ ἀδελφοῦ \Θώνιος/ <καὶ> Ἡφαιστᾶτος διὰ τραπέζης ἐφ' ὑποθ(ήκῃ) μερῶν οἰκιῶν. The contract is not only an unequivocal example of this menein group, but in fact the most complete and best preserved of them all.

[113] The full forfeit clause runs as follows: καὶ τάξασθαί σε | διὰ σεαυτοῦ ἐὰν αἱρῇ τὰ ὑπὲρ

The sale reference invites speculation that these contracts may be a last remnant of the old native Egyptian tradition of guarantee sales. The conjecture is all the more tempting since: a) the last incarnation of this tradition, the first century Fayum sale-loan contracts (supra sub III), quite likely allowed the creditor the free choice between security and loan execution that distinguishes menein contracts from ordinary hypothecs; b) these Fayum sales functioned in effect as suspended, but in such a way that it would have been completely reasonable to say that the creditor after forfeit 'keeps' the security, since he had received ab initio a property deed formally drafted as unconditional.

This is, at the present state of our knowledge, little more than an intriguing possibility. Important now, and absolutely certain, is the fact that the phrase μένειν ... τὴν κράτησιν καὶ κυρείαν indicates in these contracts, as in general in the practice of the papyri (supra nn. 104-108), permanence in the future; that the contracts themselves do not bestow kratêsis and kyreia on the creditor until the term arrives and the debtor defaults; that these contracts function therefore as a mere forfeit security, μετὰ τὴν προθεσμίαν, enforced through the same executive procedure applied to hypothecs (supra sub ‹a›); that they, in sum, are not instances of title-transfer security, no ‹Sicherungsübereignungen›.

VI. Title-Transfer Security in the Prôtarchos *Archive*[114]

The material reviewed in the previous sections exhausts what the papyri have to offer by way of well documented, typical contractual practices. Most, if not all of them, belong to the native Egyptian tradition (the roots of the menein contract remaining a non liquet: supra V i.f.), and none is a title-transfer security, a 'Sicherungsübereignung' proper: they are all suspended sales akin to hypothecations (or, in the case of the menein contracts, hypothecations likened to suspended sales).

At this point, only isolated documents remain to be considered. A quite remarkable one, and so far the closest that the papyri come to a true title-transfer

τούτων τέλη καὶ δεσπόζιν | αὐτῶν ὡς ἂν πράσεώς σοι γενομένης καὶ τὰ περιεσόμενα | ἀποφέρεσθαι καὶ ἑτέροις πωλεῖν καὶ χρᾶσθαι ὡς ἂν αἱρῇ | μηδεμιᾶς μοι ἐφόδου καταλειπομένης (P. Oxy. XXXIV 2722, 154 CE, ll. 25-29). In similar terms, including the sale reference, P. Oslo II 40 A (150 CE), ll. 11-14, P. Oslo II 40 B (150 CE), ll. 41-44. Uncertain, the very fragmentary P. Oxy. Hels. 31 (86 CE), ll. 15-18, and P. Coll. Youtie I 50 (2nd cent. CE), ll. 10-14. The entire clause is lost in P. Oxy. III 506 = MChr. 248 (143 CE), its place corresponding to the missing part of the document, that would connect fragments A and B.

[114] Prôtarchos was, in the time of Augustus, head of the Alexandrian tribunal to which contracts in form of synchorêsis, i.e. fictitious court agreement, were formally submitted. A sizeable number of synchorêseis addressed to him was found in the early twentieth century as part of the mummy cartonnage of Abusir el-Melek, and published in BGU IV (1050-1060, and 1098-1184; adde SB XX 14375 and SB XXIV 16073), cf. Schubart 1913. This archive is our best source of information for the legal practice in Egypt in the earliest Roman times.

security, is BGU IV 1158 = MChr. 234. This is a 9 BCE synchôrêsis whereby a Roman woman, Cornelia Tatia, agrees that upon payment of the 80 drachmas owed to her by her debtor, Aulus Cornelius Idaius, she shall retransfer (antiparachôrêsein) to him the five arouras that she had received from him in parachôrêsis (ll. 4-8).[115] The need to perform an antiparachôrêsis to redeem the security makes it clear that the debtor's initial parachôrêsis had not been a suspended cession, but had perfected a full transfer of title to the creditor.

The contract considers still two further scenarios: if Cornelia refuses to perform the antiparachôrêsis despite the debtor being ready to pay, he will be entitled, upon deposit of the sum at a bank to her name, to the κρατεῖν and κυριεύειν over the five arouras, undisturbed as before (ll. 21-24); if, instead, he does not pay within the term:

> ἐὰν δὲ τοῦ χρό(νου) ἐνστάντο(ς) ὁ Ὧλος μὴ ἀποδιδῷ |[13] τὰς τοῦ ἀργυ(ρίου) (δραχμὰς) π, μένε(ιν) περὶ ἑ̣ατ(ὴν) \Κορν(ηλίαν)/ τὴν ἐξουσία(ν) καὶ ἐγλογὴ(ν) ἑαυτὸν |[14] πράσσειν τὸ κεφά[λ]αιο(ν) ἢ ἀντὶ τούτου κρατ(εῖν) καὶ κυριεύε(ιν) τῶν παρα|[15]κεχωρη(μένων) αὐτῇ καθὼ[ς] πρόκειτ(αι) μὴ προσδεηθε(ῖσαν) μηδεμιᾶς |[16] διαστολῆ(ς) ἢ προσκλή(σεως)
>
> If when the time arrives Aulus does not return |[13] the eighty silver drachmas, the power and choice shall remain with the same Cornelia |[14] to exact from him the capital or in its stead to have power and dominion over the (arouras) |[15] transferred to her as aforesaid without the need for any |[16] notice of payment due (diastolê) or summons (prosklêsis).

Exemption of trial and notice is not uncommon in Roman times in ordinary hypothecations.[116] Agreements of this kind dispense merely, as here, with diastolê

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[115] In the papyri, parachôrêsis refers most often to a cession that cannot be properly styled as a sale, either because the cession is not made for a price (but as a donation, or as a transfer in lieu of payment), or, more typically, because its object is not strictly speaking susceptible of ordinary private property: thus, catoecic land, royal land, or temple land, are not properly ‚sold', but ‚ceded', even though this cession is to all practical purposes equivalent to a sale. On parachôrêsis in general, Rupprecht 1984, with lit. In our case, though, the term choice may not be due to the type of land or the cause of the transaction: the synchôrêseis in BGU IV, in fact, refer to every transfer as parachôrêsis, even when it is an ordinary sale of ordinary property: Schwarz 1911: 36 n.5.

[116] In the form μὴ προσδεομένοις ἀνανεώσεως ἢ διαστολικοῦ ἢ ἑτέρου τινὸς ἁπλῶς, it appears as an almost constant feature of the contracts from Hermopolis: P. Flor. I 81 (103 CE), l. 11, P. Strasb. I 52 (151 CE), l. 7, P. Flor. I 1 (153 CE), l. 6, but cf. P. Brem. 68 (99 CE), where the clause is not included. A similar clause, [χω]ρὶς διαστολῆς καὶ ἐπ̣ανγ̣ε̣λ̣είας, is attested in Fayum, in P. Bas. 7 = MChr. 245 = SB I 4434 (117-138 CE), l. 18; cf. also χωρὶς δ̣ι̣αστολῆς καὶ παρανγελίας καὶ [...], in SB I 5168 (after 143-144 CE, unknown provenance), l. 30.

(the notice of payment due that initiated execution), its notification to the debtor, and any summons to ordinary trial (epangelia, parangelia, prosklêsis), and often also with ananeôsis (the renewal of the security beyond the initial term). They do not dispense, instead, with execution as such: the usual embadeia procedure was still necessary in all these cases. For this reason, the inclusion of the clause in our document would seem to suggest that despite the property having been transferred to the creditor, the debtor still occupied the land: why would otherwise a simplified execution procedure be agreed upon?[117] And yet, such conclusion would be far from certain: P. Fouad I 44 (44 CE Oxyrhynchos), for instance, is a loan with enoikêsis where the general praxis covering for the breach of the enoiketic agreement as such is followed by a forfeit clause for the case of unpayment of the capital; the terms of this forfeit clause are quite close to those of the menein contracts, and they include, as BGU IV 1158, exemption of diastolê and prosklêsis, despite the fact that the creditor would be occupying the house.[118]

Intriguingly, some of the keywords and traits of the later menein contracts (supra V) are prefigured in BGU IV 1158: thus, the choice (ἐκλογή) between execution (πράσσειν) and the κρατεῖν καὶ κυριεύειν of the guarantee; thus, above all, the term μένειν itself, although referred here to this choice, and not to the property. Yet, only the language resembles that of the menein contracts. The legal situation is completely different, and at the present state of our sources, an unicum. It is the closest to the dynamic of a Roman fiducia cum creditore that we find in the papyri, and the fact that the parties are Romans might seem enticing, but the form of the document (a synchôrêsis) and many aspects of its content (parachôrêsis, diastolê) are peregrine, when not at odds with the Roman legal mentality: so, especially, the idea that upon depositing the sum the debtor is not merely entitled to claim back his property, but apparently resolves ipso iure the cession. This aspect of the agreement creates the paradox that the antiparachôrêsis, necessary to recover the property upon payment, becomes instead superfluous upon consignation; unanswered remains the question whether an antiparachôrêsis would be necessary if Cornelia chose, instead of the security, to proceed in execution for the capital.

Intriguing is also the fact, rightly underlined by Hans-Albert Rupprecht,[119] that our document was drawn up half a year after the initial parachôrêsis took place.[120] Clearly, that initial parachôrêsis deed (a synchôrêsis, as the present one) did not contain any provision as to the return of the property. This suggests that the initial

[117] In this sense, Schwarz 1911: 37-38.

[118] P. Fouad I 44 (44 CE Oxyrhynchos), ll. 24-27: [ἐ]ὰν δὲ τοῦ χρόνου ἐνστάντος μὴ κομίσῃ|[τ]αι ἡ Διδυμη τὸ π[ρο]κίμενον κεφάλαιον, κρατεῖν αὐτὴν καὶ κυρι|[ε]ύειν τοῦ σημαινομένου μέρους τ[ῆς] οἰκίας καὶ διοικεῖν περὶ αὐ|τοῦ ὡς ἐὰν αἱρῆται, χωρὶς διαστολῆς καὶ προσκλήσεως.

[119] Rupprecht 1995: 431.

[120] Whether the debt had been contracted at the same time, we do not know: in truth, we ignore even the cause and nature of the debt.

intention of the parties may not have been to secure a debt, but to perform a definitive cession, maybe as a datio in solutum, and that only now the creditor grants a new term for payment and, with it, a chance to redeem the property. If this were the case, the document would not attest an actual title-transfer security, but a completely singular occurrence, the result of a change of circumstances in this specific instance.

At any rate, the document is so far an unicum, insufficient to conjecture behind it a standard procedure of guarantee through parachôrêsis. None of the parallels conjectured by Schwarz within the same Prôtarchos archive resists scrutiny:[121]

a) BGU IV 1059 (undated), and 1130 (4 BCE) seem suspicious to Schwarz because they leave unspecified the amount that the seller declares to have received as a price.[122] Yet, this is hardly enough to conjecture that they are antiparachôrêseis as the one foreseen in BGU IV 1158 for the redemption of the property. Even if we accepted that the lack of a specific amount may hint to a lack of actual price, many other possibilities would remain open, a donation being the most obvious one.[123]

b) Schwarz mentions also BGU IV 1171 (10 BCE), where a certain Zamanos, to whose name a 1000 dr. loan had been assigned by parachôrêsis, restores the original creditor, almost a year later, to his full rights: in this case, not through antiparachôrêsis, but declaring ineffective the initial assignment: because, we read, it had been made κατὰ πίστιν.[124] Schwarz, as others before and after him,[125] saw here a form of pignus nominis: the loan had been assigned to Zamanos as a security, the original creditor being Zamanos' debtor; a year later, the latter paid his debt, and Zamanos returned the credit to him. The document, thus understood, would provide a striking parallel to BGU IV 1158: fiduciary guarantee would have been so common, at least in the early Roman Alexandrian practice, that it was applied to credit as well as property.

Tempting as this interpretation may seem, the document offers, in truth, little support for it. If it had been by paying his own debt that the lender recovered his rights, he would have wanted to have thus much acknowledged by Zamanos. Yet,

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121 Schwarz 1911: 37 n. 3, and 40 n. 1.

122 No argument in favour of a loan can be drawn, instead, from the term κεφάλαιον in BGU IV 1059, l. 6: κεφάλαιον, παραχωρητικόν, are the usual terms for the price in the parachôrêseis of BGU IV, instead of τιμή: Schwarz 1911: 36 n. 5 i.f.

123 Among the other peculiarities noticed by Schwarz in these documents, only the asphaleia in BGU IV 1059 l. 18, that the buyer somehow had before the sale, may carry some weight in support of his suspicion. Yet, it is difficult to imagine that a creditor would have secured the debtor against the loss of the pledged slave (here, by death or flight), when in all our documents the kindynos clause is invariably stipulated in favour of the creditor.

124 BGU IV 1171: ϙυν[χ]ω|7ροῦμεν ... |8 ... [εἶ]ναι \. . . ./ ἄκυρον ἣν ἀνήν[εγκεν] |9 εἰς αὐτὸν ὁ Στέ[φ]ανος ... |10 ... συνχώρησιν ... |12 ... παρα[χ]ωρήσεως δανείου ... |17 ... ἕνεκα τοῦ κατὰ πίστιν εἰ|18ς αὐτ[ὸ]ν Ζαμα[νο]ν ταύτην γεγονέναι |19 καὶ ἐξεῖναι αὐτῶι Στεφάνῳ πρά|20σειν τὸν ὑπόχρεον τὸ δάνειον καὶ |21 τοὺς ὀφειλομένους τόκους καθὼς |22 κα[ὶ] τὸ πρότερον.

125 Rabel 1907: 358-359; Mitteis 1912a: 136; Wolff 1940: 622; Schmitz 1963: 52-64.

the document contains no reference to any such payment, or, for that matter, to the supposed debt itself. The only hint to the purpose of the credit assignment are the words κατὰ πίστιν. The expression reappears in other first and second century papyri where a loan is documented to the name of someone else than the lender.[126] In all of them, as in our case, the lender eventually recovered his full rights: not through parachôrêsis (since he also had performed none), but through a document of disclosure, where the nominal creditor 'acknowledged the pistis', that is, the fiduciary nature of his position, and that the credit belonged in truth to the lender.[127] Significantly, none of these documents present the lender and the fiduciary as debtor and creditor: no debt between them is ever mentioned. When something about their relation is disclosed, they appear as relatives[128] or friends: as a friend of the lender, in fact, is the nominal creditor emphatically referred to in two occasions in the trial documented in P. Mil. Vogl. I 25 (127 CE Tebtynis).[129]

All this seems to point to a trustee, rather than a creditor: a trustee, as Gradenwitz suggested,[130] akin to a Roman adstipulator,[131] whom we allow to acquire full rights as creditor, so that he is fully entitled to act in all respects in our place. In truth, this practice is much more dangerous than the Roman adstipulatio (which was unsafe enough to induce a legislative intervention protecting the creditor from breach of trust):[132] here, we bestow our full rights on someone who appears formally as sole creditor, not just as creditor together with us. In the Roman Republic, adstipulatores

[126] SB III 6663 (6-5 BCE unknown provenance); P. Flor. I 86 = MChr. 247 (after 86 CE Hermopolites); P. Oxy. III 508 (102 CE Oxyrhynchos); CPR VI 1 (125 CE Ptolemais Evergetis), ll. 16-17; P. Mil. Vogl. I 25 (127 CE Tebtynis); PSI XV 1527 (after 161 CE Oxyrhynchos). For a more detailed discussion, Alonso 2012: 9-16, with lit.

[127] P. Flor. I 86 = MChr. 247 (after 86 CE Hermopolites), l. 9-12: ἀκολού|[θως] ... δ[η]μοσίῳ χρηματισμῷ ... | ... ἐξομολογουμένη τὴν πίστην τῶν αὐτῶν τριῶν συνγρα|[φῶν]. We have an example of such disclosure document in P. Oxy. III 508 (102 CE Oxyrhynchos): |5 ὁμολογεῖ Στέφανος ... |8 Ἡρακλᾶτι ... |10 ... γεγονέναι ἐπ' ὀνόματος τοῦ ὁμολο|11γοῦντος Στεφάνου κατὰ πίστιν δάνεια δύο.

[128] Two brothers, in CPR VI 1 (125 CE Ptolemais Evergetis), l. 17.

[129] In the first intervention of the plaintiff's advocate: ἐποίησεν τ[ὰ] τῆς παραθέ[σεως] γράμματ[α εἰ]ς ὄνομα [φί]λ[ο]υ | [ἑ]αυ[το]ῦ Ἀ[τρ]η[νοῦ] τινος γραφ[ῆ]ναι (col. II, ll. 16-17); and in one of the answers of the plaintiff himself: [ο]ὔκ ἐστ[ιν Ἀτρηνὸ]ς ἀλλὰ Δεῖος Ἀτρηνοῦ, φίλ[ος μου,] | [εἰς] ὃν ἐποίησα τὸ χε[ι]ρ[ό]γραφον [γραφ]ῆναι (col. III, ll. 19-20). The second φιλ[...] makes Vogliano's integration close to certain.

[130] Gradenwitz 1906.

[131] In Roman law, an adstipulator was a trustee of the creditor, invested (by receiving the same solemn promise as him) with full rights as a co-creditor, so that he could receive payment, and also claim the debt in his place. The figure is nowhere to be found in Justinian's compilation, since it had long before fallen into desuetude: our knowledge comes from Gaius' Institutions: Gai. 3.110-114.

[132] Such was the aim of the 3rd cent. BCE lex Aquilia in its second chapter, as we know through Gai. 3.215-216: a claim was granted to the creditor against the adstipulator who defrauded him by releasing the debtor without payment. Corbino 2004, with lit.

had been convenient as long as the legis actiones were in force, since this old procedure excluded representation in trial.[133] Why creditors would accept an even more exposed position in Roman Egypt, where representation was perfectly possible, also in court, and, in fact, through direct agency, we do not know. An incident in P. Mil. Vogl. I 25, though, shows how this practice could easily be made much less dangerous for the creditor: at a certain point, the strategos presiding over the trial wonders at the fact that the lender did not take the precaution to request from the beginning the document of disclosure where the creditor κατὰ πίστιν acknowledges to be a mere trustee.[134] This precaution, even though it was not taken in the case at hand, nor in others that have arrived to us,[135] would have been enough to safeguard the creditor's position, allowing him to enforce his rights at any time, while leaving the formal creditor in the position to act for him if it were necessary.[136] Crucially for us: the fact that the strategos, visibly familiar with this type of transaction, deems natural to obtain the document of disclosure from the beginning, confirms our impression that the lender merely commends his credit to a trustee, not to his own creditor in guarantee. This was most likely also the case in BGU IV 1171.

c) Despite Schwarz, it is quite certain that the misthoprasia in BGU IV 1157 (10 BCE Alexandria) is not a second instance of this type of 'Sicherungsübereignung'. The convoluted story documented in this papyrus[137] started with (a) a loan synchôrêsis received from three debtors by a certain Ammonios in 26 BCE (ll. 4-7), and (b) his

[133] Gai. 4.82; Inst. 4.10pr.; Ulp. 14 ed. D. 50.17.123pr. Kaser-Hackl 1996: 62-63, with lit. The later decadence of the adstipulatio was quite likely related to the admission of representation in trial under the formulary procedure.

[134] P. Mil. Vogl. I 25, col. III, ll. 30-33: ὁ στρατηγὸς Δημη|τρείῳ· διὰ τί οὐχ ἅμα [το]ῖς το[ῦ Γε]μελίνου γράμ[μ]ασιν καὶ παρὰ | τοῦ Δείου ἐξομολογουμένου τὴν πίστιν τὸ χιρόγραφον | εἴ̣λ̣ηφας;

[135] P. Oxy. III 508 is a document of disclosure issued in August 102 CE, regarding two loans that had been granted at the beginning of 99 CE and the end of 100 CE. In P. Flor. I 86 = MChr. 247, the document of disclosure was issued only in October-November 86 CE, regarding three loans that had been granted between February 82 CE and August 85 CE; the debtor had defaulted on all of them, the term for the last one being March-April 86 CE. The rest of the documents do not give enough chronological information. In the limited cases that have arrived to us, therefore, the course of events that the judge of P. Mil. Vogl. I 25 considers normal, i.e. the issuing ab initio of the disclosure document, is in truth never attested.

[136] In this sense, Gradenwitz's comparison to the Roman adstipulatio is particularly apt, since here too we find two people in the position to claim the debt: the nominal creditor, with the original loan document, and the true lender, with the disclosure document (and another copy of the original loan). BGU IV 1171 is exceptional in this respect, since this deed deprives the fiduciary of his entire legitimation as creditor, which until then corresponded solely to him: the fact that the debtor, Herod, acts as a consenting party both in the initial parachôrêsis (ll. 9-10: συ̣ν̣ε̣υ̣δ̣ο̣κ̣ο̣ῦ̣ν̣|τος τοῦ Ἡ̣ρ̣ώ̣δ̣[ου]) and in its later cancellation (ll. 4-5: παρόντος καὶ σ̣υ̣ν̣ε̣υ̣|δ̣ο̣κ̣ο̣ῦ̣ν̣τ̣ο̣ς [τῇ]δ[ὲ τῇ] σ̣υ̣ν̣χ̣ωρήσει Ἡ̣[ρώδου]) makes it further unlikely that the parties envisaged in practice a simultaneous legitimation of both lender and fiduciary.

[137] On the document, Rathbone 2007: 587-589, with lit.

reciprocal promise, in separate synchôrêsis, to grant them upon payment, the lease-sale (misthoprasia) of a skiff belonging to him (ll. 7-9). In 11 BCE, as documented in (c) a third synchôrêsis, part of the loan was paid by two of the debtors, and with their consent a third share of the skiff was given by Ammonios in misthoprasia to their co-debtor, son of one of them (ll. 9-13). BGU IV 1157 is (d) a fourth synchôrêsis (or draft thereof), whereby having received from the same two debtors the remaining capital and interest, Ammonios grants to them, from April 10 BCE, misthoprasia for fifty years on the remaining two thirds of the skiff, thus finally cancelling the two synchôrêseis that sixteen years before had created the reciprocal debt.

Schwarz understood the relation between the loan and the skiff misthoprasia as one between debt and security: as in BGU IV 1158, the creditor would have received the skiff from the debtors through fiduciary misthoprasia, promising in 'b' to return it to them upon repayment of the debt, as he eventually does in 'c' and 'd'. The hypothesis is untenable: a) unlike a parachôrêsis, a misthoprasia is not formulated as a definitive cession: the restoration of the debtor's position would have required cancelling the existing contract, not adding a new one in the opposite direction; b) BGU IV 1158 explicitly refers to the initial parachôrêsis - and to the future one, emphatically, as antiparachôrêsis; in 1157, instead, there is no trace of a previous misthoprasia by the debtors in favour of Ammonios; c) that there had been none is strongly suggested by the fact that the skiff is presented from the beginning purely and simply as belonging to Ammonios (τ[ῆ]ς ὑπαρχούσης αὐτῷ σκάφης, l. 8).

A much better explanation was proposed by Pringsheim[138] and is today generally accepted: the first synchôrêsis was not an actual loan secured by the skiff, but a fictitious loan allowing Ammonios to claim its price. The second synchôrêsis formalised Ammonios' reciprocal promise to grant misthoprasia upon receiving the money.[139] Together, their effect is equivalent to that of a purely executory lease-sale, where both parties make themselves reciprocally liable although no performance has yet taken place.[140] Unusual seems only the large amount of time that passed between this

[138] Pringsheim 1950: 262-265.

[139] Only this second synchôrêsis is referred to without a date: quite likely, as commonly assumed (Rathbone 2007: 588) because it had been executed together with the first one.

[140] Rathbone 2007: 589, as Vélissaropoulos before him, sees as ‚highly implausible' that ‚the purchasers ... accepted liability for a fictive loan if they did not gain any legal right to use the boat'. For this reason, he imagines the second synchôrêsis as an effective misthoprasia, not merely the promise of one. This is incompatible with the text. The second synchôrêsis, in fact, is unequivocally presented as an agreement to grant, in the future, upon repayment of capital and interest, a synchôrêsis peri misthoprasias: κατὰ \δὲ/ τὴν ἑτέραν ὡμολόγηκεν ὁ Ἀμμώνιος κομισάμενος ταύτας καὶ τοὺς τ̣ό̣[κους] | ἀνοίσειν εἰς τοὺς τρεῖς συνχώρησιν περὶ μισθοπρασίας (ll. 7-8). Rathbone's interpretation leads him to difficulties regarding the third synchôrêsis: why would one of the debtors receive misthoprasia on one third of the skiff in 11 BCE, if all three had already received it fifteen years before? His suggestion that the debtor in question ‚for reasons unknown, split from the other two', does not help: a share of 1/3 is what he would have had from the beginning if misthoprasia had been granted to all three; this

reciprocal contract, in 26 BCE, and its fulfilment, fifteen years later, between 11 and 10 BCE.

VII. Other Late Ptolemaic and Early Roman Documents

The remaining evidence from the Late Ptolemaic and Early Roman time is rather scant, and in some cases clearly related to the traditions already studied:

a) This is most likely the case of two Fayum documents where a sale is mentioned together with a loan, usually listed for this reason as evidence of a Greek title-transfer security: SB VI 9405, and P. Lond. II 358.[141]

In SB VI 9405 (75 BCE Ibion Eikosipentaruron), so-called P. Desrousseaux,[142] Petesouchos gives receipt to Onnôphris upon payment of a debt (in barley) contracted κατὰ συγγραφὴν δανείου ἐξαμάρτ[υρον] (l. 9), for which a cow had been hypothecated in a separate sale document: περὶ ὧν καὶ [ὑπ]έθεντο οἱ αὐτοὶ τῶι Πετεσούχωι καθ' ἑτέραν ἐξαμάρτυρον ὁμολογίαν πρά[σεως] βοὸς [θ]ηλείας πρὸς ἀσφ[ά]λειαν τοῦ δανείου (ll. 11-13). The formulation of the hypothec as a sale, and the execution of sale and loan as separate contracts points to the native Egyptian tradition attested in late Ptolemaic Pathyris and Krokodilopolis (supra IV) and in early Roman Fayum (supra III). As in the Pathyrite and Fayum examples, the parties in SB VI 9405 are unmistakably Egyptian,[143] even if both documents (and later the receipt itself) are

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new synchôrêsis would have been completely useless for him. Furthermore, the idea of a ‚split' behind the 11 BCE synchôrêsis is difficult to conciliate with the fact that precisely those other two (one of them his father, the other maybe his uncle) are the ones that pay for his share in that very same 11 BCE contract: Rathbone, aware of the difficulty, feels forced to conjecture that the drafter wrote their names by mistake ‚because they were uppermost in his mind as the two involved in the new contract'. Rathbone is led to this snowballing misinterpretation of the document by his impression that the debtors would not have accepted liability before gaining any right on the boat. The implausibility that Rathbone sees here is all imaginary. The transaction is not more unimaginable than a modern (or Roman) sale perfected by mere consent, without payment or delivery, whereby the buyer accepts to be bound to pay the price even though he has not yet received the item. Consensual sale being unavailable in the Greek tradition, the parties attain the same result through reciprocal synchôrêseis. Fictitious loans in exchange for a future performance are not unheard of in the papyri: cf. P. Dion. 11-12 (108 BCE, Hermopolites), on which infra X sub ‚g', in Alonso 2012: 17-30. Our document, in fact, shows how legal traditions that ignore consensual contracts may achieve a similar effect through reciprocal promise, as, since Jhering 1865: 190-192, is often suspected may have been the case in earlier Roman law.

141 The former is characterised as Sicherungsübereignung by Rupprecht 1995: 430; the second, with some hesitation, by Mitteis 1912a: 135 n. 1, Pringsheim 1950: 125 n.1, Herrmann 321, and Rupprecht 1995: 430 n. 51.

142 Jouguet 1937.

143 The creditor, Petesouchos son of Pekôsis; the payer (a relative of the debtors), Onnophris; the debtors, Pachratês, whose mother was a Tekôus daughter of Apollonios alias Hôros, and the wife of Pachratês, Thais alias Taêsis, daughter of Hermônis alias Petermou(this/thiôn).

executed in Greek form, as syngraphai hexamartyroi.[144]

Also the χειρόγραφον πράσεως [καὶ ὑ]ποθήκης κα(ὶ) δ[αν]είου mentioned in P. Lond. II 358 (p. 171) = MChr. 52 = Jur. Pap. 83 (150-154 CE Soknopaiu Nesos), that Stotoêtis was violently forced to draw up for his adversaries,[145] seems, in the terms it is described, a document of sale and loan in the native tradition still attested in Soknopaiu Nesos and Tebtynis in early Roman times (supra III).

b) Different is the case of BGU II 650 = WChr. 365 (46-47 CE Arsinoites). Here, a certain Potamiaina addresses the procurator usiacus in charge of the Imperial 'Petronian' domain. Her petition concerns the confiscated property of a misthôtês. She states that she had applied 'in the auction for the sale or hypothec' of some catoecic land belonging to him: ἐπεὶ προσῆλθον ἀγορασμῶι ἢ καὶ ὑποθήκῃ κλήρου | κατοικικοῦ ἀρουρῶν ἐννέα ἡμίσου[ς] τετάρτου (ll. 6-7).

The peculiar uncertainty between sale and hypothec that caught the attention of Rabel and Mitteis[146] is perfectly understandable if, as it seems quite likely, the property sold in certain auction sales was redeemable by the former owners, as it was probably the case when praedia subsignata were sold ex lege praediatoria by the aerarium or a municipium,[147] and certainly after execution of private debts in Egypt and maybe the East in general.[148] If redemption eventually takes place, it does not

[144] For the late Ptolemaic form of this type of document, with the inner text reduced to a brief summary of the transaction, and the body of the contract displaced to the outer text, Wolff 1978: 64-71. For the origin -in any case not native Egyptian- of the syngraphê hexamartyros, Wolff 1978: 59-63.

[145] The alleged aggressors were the father and brother of the woman in whose favour the document was given; as debtor/seller figured, we are told, the sister of Stotoêtis: ἐπανανκάσαι με μετὰ ὕβρεων | καὶ πληγῶν ἐγδόσθαι γράμματα χειρογράφου πράσεως [καὶ ὑ]ποθήκης κα(ὶ) δ[αν]είου δρα[χμῶ]ν | τετρακοσίων ἐξ ὀνόματος τῆς ἀδελφῆς μου, μὴ συνθ[εμέ]ν[η]ς αὐτῆς, ἀλλὰ καὶ ἀπούσης, εἰς | ὄνομα τῆς θυγατρὸς Σωτοῦ Σατυριαίνης (ll. 8-11).

[146] Rabel 1907: 359: ‚das Gesuch einer Frau, die einen Grundstücktanteil erwarb und selber nicht zu wissen scheint, ob es Kauf oder Pfand war'. Mitteis 1912a: 135.

[147] Ex lege praediatoria, as opposed to in vacuum, cf. leges Malacitana and Irnitana §63-65, Suet. Claud. 9. The difference is far from clear, but the connection between lex praediatoria, redemption (ex Cic. II Verr. 1.54-55.142), and usureceptio (ex Gai. 2.61), proposed by Mommsen 1855: 473- 477 (1905: 364-367), is still widely accepted: cf. Mentxaka 2001: 91-93, and n. 152, with lit.; Cuena Boy 2007-2008. Ample discussion in Sethe-Partsch 1920: 659-670.

[148] A right of redemption of the private debtor during and after execution is amply documented in the papyri, both for unsecured debts and for items that had been given in hypothec or hypallagma: cf. the trial before Volusius Maecianus, the Roman jurist, as prefect in P. Oxy. III 653 = MChr. 90 (ca. 161 CE Oxyrhynchos), and also SB XVI 13060 (187 CE Arsinoites), P. Ryl. II 176 (200-210 CE Hermopolis), and P. Lond. III 1164 D (p. 162) = SB XX 15188 (212 CE Antinoopolis). Different is the case of P. Ryl. II 119 (62-66 CE Hermopolis), where no execution seems to have taken place, but a mere embargo on the produce of the land. On this redemption, cf. Schwarz 1911: 112-113, Raape 1912: 81-84, Jörs 1918: 55-56. Gord. C. 8.27.7, and Diocl. C. 8.19.2, referred to hypothec with ius distrahendi, not to forfeit, flatly reject any redemption after execution.

seem far-fetched to compare them to hypothecations (with the buyer advancing the money owned by the debtor, virtually 'as a loan' to the latter, on the guarantee of the property). The analogy is quite natural, and does not imply a general practice of guarantee sales or title-transfer security in first century Egypt.

c) Close in certain respects to the menein contracts is the security in P. Oxy. II 270 = P. Lond. III 793 descr. = MChr. 236 = Sel. Pap. I 57 (94 CE Oxyrhynchos). In this document, on which much has been written,[149] a debtor gives safeguard to her guarantor that he will not be called in execution for her debt:[150] if she fails to pay to the creditor when the term arrives, she forfeits to the guarantor the same land that she had hypothecated to secure the loan:[151] κυριε[ύ]ειν αὐτὸν Σαραπίων[α] τὸν [καὶ Κ]λάρον τῶν προκειμένω[ν] ἀρουρῶν ... εἰς τὸν ἅπαντα χ[ρ]όν[ον ὡ]ς ἂν πράσεως [αὐτῷ γενο]μένης (ll. 31-34). Even though the term μένειν is not used, and κυριεύειν replaces the usual double reference to κράτησις καὶ κυρεία, we find

[149] Among the older lit.: Bortolucci 1905: 291-293; Rabel 1907: 363; Weiß 1909: 20-21; Manigk 1909b: 318-321; Schwarz 1911: 23-24; Raape 1912: 50-51, 58, 63-64, 71, 75, 93-94; Sethe-Partsch 1920: 592-597. Cf. now Schanbacher 2002a, and Wolff-Rupprecht 2002: 92-93.

[150] Among the parallels, BGU IV 1057 = MChr. 356 (13 BCE Alexandria), ll. 18-33, and P. Tebt. II 392 (134-5 CE Tebtynis), both equally formulated around παρέξασθαι ἀπαρενόχλητον καὶ ἀνείσπρακτον / ἀπερίσπαστον. The same safeguard, in the same terms, is invoked in P. Oxy. II 286, ll. 9-13: in this case, the petitioner seems to have functioned as a guarantor, but her formal role in the original loan document was that of a borrower, quite likely on behalf of the Heron against whom the petition is addressed (a similar practice of ‚privative' intercessio was often dealt with by the Roman jurisprudence in the context of the application of the senatusconsultum Velleianum: Ulp. 29 ed. D. 16.1.4, D. 16.1.8.14, Paul. 16 resp. D. 16.1.29pr.)

[151] In general, hypothecs are contracted in the papyri in such terms that the creditor accepts the security in lieu of payment: the hypothec absorbs the debtor's liability, and the creditor's praxis is limited to those cases where the hypothec is totally or partially lost, by accident or eviction. This is the so-called principle of ‚reine Sachhaftung'. In our case, the hypothec received by the creditor does not seem contracted along these lines: upon default, the creditor must have been able to choose freely between the hypothecated land and the praxis, also against the guarantor: if the latter possibility had existed only when the hypothec was useless, the security given to the guarantor for that case on the same property would have been utterly pointless. Such freedom of choice, unattested in hypothecs, distinguished instead (supra V sub ‚e') the menein-contracts: whether such had been the contract that secured the loan we do not know, since our document reproduces that security only in the part describing the land; ἐπὶ ὑποθήκῃ in l. 16 does not completely exclude it, cf. the same expression for a menein contract in P. Oxy. XXXIV 2722 (154 CE), l. 69 (supra n. 112). Partsch, in Sethe-Partsch 1920: 594, believes that the concurrence of guarantor and hypothec in P. Oxy. II 270 follows the Demotic model attested in P. Hauswaldt 18. This is unlikely. As Partsch himself underlines, the Demotic guarantors in P. Hauswaldt 18 seem to secure the debtor's duties as a seller regarding the land, rather than the repayment of loan: it is in direct connection with these duties that they are mentioned in the sale (ll. 8-9), and only regarding them that they reappear in the cession (ll. 13-14). Nothing suggests that the creditor had here free choice: as in all other preserved ‚Kaufpfandverträge', his right seems reduced to the security. No Demotic model seems to exist, therefore, for the free choice of the creditor in P. Oxy. II 270.

the same turn of phrase εἰς τὸν ἅπαντα χρόνον, ὡς ἂν πράσεως γενομένης characteristic of the menein contracts (supra V).

The sale analogy, in particular, caught the attention of Josef Partsch, for whom it was clearly modelled on the Demotic practice of guarantee sales. This cannot be excluded, but it is much less certain than in the case of the Pathyrite interrupted sales (supra IV) or the Fayum sale-loan contracts (supra III). The Pathyrite and Fayumic practice, in fact, attests a preference for the form of the suspended sale among native Egyptians, also in their Greek documents, in cases where an ordinary Greek hypothec would have been perfectly possible. In P. Oxy. II 270, instead, a hypothec would have been out of the question, because the property had already been hypothecated to the creditor:[152] multiple hypothecations are notoriously non-existent in the papyri, and this very likely because incompatible with forfeit, and for that reason usually excluded in the hypothec contracts themselves.[153] The suspended sale construction seems here less an option than a necessity:[154] and, in fact, as Rabel noticed, it reappears decades later in the exact same context, securing the position of the guarantor, in a case discussed by Cervidius Scaevola.[155] Multiple hypothecations being perfectly

[152] In this sense already Rabel 1907: 364 and n. 2.

[153] Cf. Rupprecht 1997a. Further hypothecation is in most cases explicitly excluded by a μὴ ἐξέστω-clause (μὴ ἐξέστω αὐτῇ πωλεῖν μηδ' ἑτέροις ὑποτίθεσθαι μηδ' ἄλλο τι περὶ αὐτῆς κακοτεχνεῖν ὑπεναντίον τούτοις τρόπῳ μηδενὶ ἢ τὰ παρὰ ταῦτα ἄκυρα εἶναι: P. Flor. I 1, 153 CE, Hermopolis, ll. 8-9), by a παρέχεσθαι-clause (παρέχεσθαι δὲ αὐτὸν τὴν [ὑπ]οθήκην καθαρὰν καὶ ἀνέπαπον καὶ ἀν[επι]δάνειστον ἄλ[λ]ου δαν[είου] καὶ πάσ[η]ς ὀφειλ[ῆς κ]αὶ μηδένα αὐτῆς ἐμπ[οιο]ύμενον τρόπ[ῳ μη]δεν[ὶ]: BGU III 741, 143 CE Alexandria, ll. 36-41; sometimes concurring with μὴ ἐξέστω, cf. P. Bas. 7, 117-138 CE Arsinoites, ll. 15-16, and 21-23), by an explicit authorisation to register the hypothec as katochê in the bibliothêkê enktêseôn (P. Oxy. XVII 2134, after 170 CE Oxyrhynchos, ll. 24-26), or by the hypothecated goods being deposited and sealed by both parties (so, the natron in the quite peculiar P. Genova II 62, 98 CE Oxyrhynchos). Among all preserved hypothecs, such arrangements are lacking only in P. Brem. 68 (99 CE Hermopolis), SB I 4370 (229 CE Herakleopolis); also, remarkably, outside of Egypt (cf. P. Babatha 11, P. Euphrates 13, and the general hypothecations in P. Dura 17, 18, 20-23).

[154] In truth, the sale construction provides a solution only if understood under condition of the guarantor paying or suffering execution for the debtor (as, significantly, in Scaevola's interpretation, infra n. 155), rather than literally as formulated in the document, under mere condition of the debtor's default: a literal interpretation, in fact, would lead upon default to a clash between the right of the creditor, if he chooses the hypothec, and the right acquired by the guarantor as a buyer.

[155] Scaev. 7 dig. D. 18.1.81pr.: Titius cum mutuos acciperet tot aureos sub usuris, dedit pignori sive hypothecae praedia et fideiussorem Lucium, cui promisit intra triennium proximum se eum liberaturum: quod si id non fecerit die supra scripta et solverit debitum fideiussor creditori, iussit praedia empta esse, quae creditoribus obligaverat. quaero, cum non sit liberatus Lucius fideiussor a Titio, an, si solverit creditori, empta haberet supra scripta praedia. respondit, si non ut in causam obligationis, sed ut empta habeat, sub condicione emptio facta est, et contractam esse obligationem. Cf. also Marcian. form. hyp. D. 20.5.5.1. On the text, Burdese 1949: 121-123; further lit. in Schanbacher 2002b, whose own conclusions cannot be followed. Scaevola's answer, as it has arrived to us, has long been a crux. The alternative ‚si not ut in

possible under Roman law, there is little doubt that Scaevola confronts here, as often, a non-Roman practice, probably not limited to Egypt, under which hypothec was avoided precisely because already granted to the creditor.[156]

P. Michael. 9 (ca. 92 CE Oxyrhynchites) is not, as it has been suggested,[157] another occurrence of the transaction attested in P. Oxy. II 270. The security is not given to a guarantor but to the creditor (a Roman, Gaius Annius Fuscus), and the main trait of P. Oxy. II 270, the sale analogy, is absent here. Most of the clauses regarding the security are lost, but the pignoration clause is close to that of the menein contracts, although without their characteristic μένειν: ἐὰν δὲ μὴ ἀποδοῖ τῇ προθε[σμίᾳ,] ἐξεῖναι τῷ Γαίῳ Ἀννίῳ Φούσκῳ καὶ τοῖς παρ' αὐ[τοῦ ἀντὶ] τοῦ π̣ρ̣ο̣κ̣ε[ιμένου] κεφαλαίου κρατεῖν καὶ κυριεύειν τοῦ ὑπάρχοντος [-ca.?-] μέρους πατρικῆς οἰκί̣ας (ll. 12-15).

d) P. Heid. II 219 = SB VI 9539 (100 CE Ptolemais Euergetis, Arsinoites) has been described as an 'apographê to the bibliothêkê enktêseôn for the acquisition of land in connection with a loan for 10 months', and thus a possible instance of

causa obligationis, sed ut empta habeat', is best understood as opposing sale to hypothecation: ‚obligatio' in the sense of ‚obligatio pignoris'. Problematic remains the final ‚contractam esse obligationem'. The obligatio fiduciae proposed by Rabel 1907: 363 n.1 would violate Roman law, by lack of mancipatio, as much as the will of the parties, adding to their suspensive condition an entirely unforeseen redemption right of the debtor. It is better to think, with Vangerow, that the obligatio contracta is that of the seller in the contract of sale (even though this requires us to accept that the same term, ‚obligatio', appears in the same sentence with two different meanings: a comparatively minor lapse in clarity in the usually cryptic Scaevola). This interpretation does not turn Scaevola's answer into a ‚sheer inanity' (Rabel): it underlines that, if the parties contracted a sale and not a hypothec, the guarantor (who is not in possession of the asset) does not have, once the condition of the sale is fulfilled, an actio in rem (as he would, if this had been a hypothec), but merely an actio empti against the debtor. Completely unrelated to the case in Scaevola and P. Oxy. II 270 are the jurisprudential texts and Imperial constitutions that discuss the position of the fideiussor as ‚emptor' of the pledges when he has paid for the debtor: Paul. 4 resp. D. 17.1.59.1 and D. 46.1.59, Marcian. form. hyp. D. 20.5.5.1, Sev. Ant. C. 2.20.1. The sale construction is here the mechanism through which the Roman jurisprudence avoids, pecunia soluta, the extinction of the actions to be transferred to the fideiussor: those in personam against the debtor, and those in rem on the securities. The same construction is applied when, despite the pledges, the creditor chooses to act against the fideiussor and is compelled to transfer the pledges to him (Pap. 2 resp. D. 20.5.2, Sev. Ant. C. 8.40.2pr.)

[156] Partsch's hypothesis that P. Oxy. II 270 is rooted in the native Egyptian tradition is far from finding confirmation in P. Berl. inv. 13528, published by Sethe as P. Bürgsch. 14 = P. Eleph. 6 (225 BCE Apollonopolis), despite Wolff-Rupprecht 2002: 92. The document is presented by Partsch merely as yet another Demotic instance of the guarantors receiving security, and, in fact, there is not much more in common with P. Oxy. II 270. In P. Bürgsch. 14, the security refers to the whole property of the debtor, not to specific property previously received as security by the creditor; it does not take the form of a sale; it is in fact not even granted by the debtor, but by the creditor, and therefore probably implies the surrender of the latter's execution rights; this means that, in truth, the declarants are not guarantors, but rather replace the debtor before a creditor who surrenders to them his execution rights against the the debtor.

[157] Wolff-Rupprecht 2002: 92-93.

title-transfer security.[158] The document is certainly an apographê, but referred to a mesiteia:[159] in first century Fayum, the term simply substitutes for hypothêkê in case of ordinary hypothecation of catoecic land, for the same scruple that, when such land is sold, makes it formally more accurate to speak of parachôrêsis instead of prasis.[160]

e) A much later document, P. Oxy. XIV 1703 (ca. 261 CE Oxyrhynchos), not traditionally taken into account in our context, contains a rather suspicious transaction: Aurelius Geminos cedes to Aurelius Apion a share on a house that the children in potestate of the former had bought through him from the same Apion to whom the property now returns:[161] ὁ[μ]ο[λογῶ] καταγεγραφέναι σοι ἀπ[ὸ] το[ῦ] |6 νῦν εἰς τὸν ἀεὶ χρόνον ὃ ἐώ[νη]ντε παρὰ σοῦ δι᾽ ἐμοῦ ο̣[ἱ ὑπο]|7χε̣[ίρι]ο̣ί μου υἱοὶ ... |12 ... [... τρί]τον μέρος οἰκίας διπυργιαίας. Unfortunately, only the beginning of the contract has survived, without any further information as to the nature of that first sale. The case may have just been that of someone forced by financial difficulties to sell, but fortunate enough that later, finding himself in a better economic situation, the buyer accepted his bid to buy the property back.[162] But a title-transfer security cannot be excluded, contracted ab initio with the agreement that the sold share would be redeemable by paying back the price. Some weight in this direction may have the seemingly premeditate replacement of the usual ὁμολογῶ πεπρακέναι by ὁμολογῶ καταγεγραφέναι, as if underlining that this redemption is not properly a sale.

VIII. Ônê en Pistei

Our search narrows now dramatically, leaving one main document to consider.[163]

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[158] Rupprecht 1995: 430.

[159] Ll. 8-9: π[ρ]ο̣ϙ̣α̣[πο]γράφομαι καὶ ἣν ἔσχον | μ̣ε̣[σι]τ̣είαν, instead of [εἰς ἀσφά]λ̣ειαν as in the original edition.

[160] For mesiteia, supra n. 52. On parachôrêsis, supra n. 115.

[161] Geminos and Apion are prominent members of the metropolitan elite: both bouleutai, Geminos furthermore agoranomos, Apion (on whom infra n. 162) son of a former kosmêtês and kosmêtês himself. The property, a two-winged house (διπυργία οἰκία), of which a third share is being sold, was a high status type of residence, probably flanked by two towers: Nowicka 1973; Alston 2002: 62, with lit. It is remarkable that the well known Oxyrhynchitan preference for the chirographic form (Wolff 1978: 112-113 and nn. 22-23) arrives to the point that a contract of this economic importance is not executed through the agoranomeion even when one of the parties is the agoranomos himself.

[162] In January 261 CE, Apion sold in advance 600 artabas of wheat from the coming harvest, in addition to other 500 that he had already sold to the same creditor: P. Ups. Frid. 5. It is tempting to assume that the possible financial difficulties behind these sales on credit are related to the sale of the house share, but this is far from certain, also because we ignore the date of the initial sale and of P. Oxy. XIV 1703: the date ca. 261 is merely based on P. Ups. Frid. 5, since Apion is also there in office as kosmêtês.

[163] None of the documents mentioned as dubious by Rupprecht 1995: 430 n. 51 resist scrutiny: (a) P. Bad. II 7 and 8 (2nd cent. BCE Latopolis), are merely payments of the telos hypothêkês; the mention of the enkyklion does not imply that the hypothecation is here a ‚Sicherungsübereignung': the term enkyklion is often used as generic, comprising also the hypothecation tax (cf. P. Köln V 219 [209 or 182 BCE] ll. 1-7: τοὺς βουλομένους ὠνὰς καταγράφειν ἢ [ὑ]ποθήκ[α]ς [ἢ] ἐπιλύσεις

One with such exceptional status, though, that it has been treated as the decisive proof of the existence in Egypt of a Greek form of title-transfer security, and the revelation of its technical name: ὠνὴ ἐν πίστει.

In 1903, a papyrus from the Heidelberg collection, inventoried as nr. 1278, caught the attention of Otto Gradenwitz. He prompted Gustav Adolf Gerhard to publish the document immediately. It appeared in Philologus in 1904, with a legal commentary by Gradenwitz himself.[164] Gradenwitz believed that the Heidelberg papyrus attested a new type of real security, the 'ὠνὴ ἐν πίστει', that had been the Hellenistic equivalent of the Roman mancipatio fiduciae causa (even in the name!) and of the old Greek πρᾶσις ἐπὶ λύσει. He hailed the text as the missing link between sale and hypothec in the Greek tradition, and even between this and the Roman fiducia cum creditore.

In securing ὠνὴ ἐν πίστει a place among the established forms of real security in the papyri, Grandewitz fully succeeded. To our day, no catalogue of real securities is deemed complete without it, its existence within the Greek tradition in Egypt as widely accepted as those of enechyron, hypothec and hypallagma.[165] All this, on the basis of just one document.

δ[ανείων] ἢ ἄλλας συγγραφὰς ποιεῖσθαι τῶν τῷι ἐγκυκλίωι ἀνηκοντῶν; cf. also P. Lond. III 1201 [p. 3] = MChr. 180, P. Lond. III 1202 [p. 5] = SB I 4281 [161 BCE Hermonthis]); (b) P. Oslo III 133 (2nd cent. Arsinoites) does not suggest that the sale (of a garlic harvest) has temporary character or depends in any way from the payment of the mentioned sums of money; (c) in BGU I 189 = MChr. 226 (7 CE Arsinoites), the fact that the summary at the verso unexpectedly mentions, together with the loan documented in the recto, the sale of a donkey, is best explained, as Mitteis suggested, understanding the loan document as fictitious, connected to a credit sale of the donkey: so also Herrmann 1989: 320-321; (d) on P. Lond. II 358 (150-154 CE Soknopaiu Nesos), supra VII sub ‚a'; on P. Oxy. II 472 and 486 (131 CE Oxyrhynchos), P. Tebt. III 1 816 (192 BCE Tebtynis), and P. Oxy. XIV 1644 (63-62 BCE Oxyrhynchos), all of them ‚pistis' documents, infra IX d, X f and h. As for the documents that Rupprecht discards: (a) P. Flor. I 55 (88 CE Hermopolites) and P. Flor. I 56 (234 CE Hermopolites), despite Vitelli's introduction, refer to the execution of hypallagma, not to any title-transfer security; (b) SB XX 14198 (104 BCE Pathryis) was edited by Messeri Savorelli 1990 as cancellation of the sale in P. Adler 7 dupl. P. Med. I 2 = SB III 6645 (104 BCE Pathyris), which would therefore have been a guarantee sale: the document is extremely fragmentary, and the reconstruction unclear, particularly the conjectured cancellation of the supposed security just days after having been contracted; in any case, it would not have been a title-transfer security, but a suspended sale of the Pathyrite group, vid. supra IV. For the rest of the documents commonly mentioned since Mitteis, i.e. those referred to ‚pistis' and to acquisitions made ‚en pistei', cf. infra IX-X.

164 Gerhard and Gradenwitz 1904; cf. p. 498 for the reasons behind the publication; Gradenwitz's commentary in pp. 577-583.

165 Cf., among the recent lit., Herrmann 1989; Markiewicz 2005: 156; Lippert 2012: 152; Urbanik 2013: 152. More cautious, Rupprecht 1995: 430, warning about the lack of contractual examples, and again in Keenan, Manning and Yiftach-Firanko 1914: 249-252, although ultimately accepting the category, cf. the glossary of technical terms, p. 558. For the initial (favourable, but cautious) reception of the document and of Gradenwitz' evaluation, cf. Rabel 1907: 355-364, and Mitteis 1912a: 135-141, the latter dismantling the objections advanced by Manigk 1909a: 2314-2315, and 1909b: 325-328.

The document, a 111 BCE Pathyris epilysis discharging debt and security, became immediately famous, and was included by Mitteis in the Chrestomathie as nr. 233:[166]

|[1] ἔτους Μεσορὴ κθ ἐν Παθύρει ἐπ' Ἀμμωνίου |[2] ἀγορανόμου. [vac. ca. 4] ἐπελύσατο Πανοβχοῦνις Τοτοέους |[3] ὠνὴν ψιλοῦ τόπου τοῦ ὄντος ἐν τῶ<ι> ἀπὸ νότου |[4] μέρει Παθύρεως πήχεις στερεοῦ β ὃν ὑπέ|[5]θετο Πατοῦτι Πελαίου \καὶ Βοκενο̣ύ̣π̣ε̣ι Πατο̣ῦ̣τ̣ος/ κατὰ συνγραφὴν |[6] ὠνῆς ἐν πίστει ἐπὶ τοῦ ἐν Παθύρει ἀρχείου |[7] ἐφ' Ἡλιοδώρου ἀγορανόμου ἐν τῶ<ι> ε (ἔτει) |[8] Μεσορὴ κζ χα(λκοῦ) (ταλάντου) α (δραχμῶν) Α [vac. ca. 3] ὃς καὶ παρὼν |[9] Πατοῦς \καὶ Βοκενοῦπις/ ἐπὶ τοῦ ἀρχείου ἀνωμολογήσατο |[10] ἀπέχειν καὶ μὴ ἐπικαλεῖν περὶ τῶν |[11] διὰ τῆς ὠνῆς γεγραμμένων πάντων |[12] τρόπω<ι> μηδενί. Ἀμμώ(νιος) κεχρη(μάτικα). Verso: |[13] ἐπίλυσις Πανοβχού(νιος)

|[1] In the sixth year, Mesorê 29th, in Pathyris, before Ammônios |[2] the agonoranomos. [vac. ca. 4] Panobchounis son of Totoeis has discharged |[3] a sale of a vacant plot located to the south of the |[4] division of Pathyris, two square cubits, which he had hypo|[5]thecated to Patous son of Pelaios and to Bokenoupis son of Patous according to a syngraphê |[6] of sale en pistei at the archeion in Pathyris |[7] before the agoranomos Hêliodôros in the fifth year, |[8] Mesorê 27th, for one talent 1000 bronze drachmae, [vac. ca. 3] which also |[9] Patous and Bokenoupis, present at the archeion, acknowledge |[10] to have received, and that they shall not claim about anything |[11] that was written in the sale contract |[12] in any manner. I, Ammônios, have drawn up the document. Verso: |[13] discharge (epilysis) of Panobchounis.

It is unquestionable that the security here cancelled is described simultaneously as a hypothec and as a sale:[167] ἐπελύσατο Πανοβχοῦνις ... ὠνὴν ψιλοῦ τόπου ... ὃν ὑπέθετο

[166] I reproduce here Mitteis' edition, with the small corrections by M. Vierros published in papyri.info, pointing to the short vacat after the date in l. 2 and after the amount in l. 8, and to the fact that the name of Bokenoupis as co-creditor in ll. 5 and 9 is in fact in both cases an interlinear addition.

[167] In a more careful translation, a ‚purchase': Pringsheim 1950: 111-126. It would be misguided to speculate why the act of the debtor redeeming the security is not presented as a cancellation of his ‚sale' but of the creditor's ‚purchase'. The reason is in fact quite simple, and clarified already by Pringsheim. The term πρᾶσις became dominant only in Roman times, in connection with a contractual model formulated as a πεπρακέναι-homologia of the seller (a Ptolemaic precedent, already noticed by Pringsheim, in SB VI 9405, supra VII sub 'a'): so, already, in the mid first century register of the Tebtynis grapheion, in P. Mich. II 121 verso and 123, where ὁμολογία πράσεως (as also πρᾶσις) is ubiquitous (cf. only the index in p. 238, s.v.), in application of the registration model set in P. Mich. II 122, and in correspondence with the πεπρακέναι homologia form of the sales (and subscriptions) executed at the same grapheion, and published in P. Mich. V (cf. index in p. 435 s.v.: notice the absence of the substantive ὠνή in the indexes of both P. Mich. II and V). In Ptolemaic Egypt, instead,

Πατοῦτι ... καὶ Βοκενϙούπ̣ε̣ι̣ ... κατὰ συνγραφὴν ὠνῆς ἐν πίστει. The debtor, we read, had hypothecated the land by means of a sale syngraphê. Alfred Manigk attempted an alternative explanation -the transaction would have been a sale on credit, secured by an ordinary hypothecation of the sold land itself-,[168] today remembered mostly due to Mitteis' two pages of categorical —and thoroughly convincing— rebuttal in the Grundzüge.[169]

Less remembered is the fact that Mitteis shared much of Manigk's reluctance to accept ὠνὴ ἐν πίστει as a terminus technicus. Manigk had observed[170] that ἐν πίστει does not necessarily qualify ὠνή: it may as easily refer to the whole syntagma συνγραφὴ ὠνῆς. And, in fact, if we pay attention to the structure of the sentence, everything after ἐν πίστει —‹ἐπὶ τοῦ ἐν Παθύρει ἀρχείου›, ‹ἐφ' Ἡλιοδώρου ἀγορανόμου›— refers to the sale deed: all these are adjuncts to συνγραφὴν ὠνῆς, as if through an implicit γενομένην, τελειωθεῖσαν, rather than merely to ὠνής. Assuming that the same is true for ἐν πίστει is quite natural, and, as Manigk saw, enough by itself to dispel the notion of ὠνὴ ἐν πίστει as a technical term: all we would have here is a συγγραφὴ ὠνῆς that happened to be executed ἐν πίστει, that is, as guarantee.[171] In Manigk's own words, "dann haben wir keine ὠνὴ ἐν πίστει mehr, sondern eine συγγραφὴ ἐν πίστει!». Mitteis insisted, unwarrantedly, that Manigk's

πρᾶσις was used (leaving aside private letters, etc.) for auction sales and for sales contracted in the Demotic form of the ‹document for silver›, cf. for instance BGU III 1002 (55 BCE Hermopolis), l. 1: ἀντίγραφον συνγραφῆς πράσεως Αἰγυπτίας μεθηρμηνευμένης κατὰ τὸ δυνατόν. This may have been also the sense of πρᾶσις, as opposed to ὁμολογία πράσεως, in the Tebtynis grapheion, cf. the distinction between both in the registration model of P. Mich. II 122, l. 22 and l. 24. Very frequent is the phrase πρᾶσις καὶ ἀποστασίον, referred to the Demotic 'document of silver' and 'of being far': cf., all in Fayum, BGU VI 1214 (185-165 BCE), PSB XXIV 16161 (85 BCE), SB XXIV 1612 (83 BCE), P. Ashm. I 14+15 = SB XIV 11408 (71 BCE), P. Ashm. I 16+17 = SB XIV 11409 (69 BCE). The Greek agoranomic sales, instead, are always labelled as ὠναί. This is also the case of the Pathyrites, where the term used for the contract of sale is invariably ὠνή: cf. already Pringsheim 1950: 115 n. 1; an overview of the documents in Pestman 1985a: 16-23. In the abundant material from the Pathyris-Krokodilopolis agoranomeion, the term πρᾶσις appears only once, and in connection with ὠνή, in P. Strasb. II 87 (107 BCE), l. 14: συνεπιγραφομένου τῆι ὠνῆι καὶ πράσει.

168 Manigk 1909a: 2314-2315; Manigk 1909b: 325-328.

169 Mitteis 1912a: 137-138: ‚sachlich unwahrscheinlich und sprachlich unmöglich'.

170 Manigk 1909b: 306-307.

171 Under this interpretation, ‚in guarantee' would be the most likely sense of ἐν πίστει, even if not the only possible one: thus, for those sharing Gradenwitz's theory of a redeemable sale, it would be also natural to translate ἐν πίστει as ‹in trust›, in the sense that the debtor accepts to issue a sale deed with immediate effect, trusting that the creditor will cancel it upon payment; if, instead, we understand the transaction, with Pestman, as a suspended sale (infra in text), ἐν πίστει may be understood as ‹in trust›, in that the creditor accepts to leave the transaction interrupted and without effect for the duration of the credit, cf. Pestman 1985b: 46: ‹Un seul texte de Pathyris indique cette situation, et se réfère à un acte incomplet en le nommant συνγραφὴ ὠνῆς ἐν πίστει›.

interpretation required connecting ἐν πίστει to ὑπέθετο, a much less likely reading, given the distance between them. In any case, Mitteis believed that extreme caution was advisable before accepting ὠνὴ ἐν πίστει as a terminus technicus, considering that the expression was not attested in any other document.[172] One century later, no other occurrence has yet appeared.[173]

This has led to a curious perversion, for which Mitteis, uncharacteristically, set the precedent himself. The expression ἐν πίστει has been uncritically understood as pointing to title-transfer security, and precisely to ὠνὴ ἐν πίστει, whenever it appears associated to a loan or a sale.[174] This is unfortunate. Πίστις is an extremely polysemic term.[175] In connection with loan and sale, ἐν πίστει, as the also frequent κατὰ πίστιν, commonly refers to phenomena that have nothing to do with securing a debt. Thus: (a) in the loans documented κατὰ πίστιν to the name of someone other than the lender (supra VI sub ‹b›), this third party is not the lender's creditor but his trustee; also a trustee, not a secured creditor, lies behind the cases of property acquired ἐν πίστει or κατὰ πίστιν to someone else's name in (b) P. Oxy. LX 4060 (161 CE Oxyrhynchos), (c) BGU IV 1047 (after 131 CE Arsinoites), and in the crucial (d) P. Oxy. III 472 and 486 (131 CE Oxyrhynchos); (e) P. Warr. 1 (164 CE Antinoopolis) may concern such a trustee or, more likely, a fideicommissum; (f) in P. Tebt. III 1 816 (192 BCE Tebtynis) there is no trace of a secured loan, merely an owner entrusting the sale of the property to her co-owners; (g) the συγγραφὴ ὑποθήκης given ἐν πίστει in P. Dion. 11-12 (108 BCE Hermopolites) is no fiduciary transfer, but a fictitious loan secured by ordinary hypothec; (h) a fictitious loan is also a likely explanation for the obscure P. Oxy. XIV 1644 (63-62 BCE); (i) in BGU III 993 (127 BCE Hermonthis) there is no real security, but to all likelihood an undocumented loan, described as given ἐν πίστει precisely because granted without a written deed; (j) in P. Oxy. VI 980 verso (3rd cent. CE Oxyrhynchos), ἐν πίστει does not refer to the sale, but to a partial payment, probably made in advance, as in P. Oxy. XII 1413 (272 CE Oxyrhynchos), and, quite likely P. Strasb. VII 603 (103-116 CE Tebtynis); (k) BGU II 464 (after 138 CE Arsinoites) is too fragmentary, the hypothesis of a title-transfer security in any case arbitrary and, in fact, not particularly likely.

This exhausts the material for ἐν πίστει and κατὰ πίστιν. Most of these documents have been paraded together with MChr. 233, with various degrees of certainty, as further examples of Sicherungsübereignung. A more detailed analysis of all of them will be presented infra in sections IX and X. Its results, as I have summarised

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172 Mitteis 1912a: 138.

173 For P. Adler 2 and BGU II 464, cf. infra nn. 190-191 and X sub ‚k'.

174 Rabel 1907: 355-364; Mitteis 1912a: 135-141; Pringsheim 1950: 124-125 and n. 1; Schmitz 1963: 33-64; Herrmann 1989. Sceptical only Manigk 1909b: 306-328, and now Rupprecht 1995: 430 and nn. 49-51: ‚Bislang ist kein Anhaltspunkt gegeben, der eine Zusammenfassung der im folgenden aufgeführten Formen unter den Begriff der ὠνὴ ἐν πίστει gestattete'.

175 Alonso 2012: 9 and n. 1, with lit.

above, are unambiguous: nothing justifies the assumption of a fiduciary title-transfer security behind these expressions in the papyri.

If we turn back our attention to the Heidelberg papyrus that prompted this feverish search for supplementary evidence of a Greek tradition of fiduciary guarantees in Egypt, the reason why the search was doomed to fail becomes glaringly obvious. In the Heidelberg document, the creditor is a Panobchounis son of Totoetis; the debtors, a Patous son of Pelaios, and a Bokenoupis son of Patous. All of them, quite obviously, not Greeks, but native Egyptians. The original συγγραφὴ ὠνῆς had been executed in Pathyris in 112 BCE before the agoranomos Hêliodôros; the ἐπίλυσις is executed also in Pathyris, in 111 BCE, before Ammônios (alias Pakoibis, well known member of a native notarial family: supra n. 82). This is the same Pathyris, the same Ammônios and Hêliodôros, and the exact same years of Pestman's interrupted sales (supra IV, also ὠναί, as all Pathyrite sales, supra n. 167, and συγγραφαί, as agoranomic deeds[176]): not instances of fiduciary transfer, but of suspended guarantee sale, taxed as hypothecs if the debt is satisfied, just as, significantly, our sale is described as a hypothecation (ὠνὴν ψιλοῦ τόπου ... ὃν ὑπέθετο). Far from its purported unique status as evidence of a Greek form of title-transfer security called ὠνὴ ἐν πίστει, the Heidelberg papyrus is just one among the many documents that illustrate the native Egyptian tradition of suspended sales in their Pathyrite agoranomic incarnation.

As we know (supra IV), although these sales were suspended by the very fact of the initial incompleteness of the deed (and the holding of the tax), it was common upon payment to document their cancellation. The Heidelberg papyrus is simply one example of such cancellation, and not without parallel. P. dem. Adler 20 (93 BCE), for instance, cancels a suspended sale that had secured the loan documented in P. Adler 15 (100 BCE).[177] The cancellation is formalised as a Demotic apostasion of the buyer/creditor: "we are removed from thee in regard to the right of that writing for silver which I made...".[178] A similar Demotic apostasion is P. Amiens 5 (90 BCE), acknowledging the payment of a loan of 4.5 wheat artabas, and cancelling the 96 BCE land sale that secured it.[179] Also in BGU VI 1260 (101 BCE) the cancellation is formalised as an apostasion of the buyer/creditor: this time in a Greek agoranomic document, where the 'buyers' acknowledge that the sum has been paid (ll. 11-13: ἀνομολογήσαντο Νεχθανοῦπις καὶ οἱ τού|του υἱοὶ ἀπέχειν τὴν λύτρα τῆς σημαινομένης | ἀρουραν μίαν), and accept to ‹remain far› from the land that had been <sold> to them (ll. 3-6:

[176] For the term συγγραφὴ in the papyri, Wolff 1978: 137-139; for the agoranomic syngraphê, 81-91.

[177] In this case, upon oath given by the children and heirs of the deceased borrower that the loan had been repaid: the oath is preserved in P. dem. Adler 19 (93 BCE). Of the initial transaction, only the loan has survived, in P. Adler 15 (100 BCE), but the Greek agoranomic suspended sale is mentioned in P. dem. Adler 20 (93 BCE), through which it is cancelled. On the whole affair, cf. Pestman 1985b: 54-55, sub ‚m'; Markiewicz 2005: 157-158.

[178] Tr. F. Ll. Griffith, from the edition.

[179] Chauveau 2002: 45-48.

| ἀφίσταται Νεχθανοῦπις ... | καὶ οἱ τούτου υἱοὶ ἀπὸ τῆς πεπραμένης αὐτοῖς | ὑπὸ Πετεαρσεμθεία ... γῆς σιτοφόρου | ἐν τῷ περὶ Παθύρειν πεδίωι ἄρουραν μίαν).[180] A close parallel, cancelling the sale in P. Lips. I 1 (104 BCE), although without explicit reference to the payment itself, is the Greek agoranomic apostasion in P. Grenf. II 28 (103 BCE): |[3] ἀφίσταται Σεννῆσις ... |[6] ἀπὸ τῆς ἐωνημένης υπ' αὐτῆς παρὰ Πετεαρσεμ|[7] θέως (τετάρτης) μερίδα ἀμπελῶ(νος) κτλ.[181]

MChr. 233 differs from these examples in that it is not formulated as the buyer's renunciation (apostasion) to the property but as the seller's cancellation (epilysis) of the sale. Yet, as Pestman observed,[182] this is merely one among many minor variations in notarial technique between the different Pathyrite agoranomoi: in this case, between Hermias, who executed P. Grenf. II 28 and BGU VI 1260 as a Greek adaptation of the Demotic form of the apostasion, and Ammônios, who a decade before had executed MChr. 233 as a simple epilysis. That the nature, function and effect of both documents was completely identical is confirmed by the verso of BGU VI 1260, where the document, even if formulated as an apostasion of the buyers, is labelled, exactly as MChr. 233, as an epilysis of the seller: ἐπίλυσις Πετεαρσεμθεία Πανοβχού(νιος) γῆς ἀρού(ρης) α ἧς πέπρα(ται) Νεχθανοῦ(πις) Πατσεοῦτος καὶ οἱ τούτου υἱοί (ll. 23-28).[183]

It would be a mistake to imagine, behind the term ἐπίλυσις, a connection between MChr. 233 and the Greek so-called πρᾶσις ἐπὶ λύσει.[184] This, already, because, as Edward Harris has proven beyond doubt,[185] the traditional distinction between πρᾶσις ἐπὶ λύσει and hypothec is completely unfounded: they are one and the same institution. Also, because ἐπίλυσις, in the papyri, is the ordinary term to refer to any debt cancellation, whether the debt is secured or unsecured: cf., without going

[180] On this transaction, Pestman 1985b: 54, sub ‚l'.

[181] The fact that the initial contract appears here as a ‚purchase' (τῆς ἐωνημένης υπ' αὐτῆς κτλ) while in BGU VI 1260 is described as a ‹sale› (τῆς πεπραμένης αὐτοῖς κτλ) may be just an immaterial phraseological oscillation. Yet, if we assume with Pringsheim (supra n. 167) a precise connotation of ὠνή and πρᾶσις in the Ptolemaic legal language, it may hint to BGU IV 1260 as cancellation of a Demotic πρᾶσις rather than a Greek ὠνή, as is instead the case of P. Grenf. II 28 (103 BCE), the cancelled ὠνή being P. Lips. I 1 (104 BCE).

[182] Pestman 1985b: 54.

[183] Beyond showing that there was no difference between the debtor's epilysis and the creditor's apostasion, this proves that the latter formulation does not imply that the creditor had acquired: as Pestman has shown (supra IV), these were all cases of suspended sale. In this sense, regarding BGU VI 1260, already Schwarz 1937: 253, with great lucidity: ‚ein Anspruchsverzicht auch hinsichtlich des blossen Anwartschaftsrechts am Platze war'.

[184] The term as such, as it is well known, is a modern invention on the basis of the πεπραμένου (-ης, -ων) ἐπὶ λύσει of the horoi. Such substantivisations are hardly ever harmless: even if we are well aware of their modern origin (Pringsheim 1950: 117-118), they ontologise a practice into a definite legal institution, with misleading effects that the case of the πρᾶσις ἐπὶ λύσει, for decades imagined as opposed to the ordinary hypothec, illustrates all too clearly.

[185] Harris 1988; further lit. supra n. 14.

beyond the Pathyris-Krokodilopolis agoranomeion, P. Grenf. I 26, P. Grenf. II 26, 30, 31.[186]

The revelation that MChr. 233 belongs with Pestman's interrupted sales suggests also a new interpretation for the crucial κατὰ συνγραφὴν ὠνῆς ἐν πίστει ἐπὶ τοῦ ἐν Παθύρει ἀρχείου κτλ. The kernel of the Pathyrite technique is the freezing of the deed's execution, to be completed only upon unpayment, at the request of the creditor. The most natural place to keep in the meantime the incomplete deed was the office of the agoranomos.[187] It is to the physical space occupied by the office that the term archeion refers.[188] In this context, a plausible meaning of ἐν πίστει is ‹in trust›, in the very simple sense of ‹in custody at the archeion›. Under this interpretation, Gradenwitz's ὠνὴ ἐν πίστει vanishes entirely: all we have is a συνγραφὴ ὠνῆς that had been executed before the agoranomos and kept in custody, while still incomplete, at the archeion.

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[186] P. Grenf. I 26 = P. Lond. III 622 descr. (109 BCE), ll. 2-3: ἐπελύσατ[ο] Ψενενοῦπις Ὀννώφριος δάνειον | πυροῦ ἀρ(ταβῶν) ν ; l. 11: ἐπίλυ(σις) Ψενενούπιος; P. Grenf. II 26 = P. Lond. III 660 descr. (103 BCE), ll. 27-28: ἐπίλυσις Πετεαρσεμθέως καὶ τους | ἀδελφους (i.e. τῶν ἀδελφῶν); P. Grenf. II 30 = P. Lond. III 663 descr. (102 BCE), ll. 4-7: ἐπελύσατο Πετεαρσεμθεὺς | καὶ Πετεσοῦχος τῶν (i.e. τοῦ) Πανοβχού(νιος) | τοῦ Το το ηοῦς καὶ τοῦς (i.e. οἱ) τούτων ἀδε(λφοὶ) | δάνειον χαλκοῦ (ταλάντων) β; ll. 31-33: ἐπίλυσις <πρὸς> Πετεαρσεμθέα | καὶ τοὺς ἀδε(λφοὺς) | δα(νείου) χα(λκοῦ) (ταλάντων) β ἃ ἐδά(νεισεν) αὐτῶι Πετεαρσεμθε(ὺς) Ἁλμα(φέως). P. Grenf. II 31 = P. Lond. III 673 descr. (104 BCE), ll. 19-20, ἐπίλυ(σις) Παοῦ το ς Ὥρου | παρὰ Χαιρήμω(νος). None of these epilyseis mention any security, as they certainly would if it had existed, cf. only P. dem. Adler 20, P. Amiens 5, BGU VI 1260, P. Grenf. II 28, and our own MChr. 233.

[187] P. dem. Adler 20 (93 BCE) cancels a sale executed in 100 BCE at the archeion „in the hands of Panebchounis, son of Pakoibis". As Pestman 1985b: 58 suggests, this Panebchounis, otherwise unknown, is quite likely the son of Ammonios alias Pakoibis, the (deputy-)agoranomos who had executed our own MChr. 233 a decade before. Since the 100 BCE sale deed was entrusted to Panebchounis when the Pathyris agoranomos was Hermias I, Pestman imagines that he custodied it -and possibly other similar deeds- privately. Yet, this Hermias was his father's cousin (supra n. 81), and Panebnouchis' father (whose own father had also been agoranomos) was agoranomos both immediately before and immediately after him. It seems obvious that Panebchounis received the documents precisely because he belonged to the family. Thus, his involvement does not exclude that the incomplete deeds were ordinarily kept at the archeion. In truth, it does not exclude it even in his own case: the archeion, in fact, was not necessarily a special, official building; it must often have been simply the house of the agoranomos; in this case, quite obviously, Panebchounis' own family's house. Where the extant interrupted sales were actually found is a different question: these, in fact, were not awaiting completion; they appear all either completed or cancelled. Pestman 1985b: 55, argues that the lack of the original sale cancelled in P. dem. Adler 20 in the archive of the family of Hôros (P. Adler) must be due to the fact that it was kept by Panebchounis even after its cancellation. The argument is far from compelling (presupposing as it does that the archive was complete and is entirely preserved), and, in any case, it is certainly not enough to conjecture (so Pestman 1985b: 57-58) that it was precisely to Panebchounis' archive that all extant interrupted sales belonged.

[188] Wolff 1978: 27 n. 80, with lit.

Pieter Pestman was of course aware of MChr. 233, and recognised that it belonged with his other Pathryite interrupted sales.[189] Unfortunately, he seems to have been less aware of the irreducible disparity in nature and background between these Pathyrite documents, a chapter in the native Egyptian suspended sale tradition, and the notion of ὠνὴ ἐν πίστει, conceived since Gradenwitz as a Greek institution, equivalent to the Roman fiducia cum creditore. For this reason, his discovery of the Pathyrite guarantee sales, and his recognition of MChr. 233 as one of them, did not lead him to question the received notion of ὠνὴ ἐν πίστει; quite the opposite, he extended the term to the other suspended sales, adding a further layer of confusion to an already entangled field.

It may not be useless, therefore, to emphasise once more: MChr. 233, far from attesting the existence of a Greek form of title-transfer security akin to the Roman fiducia cum creditore, is just the cancellation of one of Pestman's Pathyrite interrupted sales. These are not a case of fiduciary transfer, but mere suspended sales. They are not a Greek institution (certainly not a later counterpart of the πρᾶσις ἐπὶ λύσει, which was nothing else than the ordinary hypothec), but one of the various incarnations of the native Egyptian tradition of guarantee sales. As for the term ὠνὴ ἐν πίστει: in his Grundzüge, Mitteis advised caution before assuming its technical character, until further evidence might confirm it. Today, more than a hundred years later, the term has not yet reappeared in any other document.[190] It does not figure in any other of the Pathyrite sales,[191] and, it is worth noting, it is not used in BGU IV 1158 (supra VI) or P. Oxy. XIV 1703 (supra VII e), so far the most likely (even if not completely certain) instances of title-transfer security in the papyri. In truth, under a careful reading the term vanishes even from MChr. 233, best understood as merely describing the Pathyrite practice in terms of the execution ἐν πίστει, i.e. in guarantee, of a sale syngraphê, or, simply, of its keeping ἐν πίστει, i.e. in custody, at the archeion. It is time to recognise that ὠνὴ ἐν πίστει is not at technical term, but, at the present state of our sources, a phantom, as the Greek form of title-transfer security that it was believed to design.

IX. En Pistei *and* Kata Pistin*: Straw Creditors an Straw Owners*

For over a century, the universal belief in a Greek form of fiduciary title-transfer security called ὠνὴ ἐν πίστει was sustained, along with MChr. 233, by a whole series of documents where the expressions ἐν πίστει and κατὰ πίστιν appear associated to

[189] Pestman 1985b: 46 and n. 6. In p. 54 he includes P. Heid. inv. 1278 as ‚k' in his list of provisional sales.

[190] Cf. infra X sub ‚k', for τὴν [γ]ενομένην πρᾶ[σ]ιν [ἐ]ν πίστι in BGU II 464 (after 138 CE Arsinoites), l. 3.

[191] The integration κ[ατὰ συγγραφὴν ὠνῆς ἐν πίστει ἐν πίστει] in P. Adler 2 (124 BCE Pathyris), l. 8 is completely arbitrary: Pestman 1985b: 55.

a sale or a loan. In these texts, generations of legal papyrologists, from Mitteis and Rabel to our own times, have believed to find further examples of the ὠνὴ ἐν πίστει that Gradenwitz imagined behind MChr. 233. The ὠνὴ ἐν πίστει mirage cannot be fully dispelled without a careful consideration of this material:

a) In a group of papyri referred to loans documented κατὰ πίστιν to the name of someone else than the actual lender (supra n. 126), the position of this third party is very likely (supra VI sub 'b'), as Gradenwitz suggested when the phenomenon first came to light, that of a trustee,[192] rather than, as Rabel instead proposed,[193] that of a creditor who receives the loan as security for his own.

b) The same phenomenon, a right documented ἐν πίστει to the name of a mere trustee, is also attested for property. Thus, among the letters concerning fugitives addressed to the strategos of the Oxyrhynchites in P. Oxy. LX 4060 (161 CE Oxyrhynchos),[194] the second, in ll. 39-67, refers to a Herakleides, former lessee of a lentil tax,[195] whose property is to be sequestrated to the fisc together with its revenue and put up to auction: several strategoi are requested to check if he had acquired any other property in their nomoi, in his own name or in others' in trust: [ἀ]ν̣αζητῆσαι δὲ καὶ ε[ἴ τινα ἄ]λλον πόρον κέκ̣τ̣ηται παρ' ἡμεῖν | ἐπὶ τοῦ̣ ἰδ̣ί̣ο̣υ̣ ὀ̣ν̣ό̣[μα]τ̣[ος] ἢ ἑτέρων ἐν πίστ̣[ει] (ll. 50-51).[196]

The phrase κέκτηται ἐπὶ ὀνόματος ἑτέρων ἐν πίστει cannot refer to property transferred to Herakleides in guarantee: in such case he would not hold it to others'

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[192] Gradenwitz 1906; Alonso 2012: 10-16, with further lit. Despite the difficulties raised by Gradenwitz's interpretation (ibid. 14-15), the crucial P. Mil. Vogl. I 25 (127 CE Tebtynis) seems a conclusive confirmation that the person to whose name these loans were documented κατὰ πίστιν was a trustee, not a creditor who received them as security, in a sort of pignus nominis.

[193] Rabel 1907: 358-359.

[194] On the issue, Lewis 1996: 64-65; Jördens 2010: 347, passim. The papyrus is a copy from the tomos synkollêsimos collecting the original letters.

[195] Ll. 45-46: τέλος φακοῦ | ἐρείξεως. Cf. Coles, in the edition. Taxes on lentil farming are well known, cf. for instance BGU III 977 l. 2. For lentil cultivation in the Delta, and in particular in the Mendesian nome where the present affair originated, cf. Blouin 2014: 175-182. The tax was paid in kind, initially stored in the nome (P. Tebt. II 340, 206 CE, l. 14): the involvement of the Alexandrian procurator ad Mercurium (infra n. 196) shows that the produce, or part of it, was due to be sent to Alexandria.

[196] The request comes from a Domitius Peregrinus, whom the letter refers to as former procurator ad Mercurium (ὁ γεν[όμενος τοῦ] Ἑρμοῦ ἐπίτροπος, l. 41), presumably still in office when the request was issued. On this office, cf. Beutler-Kränzl 2007. In the letter, the strategos of Nesyt re-addresses the request to his Oxyrhynchite counterpart: ἵν' οὖν ε[ἰ] π̣αρὰ σοὶ πόρος τ̣ι̣ς αὐτῷ̣ | ὑπά[ρχ]ε̣ι̣ ἐπὶ τ[οῦ] ἰδ̣ί̣ο̣υ̣ ὀνόματ̣[ος] ἢ ἑτέρω̣ν̣ τ̣[ὸ ἀ]κόλουθον [το]ῖ̣ς̣ κ̣ε̣λ̣ε̣υ̣[σ]θ̣ε̣[ῖσ]ι | ποι[ήσ]ας δηλ̣ώ̣σ̣η̣ς̣ μοι ἔγρ[αψ]ά σοι (ll. 54-56). Crucially for us, this confirms the reading ὀνόματος in l. 51. The request is answered through subscription by the strategos of the Oxyrhynchite, in a negative sense: δηλοῦμεν̣ μηδένα π[όρ]ον ὑπάρχ(ειν) τῷ προγεγρ(αμμένῳ) [π]ερὶ τοὺς ὑφ' ἕ̣κ̣(αστον) | ἡμῶν τόπ̣ο̣υ̣ς̣ ἀλλ[ὰ καὶ] ἀγνοεῖν αὐτὸν̣ τ̣ῷ̣ κ̣α̣θ' [ὅλο]υ (ll. 66-67).

name but to his own. Neither can it refer to property transferred by him to others in guarantee, because then he would not own it (κέκτηται) at all. The binomial ἐπὶ τοῦ ἰδίου ὀνόματος versus ἐπὶ ὀνόματος ἑτέρων can only refer to two ways of holding property: to one's own name, and to the name of someone else. This 'someone else' must therefore be a person through whom we hold property: not our fiduciary debtor or our fiduciary creditor, but our strawperson. Evading confiscation, for those who are under fiscal duties as public lessees or as liturgists, may have been one of the reasons to hold property through such straw owners: a significant argument in this sense is the fact that all our attestations so far (cf. infra sub 'c' and 'd') come from the second century CE, when the expansion of the liturgical system and its associated financial liability started to overwhelm the population to the point of resorting to anachôrêsis.[197]

c) A similar situation is attested in BGU IV 1047 (after 131 CE Arsinoites).[198] One of the letters in this collection of official correspondence, reproduced without sender or addressee in col. III l. 10 to col. IV l. 18, concerns unpaid obligations of lessees of public (or, possibly, imperial)[199] land upon completion of their leases. A previous letter, we read, had requested a more active inquiry into the property belonging to the defaulters from the time they entered upon their leaseholds.[200] In compliance with this request, the writer of the present letter wrote to the keepers of the property record office so that they would report the property registered in their records by the sub-lessees listed in the attached libellus,[201] either in their name or in the name of others κατὰ

[197] Cf. the edict of Sempronius Liberalis in SB XX 14662 = BGU II 372 = WChr. 19 (154 CE Arsinoites), ll. 5-9: ἐτ[έ]ρους δὲ λιτουρ|[γεία]ς τινὰς ἐ[κφυγόντας] διὰ τὴν [τ]ότε περὶ αὐ|τοὺς ἀσθένειαν ἐν ἀλλοδαπῇ ἔτι καὶ νῦν διατρεί|βειν φόβῳ τῶν γενομένων παραυτίκα προ|γρ[α]φῶν, and Jördens 2010, with sources and lit.

[198] Rostowzew 1910: 183-185. A detailed analysis, in Kruse 2002: 1047-1052.

[199] The whole process seems to have been set in motion by a Cestus, when he was assistant to a procuratorial office (ll. 10-11: Κέστου [γε]νομέν|ου βοηθοῦ τῆς ἐπιστολῆς ἐπιτροπῆς); the office may have been that of the procurator usiacus, if there is any thematic connection between fragments, since the second concerns the Ἀγριππιανὴ οὐσία (Parassoglou 1978: 69-70 nr. 2). Cf. Kruse 2002: 1049-1050, also for a discussion of the possible identity of sender and addressee.

[200] Ll. 14-18: ἐκέ[λ]ευσας | τῇ ἀπαιτήσει τῶν κ[ανό]νων εὐτονώ[τερον ἔτι] ἐξετάσαι | περὶ τῶν ὑπ[αρχόντων] α[ὐ]τοῖς ἐξ οὗ χρόν[ου προσῆλθον ταῖ]ς μισθώ|σεσι τά τε κατ[ὰ πίστιν αὐ] τῶν ὑπάρχοντα κ[αὶ τὰ δια]κείμε|να κ[αὶ] ὅσας ἂν [...]. The integration κατὰ πίστιν, based on col. IV, l. 6 (infra in text), is here far from certain.

[201] The sudden shift from μισθωταί (col. III l. 12) to ὑπομισθωταί (col. IV l.5) is puzzling. In any case, despite Rostowzew 1910: 184-185, these ὑπομισθωταί do not appear as bound merely to the main lessees: they are clearly treated as public debtors, and reference is made -as Rostowzew himself underlines- to the conditions they offered when they made their bids (ll. 11-12), and to the property they subjected to hypallagma to secure their obligations (ll. 9-10), as we know other public debtors did: cf. P. Lips. II 132 (25 CE, Leukos Pyrgos, Hermopolites); P. Tebt. II 329 (139 CE Tebtynis); P Turner 23 (144-5 CE Arsinoites); P. Thmouis I (180-192 CE, Thmuis), col. 74, l. 19, col. 75, l. 3, col. 81, l. 11. In this same sense,

πίστιν, from the time they entered upon their leases, and also if anything turned out to have been alienated: ἐπ[έ]σ[τ]ειλα δὲ [καὶ τ]οῖς τῶν | ἐνκτήσεω[ν] βιβλιοφύλαξι Δείωι τῷ καὶ Ἀπολλωνίωι καὶ Ἡρώδῃ | τῷ καὶ Διογένει, ὅπως τῶν διὰ το ὑποτεταγμένου βιβλειδίου | ὑπομισθωτῶν τὸν διακείμενον παρ' αὐτοῖς πόρον ἤτοι ἐπ' ὀνο|μάτων αὐτῶν ἢ ἑτέρων κατὰ πίστιν ἐξ οὗ χρόνου προσῆλθεν ἕκα|στος τῇ μισθώσει κἄν τίνα ἦν ἐξοικονομημένα δηλώσωσι (col. IV, ll. 2-7).

Here again we find a dichotomy between property held -and registered- 'to their own name' and 'to that of others κατὰ πίστιν'. Once more, the latter cannot refer to property transferred in guarantee: not to the lessees by their possible debtors, since in that case it would be registered 'to their own name'; even less by them to their possible creditors, because alienations are explicitly referred to as a different case in l. 7. The ‹others› to whose name the property of the public debtors is registered κατὰ πίστιν must be again trustees, mere straw owners.

Less obvious is how the bibliophylakes could find and recognise such properties in their records, if they were not registered to the name of the debtors, but to someone else's. This would be possible only if the fiduciaries disclosed their position upon registration, and feasible in practice only if such disclosure left also a trace in the diastrôma of the person who owns through them. One might imagine a system where the pistis, i.e. the disclosure, would be registered to the name of the latter, together with the main registration of the item to the name of the former.[202] The fact itself of the disclosure, though, seems highly improbable: it is difficult to imagine any goal for hiding behind a strawperson that would not be compromised by disclosing that very fact at the record office. In our case, perhaps unsurprisingly, the bibliophylakes' enquiry yielded no results.[203]

Kruse 2002: 1051.

[202] A pistis, quite likely the document where the trustee acknowledges his position as such, is presented for registration, probably to the bibliophylakes enktêseôn, in PSI Congr. XI 9 = PSI XV 1527 (after 161 CE Oxyrhynchos), albeit in this case not referred to property, but to a loan: ἐξομολογοῦμαι καὶ ἀπογράφομαι ... ἣν ἔ[χ]ω ἐπ' [ὀνό]ματος Δ[ιονυ]||σίου ... πί̣[σ]τι̣ν ᾧ[ν ἐδ]άνε[ι]σ̣α ἐπ' ὀνόμ[α]||τ[ος αὐτ]ο̣ῦ̣ Πετοσείρει ... καὶ Ἑρμῇ ... ἀργυρίου δραχμῶν δισχειλίων τρι[α]||κοσ[ίω]ν κεφαλαί̣[ο]υ καὶ τόκων (ll. 4-13). Cf. supra sub ‹a› and VI b for this type of situation. Similar disclosure documents are likely for property, issued by the straw owners to the actual buyers. The Syro-Roman Law Book seems to mention them, curiously under the term katagraphai, cf. Selb-Kaufhold §62: «... hat er (der, in dessen Namen gekauft wurde) keinen Nachteil davon, daß jener für ihn keine Überschreibungsurkunde (καταγραφή) gemacht hat, der in seinem Namen gekauft hat». Despite Selb and Kaufhold's own commentary (III: 131), katagraphê cannot be here, as usual, the sale document issued by the seller: there is no mention of the seller in the whole paragraph, only of the actual buyer and the straw owner, and their own translation implies quite clearly that the katagraphê in question is issued by the straw owner. This is even more unequivocal in versions RII, D, and in the M manuscript, where Selb translates: «daß er ihm keine Überschreibungsurkunde für das auf seinen Namen Gekaufte macht».

[203] In P. Oxy. XXIV 2411 (after 170 CE Oxyrhynchos), a case of execution of fiscal debts, the very fragmentary first preserved column is an inventory of property, apparently issued

These strawpersons, whose name replaces that of the true buyers in the property documents, and who keep reappearing in the papyri (cf. also infra sub 'd'), were quite obviously a prominent fixture of legal life in second century Egypt. Later Roman sources show that the phenomenon lasted much longer and was not limited to Egypt or to the East. The fragments of the late third century Codex Gregorianus preserved in the breviarium Alarici (so-called epitome codicis Gregoriani Wisigothica) include a title on this practice, 'si sub alterius nomine res empta erit', Greg. 3.7.[204] A title of Justinian's code is also partially devoted to it: C. 4.50, *si quis alteri vel sibi sub alterius nomine vel aliena pecunia emerit*. Even such a tight compendium as the late fifth century Syro-Roman Law Book devotes a paragraph to the phenomenon.[205]

The Gregorian and Justinian titles comprise five third-century imperial constitutions: two of Valerian and Gallienus, and three of Diocletian and Maximian.[206] They all reassure those who have a sale documented to someone else's name, 'in whose fides they take refuge' (Greg. 3.7.1: *ad cuius fidem ipse confugeras*), very commonly their wives,[207] that theirs are all the rights on the property: a trustee, all these constitutions

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by the bibliophylakes enktêseôn (ll. 13, 19), comprising items registered to the name of the debtor's father: ἐπ᾽ ὀνόμ(ατος) τοῦ πα|[τρὸς αὐτοῦ], l. 8-9; [ἐπ᾽ ὀνό]μ(ατος) τοῦ πατρὸς αὐτοῦ, l. 11. In this case, though, precisely because it is not some unrelated person but the closest relative, it is quite possible that the bibliophylakes did not have any recorded evidence that the father was a mere straw owner, but nevertheless included ad cautelam all property registered to his name. On this important document, Purpura 1978, with lit.

[204] Krüger-Mommsen 1890: 228-229.

[205] Selb-Kaufhold §62 (= FIRA II §64). On the book, cf. precipue Selb-Kaufhold 2002 I.

[206] Valerian and Gallienus: Greg. 3.7.1; C. 4.50.4. Diocletian and Maximian: Greg. 3.7.2; C. 4.50.5 and 6. In three of the rescripts the addresses are Eastern Aurelii: an Auxonius in Greg. 3.7.1, a Cyrillus, in C. 4.50.4, a Dionysios, in C. 4.50.6. Nothing points to the East, instead, in Greg. 3.7.2 (Aelius Ingenuus) and C. 4.50.5 (Verus).

[207] That is the case in all the Diocletianic constitutions: Greg. 3.7.2, and C. 4.50.5 and 6. In Val. Gall. C. 4.50.4, the straw owner is the father in law; in Greg. 3.7.1 just a generic alter emptor. Of course, an acquisition to the wife's name may also be intended as a donation (which would be ipso iure void under Roman law as donatio inter virum et uxorem), and situations de facto ambiguous between both possibilities are perfectly imaginable. Uncertain seems, for instance, the situation in P. Tebt. II 407 (199 CE Tebtynis), where a husband treats as his own the property of his daughter and wife: ἀφ᾽ ὧν ἔ]χω ἐπ᾽ ὀνόματός | σου ὑ[π]αρχόντων (ll. 15-16), πά]ντα ὅ[σα] ἐποίησα | ἐπ᾽ ὀνόματός σου (ll. 22-23). This ambiguity is the theme of Diocl. C.4.50.6, where the crucial criterium (as in general: infra n. 208) is whether the wife is or not in possession: if so, there is forbidden donation (§1); if not, she is deemed a mere straw owner (§2). The Syro-Roman Law Book refers to a generic strawman (Selb-Kaufhold §62 = FIRA II §64: „Wenn ein Mann ein Landgut, einen Sklaven oder eine andere Sache im Namen eines anderes Mannes kauft ..."), and treats separately (Selb-Kaufhold §39a = FIRA II §43) the case of a purchase made to the name of the wife: for the latter, though, the possibility that she may be a straw owner is not even considered; the transaction is either void as a donatio inter virum et uxorem, if made at the husband's expense, or valid if made at hers - in the latter case, we must assume, becoming her actual property. In the papyri, property is often purchased by a father to the name of his children, but these appear as beneficiaries of a

assume, while figuring in the contract as buyer, does not receive possession; possession is ordinarily conveyed to the real buyer,[208] and it is on such traditio that the acquisition depends under Roman law.[209] The fact that this reassurance could only encourage a practice that, whatever its purpose, was in fact a hindrance for fisc and creditors, was apparently immaterial: for the imperial chancellery, it seems, these cases were just an opportunity to emphasise the importance of traditio and the Roman principle 'res gesta potior quam scriptura habetur' (Diocl. Max. C. 4.50.6.2).[210]

d) Also in the complex case of Dionysia in P. Oxy. III 472 = MChr. 235 and P. Oxy. III 486 = MChr. 59 (131 CE Oxyrhynchos), the fiduciary owner (Dionysia herself, in the version of her adversaries) is most likely a mere trustee, despite Mitteis' endorsement of these documents as conclusive evidence of title-transfer security.[211] To dispel this notion, a somewhat detailed analysis of these difficult texts will be necessary:

Dionysia's version of the facts is summarised in P. Oxy. III 486, her 131 CE petition to the epistrategos of the Heptanomis: in 126-127 CE, she had bought a vineyard and some corn-land from a certain Mnesitheus; the sale was executed by public deed, the price paid to Mnesitheus and to a creditor of his; some time later, a dispute arose with Mnesitheus' son, Sarapion, who claimed that she held the land

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donation, not as trustees: cf. P. Oxy. LI 3638 (220 CE), P. Oxy. LXXV 5058 (257-8 CE), P. Oxy. IX 1208 (291 CE), P. Oxy. XII 1470 (336 CE), all from the Oxyrhynchites. The practice was well known to the imperial chancellery -Alex. C. 4.50.2 (222 CE) and 3 (228 CE), Val. Gall. Greg. 3.8.2 (260 CE)- and quite certainly not restricted to the East (notice that none of the addressees of these constitutions bear Greek names).

[208] Greg. 3.7.1: cum dominium possessionis, quod habuisse te semper et adhuc habere proponis; Greg. 3.7.2: si ... ipse inductus es in possessionem; C. 4.50.4: si possessionem tenes; C. 4.50.5: te comparante possessionem; C. 4.50.6pr.: eique possessio tradita est ... C. 4.50.6.1: eique res traditae sunt ... C. 4.50.6.2: si ... tibi tradita possessio est ... C. 4.50.6.3: in dominii quaestione ille potior habetur, cui possessio tradita est. The same assumption that trustees do not receive possession, in the Syro-Roman Law Book (Selb-Kaufhold §62 = FIRA II §64: ‚aber der Besitz [νομή] des Landgutes, das er gekauft hat, oder der Sklaven, bei him ist'), and, crucially for us, in P. Oxy. III 472, ll. 23-27, cf. infra ‚d' sub 1 and n. 217. This confirms that such trustees were mere strawpeople, the ‚trust' akin to a modern bare, passive or ‚dry' trust, one imposing no duties on the trustee except being a passive holder of the legal title.

[209] Also in the papyri (P. Oxy. LX 4060, BGU IV 1047, in this and the preceding section) we see that, when it comes to confiscation, the administration treats the property held by these trustees as part of the estate of those who hide behind them: not because of the traditio principle, but merely because the title holders are accurately recognised, also through the lack of possession, as mere strawpeople.

[210] The 259 and 294 CE rescripts of the same emperors in C. 4.22 (plus valere quod agitur quam quod simulate concipitur), turn around the same principle: veritas potius quam scriptura; non quod scriptum, sed quod gestum est inspicitur; plus actum quam scriptum valet. Further sources and lit. in Meyer 2004: 279 nn. 86-87.

[211] Mitteis 1912a: 135. In the same sense, Preisigke, s.v. πίστις 4a (col. 309); Pringsheim 1950: 125 n.1; Schmitz 1963: 48-51; Herrmann 1989: 320. Before Mitteis, extensively, and with less certainty, Rabel 1907: 359-362. Dubious for Rupprecht 1995: 430 n. 51.

in question ἐν πίστει.[212] Sarapion brought the case before the epistrategos, Claudius Quintianus, who referred it to the prefect, Flavius Titianus; when Sarapion failed to appear before the prefect, Dionysia requested to be allowed to return to Oxyrhynchos, and obtain justice there. The prefect endorsed this petition, referring the trial back to the epistrategos, now Julius Varianus. Dionysia appends this endorsed petition, where the facts had been summarised with some additional detail: Sarapion had also accused Dionysia's mother, Hermione, of poisoning; the father's creditors (now in plural), to whom Dionysia partially paid the price, had a hypothec over the land;[213] and, regarding Sarapion's claim over the land, he held that it belonged to him, and had been documented as hers only κατὰ πίστιν.[214]

More about the nature of this pistis can be learned from P. Oxy. III 472, part of an advocate's speech defending Hermione and Dionysia from claims that correspond exactly to those made by Sarapion in the first trial before the epistrategos Claudius Quintianus.[215] Not everything is clear, because we are left to reconstruct Sarapion's

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[212] P. Oxy. III 486, ll. 3-8: ἐνστάσης μ[οι] ἀμφισβητήσε|ως πρὸς Σαραπίωνά τινα Μ[ν]η[σιθέ]ου ὅ̣στις ὃ ἠγόρασα κ[τῆ]μα ἀμπελι[κ]ὸν καὶ σειτικὰ | ἐδάφη παρὰ τοῦ πατρὸς αὐ̣τ̣[ο]ῦ ἔτι ἀπὸ τοῦ ια (ἔτους) Ἁδριαν[οῦ] Καίσαρος τοῦ κυρίου ἀριθμή|σασα αὐτῷ τε τῷ π̣α̣τ̣[ρ]ὶ̣ [καί τι]ν[ι] δανε[ι]στῇ αὐ[τοῦ τὴν σ]υμφωνηθεῖ[σα]ν τιμὴν | καὶ λαβοῦσα τὸν καθήκοντα τῆς ὠνῆς δημόσι[ον χρημα]τισμὸν ἔλεγεν ἐν πίστει | με ἔχειν αὐτά.

[213] When hypothecated property is sold, the buyer, unless fraudulently kept ignorant of the encumbrance, usually takes care to cancel it by paying the necessary part of the price directly to the creditors. The phenomenon is well attested also in the papyri: BGU II 362 (215 CE), ll. 15-24, P. Hamb. I 14 (209-210 CE), P. Hamb. I 15 and 16 (209 CE), and P. Gen. I 44 = MChr. 215 (259 CE), all from Arsinoites. Such a sale is also intended by the petitioner in P. Ryl. II 119 (54-67 CE Hermopolis). As far as Roman Egypt is concerned, the main questions are whether this sale required the consent of the creditor, or, as under Roman law, was effective without it, thanks to the authorisation (epistalma) of the bibliothêkê enktêseôn, and whether this authorisation was attainable when the sale was not meant to serve to the immediate cancellation of the debt. On these questions and these documents, Alonso 2010: 13-14, 25-26 sub ‚c' and n. 53, 36-54, passim.

[214] P. Oxy. III 486, ll. 20-26: Σαραπίων τις Μνησιθέου ἀπ[ὸ τ]ῆς αὐτῆς πόλεως ἐπ[ὶ] Κλαυδίου Κυιντ[ι]ανοῦ τοῦ | γενομένου ἐπιστρατήγου [τῶν] Ἑπτὰ νομῶν τῇ μητρί μου Ἑρμιόνῃ φαρμα|κείας ἐνκαλῶν καὶ περὶ ὑπα[ρχό]ντων τινῶν ἐλογοποιήσατο ὡς ὑποστελλόν|των αὐτῷ ὧν ἐγὼ ἡ Διονυ[σί]α κατὰ δημοσίους ἠγόρασα χρηματισμοὺς ἀρι|θμήσασα τιμὴν αὐτῶν τ[ῷ] π̣α̣τ̣ρὶ αὐτοῦ περιόντι καὶ δανειστᾶις τοῦ α[ὐ]τοῦ | πατρὸς παρ' οἷς ἦν τὰ δηλ[ο]ύμενα κτήματα ἐν ὑποθήκῃ κρατούμενα | φάσκων κατὰ πίστιν . .[. .]. ἐ̣γ̣γεγράφθαι. The only slight inconsistency between this and the initial account is that several creditors appear here instead of one.

[215] There is no doubt that the case is the same. Not only it concerns a Hermione (l. 2) and her daughter Dionysia (ll. 41, 46): the former is accused of poisoning (ll. 1-14), and against the latter some property is claimed on the grounds that she acquired it ἐν πίστει (ll. 14-29). Since we know that Sarapion was not present before the prefect, nor later before the epistrategos Julius Varianus, the absolute correspondence between the P. Oxy III 472 speech and Dionysia's summary of the initial trial before Quintianus makes it likely that it was prepared for that trial, rather than for a hypothetical one taking place after the petition in P. Oxy. III 482: a

alegations on the only basis of his opponent's reaction. But what we have is enough to discard the common assumption that Dionysia's acquisition ἐν πίστει was that of a creditor receiving a security:

1. Sarapion's claim on the property, we are told, resulted from a written pistis, that he alleges had been stolen by a slave. The advocate's speech naturally derides this convenient theft, and denies that Dionysia or Hermione could have drawn up such pistis, since they are illiterate.[216] To this, he adds the following: "moreover, the possession also helps to show that there never was any pistis: for those who acquire en pistei are merely allowed to have their name in the documents, but do not claim what has been thus acquired; and yet, the buyer has clearly claimed it, and has enjoyed it since she bought it, while he, since he sold it, has no longer been in enjoyment of it, but merely administering as curator the affairs of the mother and attacking my clients".[217]

This argument would have been utterly pointless regarding fiduciary security, which may be granted without but also with possession. It makes perfect sense, instead, referred to a trustee: someone who merely figures in the property deeds, in the

possibility radically excluded by the fact that the mother, who is the defendant in P. Oxy. III 472 (ἡ νῦν | ἐνκαλουμένη Ἑρμιόνη: ll. 18-19), had already died before the frustrated second trial before the prefect (P. Oxy. III 486, ll. 27-28). P. Oxy. III 482 also shows that the trial was initiated by Sarapion, not by his father, and therefore clarifies that Sarapion was the plaintiff in P. Oxy. III 472: it is likely that, as Mitteis assumes, his father had by then died; Hermione's alleged poisoning was quite likely presented by Sarapion as the cause of this death.

216 P. Oxy. III 472, ll. 14-22: ἐὰν λέγωσιν δοῦλον Σμάραγδον ἀνεύρετον | γε̣[γ]ονέ̣ναι αὐτὸν αἰτίαν ἔχοντα τοῦ τὴν πίστιν κεκλοφέναι | φη[σ]ὶ̣ν̣ δ' οὖν καὶ πίστιν γεγονέναι ἵνα κλεπῇ, οὐ δύναται γὰρ κεκλέ|φθαι τὸ μηδ' ἀρχὴν γενόμενον μὴ δυνατὸν δ' εἶναι μηδὲ | πίστιν γεγρ[ά]φθαι. οὔτε γὰρ ἡ ἀγορα<σα>σα γράμματα ᾔδει οὔτε ἡ νῦν | ἐνκαλουμένη Ἑρμιόνη, οὔτε ξένος οὐδεὶς ἄλλης καταγραφείσης | πίστ[ι]ν πα̣[ρ' ἑ]αυτοῦ δίδωσι. ὥστε καὶ παρὰ τίνος ἂν εἴποι τὴν πίστιν | ἐσχηκέναι; παρὰ παντὸς γὰρ ἄκυρος ἦν. εἰ δὲ ἀπέδρα δοῦλος | οὐδὲν δύναται τοῦτο κατὰ δεσπότου. The last remark makes it likely that the slave Smaragdus belonged to Hermione (or Dionysia).

217 P. Oxy. III 472, ll. 22-29: ἔτι μέντοι περὶ τοῦ | μηδὲ πίστιν εἶναι καὶ ἡ νομὴ συνβάλλεται. τῶν γὰρ ἐν πίστει | καταγραφέ̣ντων τὸ ὄνομα μ[ό]νον εἰς τοὺς χρηματισμοὺς | παρε[θ]έ̣ντ̣ων, οὐκετι δ' ἀντιποιουμένων ὧν κατεγράφησαν | ἡ μὲν ἀγορασα φανερά̣ ἐσ[τι]ν̣ καὶ ἀντιπεποιημένη καὶ ἀφ' οὗπερ | ἠγόρα[σ]ε [κ]αρπουμένη, ὁ δ' ἀφ' οὗπερ πέπρακε οὐκέτι ἀλλὰ καὶ | τῶν τῆς μητρὸς τὴν [οἰ]κονομίαν ὡς προνοητὴς ποιούμενος | τούτο̣ι[ς δ' οὐκ]ἐνχ[ει]ρῶν. Grenfell and Hunt, as later Mitteis and everyone since, translate ἐν πίστει καταγραφέ̣ντων as ‚those who acquire as fiduciaries'. I depart from them not only in that respect, but also, crucially, regarding their translation of νομή as 'division': the term refers here to possession (Preisigke s.v., 2), as in Hadrian's apokrima on iniusta possessio (νομὴ ἄδικος, l. 7) in P. Tebt. II 286 (121-138), l. 7, in Severus and Caracalla's rescript on longi temporis praescriptio, in P. Strasb. I 22 = MChr. 374 (3rd cent. CE Hermopolis), l. 3 (μακρᾶς νομῆς παραγραφὴ as 'praescriptio longae possessionis', cf. also P. Par. 69 = WChr. 41, 232 CE Elephantine, col. 3, l. 20), and still much later, in Justinian's legislation (cf. Nov. 53.4.1). Cf. also, in our very same context of straw owners, the Syro-Roman Law Book: Selb-Kaufhold §62 (= FIRA II §64), supra n. 208.

place of someone else, as his strawperson. It is, in fact, the exact same assumption that we have found in the imperial constitutions that deal with such situation (supra sub 'c' ad n. 208): the defining trait of these strawpeople for the imperial chancellery is that they figure in the documents, but the item is not conveyed to them. That such were the acquirors ἐν πίστει under discussion in the advocate's speech is confirmed when he characterises them as 'those who are allowed to have their mere name in the documents': τῶν γὰρ ἐν πίστει | καταγραφέντων τὸ ὄνομα μ[ό]νον εἰς τοὺς χρηματισμοὺς | παρε[θ]έντων (P. Oxy. III 472, ll. 23-25).

2. To this, the advocate still adds: if a pistis had been given to the seller, if he had sold only in appearance, the daughter would not have undertaken further liability knowing that she would be deprived of the property whenever he chose.[218] The nature of this further liability of the daughter is unclear, but two aspects of Sarapion's allegations result unequivocally from this retort: he claimed that the sale had been only apparent (πίστεως περὶ τούτων | οὔσης παρὰ τῷ δοκοῦντι πεπρακέναι ἑτέρῳ: ll. 37-38); and, if this had been the case, he would certainly have had complete freedom to deprive Dionysia of the property whenever he chose (μελλήσουσα ἀφαιρε|θήσε[σθαι ὁ]πότε ἐκείνῳ ἐδόκει: ll. 39-40). And, in fact, in P. Oxy. III 486 Dionysia summarises Sarapion's position as claiming that the properties belong to him (ἐνκαλῶν καὶ περὶ ὑπα[ρχό]ντων τινῶν ἐλογοποιήσατο ὡς ὑποστελλόν|των αὐτῷ: ll. 22-23).

All this -the sale as a mere semblance, the seller's freedom to reclaim his property at any time, the very idea that it still belongs to him- would be quite out of place in case of a title-transfer security. It makes perfect sense, instead, if Sarapion claimed that Dionysia was a mere trustee, on whom the property had been bestowed only nominally.[219] Dionysia's insistence that she paid the price becomes thus understandable:

[218] P. Oxy III 472, l. 37-40: ἀλλὰ μὴν ̣υτ̣ων πίστεως περὶ τούτων | οὔσης παρὰ τῷ δοκοῦντι πεπρακέναι ἑτέρῳ ἂν ἑαυτὴν γράμ|ματι ἡ θ[υγ]άτηρ κατηνγύα τ̣ῷ δημοσίῳ μελλήσουσα ἀφαιρε|θήσε[σθαι ὁ]πότε ἐκείνῳ ἐδόκει; The text is obscure: particularly unclear is the origin - γράμματι- and apparent public nature -τ̣ῷ δημοσίῳ- of Dionysia's liability, puzzlingly mentioned within the discussion of a contract that she concluded with her mother: in the advocate's version (ll. 45-57), an inheritance agreement whereby Dionysia's mother gave her one and a half talents, in exchange for an annual rent of 150 jars (a similar arrangement: BGU IV 1013, 41-68 CE Arsinoites); the rent, apparently in wine, seems connected to the produce of the vineyard acquired by Dionysia, and, in fact, the plaintiff used this agreement against her (ll. 29-33: ἐὰν κοινόν ὁμολόγημα λέγωσι γεγο|νέναι τῆς θυγατρὸς πρὸς τὴν Ἑρμιόνην ἑκατὸν πεντήκοντα | κεραμίω[ν] καὶ ἀπὸ τούτων ὧν ἠγόρασεν κτημάτων φαμὲν | τοῦτο [πᾶ] ν μηδὲν εἶναι πρὸς τὸν κατήγορον. οὐ γὰρ εἴ τι ἔπραξε | θυγάτηρ πρὸς τὴν μητέρα τοῦτο αὐτοῖς εἰς συκοφαντίαν εὕρημα): either arguing that it revealed the true nature of the sale, or because it would have constituted a fraud against him.

[219] Less certain is whose trustee is Dionysia supposed to be, in Sarapion's account. The simplest possibility (a) is that Sarapion claims that she acquired as a trustee of his father, Mnesitheus, who would have executed a deed of sale in her favour without receiving the price. But the advocate's speech seems to refer to the pistis -we ignore how accurately- as received

this would not defend her from the claim that she acquired the land to secure a credit (quite the opposite: such payment would have been the credit), but it is certainly enough to exclude that she acquired as a mere trustee.

3. If Sarapion had claimed that the property had been sold merely as a security, he would have needed to make his case arguing that whatever price Dionysia paid had in fact been a loan, or that a debt with her had predated the sale; and, most crucially, that Dionysia received her money back. A reply to these claims would have required to argue either that the secured debt had not been paid, or that there had been no loan, no debt to secure between the parties. All this is conspicuously absent from the advocate's speech.

All in all, it seems to me beyond doubt that in the case of Dionysia, as in P. Oxy. LX 4060 and BGU IV 1047 (supra 'b' and 'c'), the fiduciary who acquires ἐν πίστει is a mere trustee: none of these documents are compatible with the real security hypothesis. They attest, instead, a widespread phenomenon of property held through strawpersons, that spans across the papyrological and legal sources from the second to the sixth century, and so far has not received from romanists or papyrologists the attention it deserves.[220]

X. En Pistei *and* Kata Pistin*: other uses*

The remaining material for ἐν πίστει and κατὰ πίστιν, also commonly presented en bloc as evidence of ὠνὴ ἐν πίστει,[221] if examined more carefully rather bears witness to the versatility of the idea of πίστις in the legal practice of the papyri:

e) In P. Warr. 1 = SB IV 7472 (164 CE Antinoopolis), we have a petition draft of a Gaius Valerius Marinus, possibly a veteran,[222] unfortunately preserved only in

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by Sarapion himself (ll. 20-21: ὥστε καὶ παρὰ τίνος ἂν εἴποι τὴν πίστιν | ἐσχηκέναι; the third person referring, from l. 9 onwards, to the plaintiff, who was, as we know, not the father, but the son: supra n. 215); and, in fact, it is also possible (b) that he claims that Dionysia acted as his trustee, acquiring for him from his father (the choice of Dionysia as trustee arising perhaps from Sarapion's connection to her mother, as her προνοητής, ll. 10, 28, and, in the advocate's colourful story, as her ardent admirer). In any case, if Dionysia had indeed acted as strawperson, the transaction would have been made in fraudem creditorum (cf. ll. 5-8: εἶχεν μὲν οὖν αἰτίας τοῦ καὶ | αὐτὸς ἑ[αυ]τῷ προσενενκεῖν φάρμακον ἃς καὶ ἄλλοι πολλοὶ τὸν | θάνατον τοῦ ζῆν προκρείναντες, καὶ γὰρ ὑπὸ δανειστῶν ὤλλυ|το καὶ ἠπόρει), unless the creditors received their due (as she claims): a payment that Sarapion would have claimed was in truth made with (a) his father's or (b) his own money.

[220] Cf. most notably Selb and Kaufhold's commentary to LSR §62, completely unaware of the papyrological evidence: unsurprisingly, since it had been misinterpreted as ὠνὴ ἐν πίστει.

[221] Not usually mentioned in our context, and indeed for us irrelevant: a) P. Tebt. I 14 = MChr. 42 (114 BCE Kerkeosiris), ll. 9-10: τὰ ὑπαρχόντα συντάξαι θεῖναι | ἐν πίστει does not refer to a private real security, but to someone accused of murder, whose property has been inventoried and placed in bond; in P. Strasb. IX 898 (3rd cent. CE unknown provenance), πίστι καὶ γνώμῃ (l. 9), as Dioscoros' πᾶσαν πίστιν | καὶ γνώμην in P. Strasb. I 40 (569 CE Antinoopolis), l. 18-19, is merely a formulaic reference to (good) faith and (free) will.

[222] Wilcken 1932: 94. Together with his presumable Roman citizenship, Marinus seems to

its left half. What is left of each line is insufficient for a secure interpretation. There are references to an expulsion and a house, in l. 29, and to πίστις in l. 32 (πίστι ὑποστέλλειν) and in l. 20 (περὶ πίστεως). Inevitably, this has led to conjectures of a possible fiduciary gage.[223] Better grounded seems Hunt's hypothesis that the petition refers to a fideicommissum, involving Marinus and possibly a peregrine. A key term, in fact, in the line immediately after περὶ πίστεως, is ἐξομολογησάμενος,[224] used in Gnom. §18 for the professio of forbidden fideicommissa: in that case, of hereditates fideicommissariae between Romans and peregrines.[225] This would also account for the references to fiscal fraud in ll. 6 and 39.

Alternatively, ἐξομολογησάμενος could point to the disclosure by a trustee of his condition as such,[226] for which the usual expression is ἐξομολογέομαι τὴν πίστιν.[227] This would bring us back to the phenomenon studied supra sub IX. It is also compatible with the mentions of fiscal fraud (by holding property through strawpersons, avoided only by the professio of the pistis), and not excluded by κατήντησ[εν] in l. 23, which may refer to something acquired inter vivos as well as mortis causa. A hint that favours Hunt's fideicommissum conjecture, though, is the apparent qualification of the professio in l. 22 as κατὰ τὰ κελευσθέντα: professio fideicommissi was done in accordance to imperial law, [228] whilst for property kept through strawpersons there is no evidence of a compulsory disclosure.

f) In P. Tebt. III 1 816 (192 BCE Tebtynis), a certain Demaenetus, in whose favour (col. I) two witnesses attest that he is the heir of his mother's property, appears (col. II) together with other two people as addressee of a chirograph whereby they are

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have had that of Antinoopolis, cf. the editor's commentary to Μαρκιάνειος in ll. 3 and 18.

223 Already in the edition, as an alternative conjecture, following the advice of Leopold Wenger. Cf. also Rupprecht 1995: 430 n. 49.

224 Cf. also l. 30: κατὰ τὸ τῆς ἐξο[...], where κατὰ τὸ τῆς ἐξο[μολογήσασθαι], as the editors suggest, seems possible.

225 Gnom. §18 (BGU V 1210, ll. 56-58): τὰ\ς/ κατὰ πίστιν γεινομένας | κληρονομίας ὑπὸ Ἑλλήνω̣ν \εἰς/ [[ὑπὸ]] Ῥω|μαί[[ων]]<ους> ἢ ὑπὸ Ῥωμαίων \εἰς/ Ἕλληνας ὁ θεὸς Οὐεσπασιανὸς [ἀ]νέλαβεν, | οἱ μέντοι τὰς πίστεις ἐξωμολογησά[[ντες]]<μενοι> τὸ ἥμισ[υ ε]ἰλήφασι. Cf. Lenel-Partsch 1920: 14-15; Riccobono 1950: 135-137, with lit.

226 An example of this type of disclosure, referred to a credit, is P. Oxy. III 508 (102 CE): supra n. 127.

227 P. Flor. I 86 = MChr. 247 (after 86 CE Hermopolites) ll. 11-12: ἐξομολογουμένη τὴν πίστην τῶν αὐτῶν τριῶν συνγρα[φῶν]; P. Mil. Vogl. I 25 (127 CE Tebtynis), col. III, l. 31-33: διὰ τί οὐχ ἅμα [το]ῖς το[ῦ Γε]μελίνου γράμ[μ]ασιν καὶ παρὰ τοῦ Δείου ἐξομολογουμένου τὴν πίστιν τὸ χιρόγραφον ε̣ἴ̣λ̣ηφας; PSI Congr. XI 9 = PSI XV 1527 (after 161 CE, Oxyrhynchos), ll. 4-9: ἐξομολογοῦμαι καὶ ἀπογράφομαι ... ἣν ἔ[χ]ω ἐπ' [ὀνό]ματος Δ[ιονυ]|7σίου ... π̣ί̣[σ]τ̣ι̣ν ᾧ̣[ν ἐδ]άνε[ι]σ̣α ἐπ' ὀνόμ̣[α]|τ[ος αὐτ]ο̣ῦ̣ Πετοσείρει ... καὶ Ἑρμῆ. All these documents refer to credits (supra VI b and IX a), but a similar disclosure would have been necessary in case of property acquired ἐν πίστει by a trustee: cf. supra n. 202.

228 Call. 3 iur. fisc. D. 49.14.3pr.-4, Paul. 7 Iul. Pap. D. 49.14.13, among others. On professio fideicommissi and fideicommissum tacitum, Müller-Eiselt 1982: 263-283; Johnston 1988, chapter III.

authorised by one of the owners of a house to sell it as they please, without fear of any claim: τῆς ὑπαρχούσης ἡμῖν οἰκίας ἐν Ἡρακλέους | [π]όλει τῆι ὑπὲρ Μέμφιν πίστει κυ̣ρ̣ω̣θ̣ε̣[ίσ]ης ὑμῖν | [π]ωλεῖν ὡς ἂν βούλησθε, καὶ κου (l. οὐ) μὴ ἐπ̣έλ̣θ̣[ω] ἐπ' αὐτὴν | [ἡ] ἀγχιστεύουσα \οὔτε/ ἐφ' ὑμᾶς οὐδ' ἐπὶ τοὺς ἠγορακότας | [ο]ὐδ' ἄλλος ὑπὲρ ἐμοῦ παρευρέσει ἡιτινιοῦν (ll. 24-28).

In the edition, Hunt assumed that the house had been the security for a loan, and integrated in κυ̣ρ̣ω̣θ̣ε̣[ίσ]ης in l. 25 as referred to an auction sale in execution of the security: 'knocked down' is his translation. This would exclude Herrmann's hypothesis of a fiduciary transfer made by the woman who issued the chirograph:[229] execution through auction sale would be out of place in case of fiduciary transfer, and πίστει would anyway refer to the result of such auction, not to a transaction made by the woman. In truth, Hunt's interpretation is also dubious: πίστει κυ̣ρ̣ω̣θ̣ε̣[ίσ]ης can hardly mean 'knocked down in pledge', since that would turn the pledge into the result of the auction sale, rather than its cause; κυ̣ρ̣ω̣θ̣ε̣[ίσ]ης is extremely conjectural, and, even if correct, would not necessarily point to an auction: it could equally mean 'determined', 'confirmed', 'ratified'.

The key to the document may lie in an oddity that has so far attracted no attention: the contrast between the plural ἡμῖν, referred to the owners of the house, and the fact that the document is issued in first person singular by only one of them. This by itself suggests that the 'us' comprises the addressees of the chirograph —Demaenetus, Hyllus and Ptolemaeus—, i.e. that they are the co-owners. Such co-ownership would most likely have resulted from a common inheritance.[230] In the same direction points the otherwise inexplicable reference to the author of the chirograph 'being the next of kin' (ἀγχιστεύουσα, l. 27). This dispenses with the conjecture of a secured loan, of which there is no trace in the document: the chirograph is merely an authorisation to sell, issued by one of the owners of the house to her co-owners. And, in fact, the papyrus continues with the copy of a six-witness document —l. 35: (ἑξα)μαρτύρ[ου ἀ]ντίγραφον—, quite likely the sale that the chirograph authorised. The πίστις consists here in entrusting the co-owners with selling the house: πίστει κυ̣ρ̣ω̣θ̣ε̣[ίσ]ης ὑμῖν, if we stand to Hunt's integration, would here simply mean ‹entrusted to you›.

g) In P. Dion. 11 and 12 (108 BCE Hermopolites), we read that Dionysios issued a loan and a hypothec syngraphê in trust (ἐθέμην αὐτῶι ἐν πίστει ... συγγραφὴν ὑποθήκης: P. Dion. 11, l. 10). As I have argued elsewhere,[231] this refers to a fictitious loan secured by hypothec, rather than to a fiduciary transfer[232]. The pistis, the 'trust', consists here in issuing a hypothec syngraphê for the repayment of a sum that

[229] Herrmann 1989: 319. Cf. also Schmitz 1963: 44-46. Less certain, Rupprecht 1995: 430 n. 51.

[230] In any case, it would seemingly be a different inheritance from that of the first column, where Demanaetus is emphatically presented as sole heir of his mother.

[231] Alonso 2012: 17-30, with lit.

[232] So, tentatively, Rabel 1907: 357, cf. also Preisigke s.v. πίστις 4a (col. 309).

Dionysios had not actually received, in exchange for a counter-performance that has not yet been carried out.

h) In P. Oxy. XIV 1644 (63-62 BCE), the tree sons of the deceased Arsinoe release their nephew Moschion, son of their also deceased sister, from a loan that Moschion had made with Arsinoe, because, they declare, 'Moschion for various reasons had effected the renewal of the money agreement with Arsinoe in trust on account of their kinship': ἕνεκα τοῦ τὸν Μοσχίωνα διά τινας αἰτίας τὸν | καινο̣χωρισμὸν τῆς προειρημένης ἀργ[υ]ρικῆς συναλλάξεως | εἰς τὴν̣ Ἀρσινόην ἐν πίσ̣[τει] διὰ τὴν προγεγραμμένην | ἰδιότη[τ]α πεποιῆσθαι (ll. 18-21). The text has long been a crux.[233] Much in it is uncertain, starting with the meaning of expressions like καινοχωρισμός or διὰ τὴν ἰδιότητα. In any case, Herrmann's hypothesis that ἐν πίστει refers also here to a fiduciary security[234] does not seem compatible with the intriguing 'διά τινας αἰτίας' and 'διὰ τὴν προγεγραμμένην ἰδιότητα', and finds little support in a text where ἐν πίσ̣[τει], assuming it is rightly integrated, does not refer to any property being conveyed, but to a καινοχωρισμός, i.e. probably a 'contract renewal'.[235] The notion that receiving security is a contract renewal would be remarkable,[236] and an unicum in the papyri; even more so, the idea of releasing the debtor from all liability because he has secured the debt.

Much in the document points, instead, to the possibility that Moschion's loan was fictitious, as in P. Dion. 11-12 (supra sub 'g'). The loan is not referred to as a sum received by Moschion, but as a deed made by him for Arsinoe: ἔθετο ὁ Μοσχίων τῆι τῶν ὁμολογούντων μητρὶ ... δ[α]νείου (ll. 11-14).[237] The καινοχωρισμός was made 'for certain reasons', διά τινας αἰτίας, an expression strikingly close to the one we

[233] Meyer 1921: 263-264; Schwarz 1937: 251 n. 6. The wheat loan in P. Oxy. IV 836, maybe taken by one of Moschion's uncles (Schmidt 1999: 155 n. 3), would be, if indeed referred to the same person, a completely unrelated transaction, useless for the interpretation of P. Oxy. XIV 1644.

[234] Herrmann 1989: 319. Less certain, Rupprecht 1995: 430 n. 51.

[235] Less likely translations: taking into account the family context, one might think of a ‚new division' (χωρίζω as 'separate, divide'), i.e. of the estate; Preisigke s.v. suggests ‹deposit›, i.e. of the document with the grandmother. It is also unlikely that the hapax καινο̣χωρισμὸν is a false reading for καταχωρισμὸν.

[236] Traces of such idea can be found for novatio in the Roman legal tradition. In a constitution addressed to the Senate in 530 CE, Justinian mentions, among the cases in which ‚veteris iuris conditores introducebant novationes', also the addition of a real security: vel pignus acceperit. Of such possibility, though, there is little trace in the classical jurisprudence: Ulp. 58 ed. D. 42.1.4.4, that may seem to imply it, in fact deems the addition of a pignus (or a guarantor through fideiussio) rather an accessio than a novatio; and Gai. 3.177-178 mentions as novatio only the addition or detraction of a guarantor through sponsio, and only according to the Sabinian school. On the question, and on Justinian's constitution, Lambrini 2006: 7-22, with lit.

[237] In very similar terms, P. Dion. 11-12 (108 BCE), ll. 10-11: ἐθέμην αὐτῶι ἐν πίστει καθ' ὧν | ἔχω ψιλῶν τό̣π̣ων συγγραφὴν ὑποθήκης.

find for the issuing of the fictitious loan in P. Dion. 11-12.[238] If Moschion issued a fictitious loan for his grandmother, it is not difficult to imagine how this may be connected to their kinship. Contracts assigning to a child part of the family property with immediate effect in exchange for an annual rent are not unusual, especially in the female line;[239] in the Egyptian practice, on the other hand, the duty to pay such annuities was typically created through documents formulated as loans, often fictitious.[240] One such arrangement may have existed between Moschion (or already his mother, later renewed by him) and his maternal grandmother while she was alive, and is cancelled by his uncles now that she has died. All this is obviously conjectural, but in any case less arbitrary than the hypothesis of a fiduciary security.

i) BGU III 993 (127 BCE Hermonthis), executed at the Pathyrite agoranomeion of Hermonthis, is a συνγραφὴ δόσεως (col. I, l. 7) whereby a Psenthôtês distributes his property among his relatives for after his death (ἀπομεμερικέναι μετὰ τὴν ἑαυτοῦ τελευτὴν: col. II, l. 12): in fact, the earliest extant example of a Greek notarial deed adapting this distinctively native Egyptian form of arranging one's inheritance. Col. III, l. 11-12 refer to other assets that may belong to the inheritance, in the following terms: καὶ εἴ τι ἄλλο ὑπάρχον αὐτῶι ἐστιν ἤτ<ο>ι κατὰ συνβόλαια ἢ κατ' ἐπενέχυρον καὶ ἔν τισιν ἐν πίστει πυροῦ τε καὶ κριθὴν | ὄλυραν φακοῦ ἀράκου καὶ χαλκωμάτων καὶ ἱματισμοῦ.

Again, ἐν πίστει has been unanimously understood as referred to title-transfer security:[241] given to Psenthôtês rather than by him, we must assume, since it is included as part of his estate. The preceding κατ' ἐπενέχυρον would prima facie seem to invite this interpretation.[242] Yet, this leaves unexplained the final list of grain types: grammatically, these genitives (with the usual Pathyrite genitive/accusative oscillation: κριθὴν and ὄλυραν for κριθῆς and ὀλύρας)[243] must be somehow connected to

[238] P. Dion. 11-12 (108 BCE), ll. 4-5: διὰ τὰς ἐπὶ τοῦ πράγματος ὑπο|δειχθησομέ[ν]ας αἰτίας.

[239] Thus, between mother and daughter in P. Oxy III 472 (before 131 CE Oxyrhynchos), ll. 37-57, supra n. 218; between a mother and her three daughters in BGU IV 1013 (41-68 CE Arsinoites).

[240] The model was here the deed of maintenance of the husband for the wife in the native Egyptian tradition, usually called in Greek συγγραφή τροφῖτις: Pestman 1961: 32-50. For its assimilation to a loan, cf., among many examples, UPZ I 118 = P. Tor. 13 = MChr. 29 (ca. 140 BCE Memphis), ll. 8-10: δεδανεικέναι τῶι εὐθυνο|μένωι [κατ]ὰ συγγραφὴν τροφῖτιν τὴν ἀναγραφεῖσαν διὰ τοῦ γραφίου ἀργυ(ρίου) (δραχμὰς) φ ἐπὶ τῆι ἐξονομαζο|μένηι Θα[υ]ῆτι τῆι καὶ Ἀσκληπιάδι εἰς τὸ χορηγεῖν ταύτηι καθ' ἔτος ὀλυρῶν (ἀρτάβας) ξ, κτλ. On UPZ I 118, Pestman 1961: 45-46.

[241] Rabel 1907: 357; Mitteis 1912: 136; Schmitz 1963: 46-48; Herrmann 1989: 319; Rupprecht 1995: 430 n. 49.

[242] Mitteis 1907: 136 n. 2, invokes the parallel of Scaev. 16 dig. D. 32.101pr. The comparison is unfit: the praedia pignori data are not presented there as cases of Sicherungsübereignung, but merely of forfeit-pledge, cf. ‚si modo in proprium patrimonium (quod fere cessante debitore fit) non sit redacta'.

[243] For genitive/accusative oscillation in the Pathyrite agoranomic sales, Vierros 2012. More

the previous words, but one wonders why would Psenthôtês take for granted that if a title-transfer security were to be part of his estate at his death, it would consist in grain.

A better interpretation is possible. The passage begins by mentioning what may be due by virtue of a document, be it a simple loan deed or a real security: κατὰ συνβόλαια ἢ κατ' ἐπενέχυρον. The emphasis lays on the document, and this sheds light on the meaning of ἐν πίστει: whatever may be due by virtue of undocumented loans in grain.[244] There is no real security here: the πίστις is simply the trust of lending without a document, as is commonly done when it comes to minor grain loans.

j) P. Oxy. VI 980 verso descr. (3rd cent. CE), is a short fragment from a list of prices referred to houses. It contains simple entries like Ἄρειος ὀπωροπώλη[ς] τιμῆς οἰκίας (δραχμαὶ) φ, but the first one reads Κορνήλιος ποικιλτὴς τιμῆς οἰκίας ἐν πίστει ἰς ἣν τιμῆς (δραχμαὶ) Β. Here, ἰς (i.e. εἰς) ἣν τιμῆς points to a partial payment, and the phrase ἐν πίστει ἰς ἣν τιμῆς suggests that it is this payment, not the sale itself, as commonly assumed,[245] that is made ἐν πίστει. The phrase may thus refer to a partial payment made in advance. This is also the meaning of ἐν πίστει in the contemporary P. Oxy. XII 1413 (272 CE). The document records several debates in the senate of Oxyrhynchos. In the last one (l. 25 ss.), on the completion of a golden crown requiring 12 extra talents, the syndic promises to report any payments made in advance to the artificers: [εἴ τι τοῖ]ς τεχνείταις ἐν πίστι ἀναλίσκεται, παρατεθήσεται ὑμῖν (l. 33).[246]

k) BGU II 464 (after 138 CE Arsinoites), often mentioned as an example of ὠνὴ ἐν πίστει,[247] is in truth too fragmentary to allow any conclusion. Although the text refers to a specific affair, it is written in an almost literary upright hand fit for a bureaucratic text or a petition rather than a purely private document. The crucial lines are 3-5: [- ca.? - α]ὐτὰ τὴν [γ]ενομένην πρᾶ[σ]ιν [ἐ]ν πίστι γεγονέναι ὑπ[- ca.? -] | [. . . . Ἀρφ]αήσιος καὶ τῆς τούτων μη[τ]ρὸς τῆς Φανο[μγέως (?) . . . .] | οἰκίας καὶ αὐλῆς καὶ φοινικῶνος ἐν ἰ̈διοκτήτῳ [γῇ . . . .]. Undoubtedly, they refer to a sale concluded ἐν πίστει. It is not irrelevant, though, that ἐν πίστει seems an adjunct to the infinitive γεγονέναι rather than to πρᾶσιν: it is not evidence of an

lit. on the linguistic idiosincracies of the Pathyrite agoranomoi supra n. 82.

[244] The considerations on ἔν τισιν in Rostowzew 1910: 186-187 are not helpful for the understanding of our text. As I see it, ἔν τισιν refers to ἄλλο ὑπάρχον and is in turn qualified by πυροῦ κτλ: "if there is any other property belonging to him (i.e. to Psenthôtês), by virtue of a deed of credit or pledge, and also *consisting in some wheat, barley, etc.* given en pistei".

[245] Preisigke, s.v. πίστις 4a (col. 309); Pringsheim 1950: 125 n. 1; Rupprecht 1995: 430 n. 49.

[246] A similar sense is likely in the too fragmentary meriteia P. Strasb. VII 603 (103-116 CE Tebtynis), l. 15: [- ca.? -] πρεσβυτέρας ὄνομα ἐν πίστι. The lacuna must probably be integrated [- ca? - εἰς τὸ τοῦ Ἑλένης] (cf. Preisigke 1925, s.v. ὄνομα 2e, col. 185), in the likely sense that something is or had been granted to Helen the elder in advance for her share.

[247] Mitteis 1912: 136; Preisigke, s.v. πίστις 4a; Pringsheim 1950: 125 n. 1; Schmitz 1963: 51-52; Herrmann 1989: 321, 323; Rupprecht 1995: 430 n. 49.

institution called πρᾶσις ἐν πίστει, but of a sale that happened to be concluded ἐν πίστει in a specific case whose details we ignore. It might be, as generally assumed, a guarantee sale, but at this point it seems improbable: all the alleged instances of ἐν πίστει for guarantee sales have turned out to be misinterpretations of the evidence (supra ‹a› to ‹j›); the only remaining occurrence is MChr. 233 (supra VIII), which belongs to a very specific late Ptolemaic Pathyrite practice for which the abundant second century Fayum material offers no parallel:[248] a practice, in any case, of suspended sale, not of title-transfer security.

Much more likely seems that ἐν πίστει has here one of the meanings that we have found through our survey in this and the previous section. A possible hypothesis: after γεγονέναι in l. 3, the lacuna must be integrated with the names of the three brothers mentioned at the end of the fragment, [...]ι̣ος καὶ Ἀσκλᾶτος κα[ὶ Ἀ]ρφαήσιος (l. 8), together with their mother Φανο[μγέως (?)], preceded by a preposition that may be simply ὑπὸ but also ὑπὲρ; in this latter case, the sale would have been concluded on their behalf by someone else, and this would explain ἐν πίστει, in a sense analogous to the one we found supra sub ‹f›.

This exhausts the alleged evidence of ὠνὴ ἐν πίστει in the papyri. In retrospect, it seems a hodgepodge built with virtually every document linking ἐν πίστει to a sale or a loan. If each of these texts is carefully considered on its own, and not just as a piece in a hurriedly assembled puzzle, title-transfer security turns out never to be the only possible, or even the most likely interpretation.

XI. Guarantee sales and title-transfer security in the papyri: an overview

In the romanistic tradition, title-transfer security, shaped as fiducia cum creditore, was for centuries relegated to a marginal position within the received body of real securities. Long extinct by Justinian's times, like the mancipatio that it required, absent from the Corpus Iuris, its memory was reduced to scattered references in authors like Cicero and pre-Justinianic compendia like the Pauli Sententiae.[249] In the nineteenth century, fiducia had no proper place in the great pandectistic treatises,[250] precisely because absent from the Pandects.[251] All this changed towards the end of

[248] Guarantee sales are attested in Fayum only in the first century CE, in the form of double document examined supra sub III, but for these the expression ἐν πίστει is never attested.

[249] A list in Noordraven 1999: 12-14, sub 2 (legal pre-Justinianic sources) and 3 (literary sources).

[250] In the three volumes of Windscheid's Pandekten, for instance, only a footnote is devoted to fiducia and contemporary Sicherungsübereignung: §224 n. 2 (yet a fleeting mention in §226a n.2: Windscheid-Kipp 1900: 1005 n.2, 1018 n.2).

[251] The early nineteenth century discovery of the Veronese Gaius did not add much: Gaius' quadripartite system of the obligationes ex contractu allowed no place for fiducia, quite likely rather out of use already in Gaius' times, who mentions it only incidentally: Gai. 2.59-60 (usureceptio), 2.220 (legatum of a res fiduciae causa data), 3.201 (again usureceptio), 4.33 (actio fiduciae among actiones famosae), 4.62 (actio fiduciae as iudicium bonae fidei). Other

the century, in great measure due to the emerging historical approach to the sources. A turning point was an article by Otto Lenel in the Savigny Zeitschrift in 1882,[252] where he identified the sections of Ulpian's and Paul's commentaries ad edictum and of Julian's digesta originally devoted to actio fiduciae. In addition to this refound jurisprudential material, two pieces of documentary evidence appeared in 1867 and 1887: the formula Baetica and the so-called mancipatio Pompeiana.

The end of the century brought also unprecedented attention to title-transfer security in the German legal theory and practice. The dangers that non-possessory chattel pledge entailed, due to its lack of publicity, had led since the early eighteenth century to its progressive eradication. Around 1880, the so-called Faustpfandprinzip ('principle of the possessory pledge'), that limited hypothecation to real estate, had fully asserted itself in legislation, jurisprudence and legal science,[253] even though it imposed for movables a transfer of possession undesirable in most cases for both borrowers and lenders. The attempts to overcome this limitation through redeemable sales and through abstract Sicherungsübereignung were initially rejected by scholars as a circumvention of the law; and yet, a series of court decisions, starting in 1880, upheld their validity, making of fiduciary transfer the ordinary form of security on movable property in Germany, even though it eventually did not find a place in the BGB.[254]

In this context, a papyrus cancelling a sale described as contracted ἐν πίστει, and characterised as a hypothec, would inevitably attract a fair share of attention: it is completely understandable that Grandenwitz hailed P. Heid. inv. 1278 = MChr. 233 (supra VIII) as evidence of a Hellenistic form of title-transfer security, akin, even in its apparent name, ὠνὴ ἐν πίστει, to the Roman fiducia cum creditore. Unfortunately, the force of suggestion of this possibility, and the sense of certainty created by the semblance of a terminus technicus, drove even a scholar so cautious as Ludwig Mitteis to accept as further evidence documents that a dispassionate study easily shows to be completely unrelated: most egregiously, the case of Dionysia in P. Oxy. III 472 = MChr. 235, and P. Oxy. III 486 = MChr. 59. Far from being an example of fiduciary gage, Dionysia's affair is just one among many pieces of evidence for the phenomenon of straw owners in the Mid- to Late Empire (supra IX). The case for ὠνὴ ἐν πίστει has in truth been made by collecting all documents where ἐν πίστει appears in connection with a sale or a loan, assuming that they refer to fiduciary guarantees: if some attention is devoted to each of them individually, this turns out to be hardly ever the only or even the best interpretation (supra X).

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than this, only family law applications: 1.114-115b (coemptio fiduciaria), 1.166 and 1.172 (tutela fiduciaria).

252 Lenel 1882: 104-170, 177-180.

253 Hromadka 1971.

254 On the doctrinal debate, and the final affirmation of title-transfer security, Theisen 2001, Aschenbrenner 2014: 10-18.

This negative result for the ἐν πίστει documents is unsurprising: the συγγραφὴ ὠνῆς ἐν πίστει of MChr. 233 was a false lead; not the unknown Hellenistic form of fiduciary gage that Gradenwitz imagined, but the Pathyrite agoranomic version of the native Egyptian tradition of suspended guarantee sales. It was Pieter Pestman in 1985 (supra IV) who first paid attention to the oddities of a group of late second to early first century BCE Pathyrite agoranomic sales, executed in two stages, with an interval of some months to some years, or cancelled after a similar interval. Pestman realised that these sales functioned as securities for the return in money (documented as price) of wheat loans, as the rich available material often explicitly confirms (supra n. 71). The suspension of the sale was achieved by interrupting the execution of the deed, leaving it initially incomplete. The method may seem raw, but it entailed a remarkable advantage: taxes were paid only at the end, and, unlike in ordinary hypothecations, only once, either at the rate required for sales, if the debtor defaulted and the creditor wished the sale to be completed, or, otherwise, at the minor rate required for hypothecs. This latter rate confirms that the transaction was, also in the eyes of the administration, a mere surrogate for hypothecation: a sale with suspended effect, not a title-transfer security. Despite this, if the debtor repaid the loan and the sale deed was left incomplete, a document would usually be issued explicitly confirming the cancellation of the sale. These documents, drawn up in Demotic or Greek, were labelled as epilyseis, even when fashioned in the native form of the apostasion (cf. BGU VI 1260, 101 BCE, Pathyris). MChr. 233, dated in 111 BCE Pathyris, is, as Pestman recognised, just one such epilysis; the συγγραφὴ ὠνῆς ἐν πίστει under cancellation, just one of his Pathyrite interrupted sales, significantly characterised as a mere hypothecation (ὠνὴν ψιλοῦ τόπου ... ὃν ὑπέθετο).

These interrupted sales show the remarkable ingenuity of the Pathyrite notaries, bilingual natives like the Ammônios alias Pakoibis (supra n. 81) who executed MChr. 233, in pouring into Greek agoranomic form the legal traditions of the native Egyptian population. Suspended sales were, in fact, together with manual pledge, the main national form of real security. In Fayum, the extant examples span from the mid third century BCE Demotic P. Chic. Haw. 7 (supra II) to the first century CE bilingual sale-loan contracts from Soknopaiu Nesos and Tebtynis (supra III). Characteristic of this Fayum tradition, in its early Ptolemaic as in its early Roman incarnation, is that the sale deeds were formulated as unconditional, as for a fully perfected sale, the ‹document of being far› issued already ab initio together with the ‹document for silver›. Upon default, the creditor had thus a perfectly unconditional, ordinary property deed: in a separate papyrus, in the early Ptolemaic model; in a separate column that could easily be excised from the loan, in the early Roman one. And yet, these deeds were labelled as hypothecs and taxed as such: whatever the parties believed, the creditors were not owners ab initio, and would not become such until default, by paying the full telos epikatabolês. This requirement has such practical relevance that by itself makes it quite unlikely that the parties could have

believed otherwise. And, in fact, we have hints that they were perfectly aware of this suspended effect: the original property deeds were promised but not yet conveyed (supra II i.f.); in the later model, the Demotic sale deed was accompanied by a Greek loan deed that could only be meant for court, and would have been completely useless if the sale had been unconditional (supra III); the public duties were agreed to pass to the creditor only when the term arrived (III sub ‹b›).

In the Theban area, guarantee sales were quite explicitly suspended (supra II): the contracts are acknowledgements of debt to which a sale -as a mere ‹document for silver›, without the ‹document of being far›- is added for the case the borrower does not pay in time. These are Spiegelberg's Kaufpfandverträge, spanning from the very early Ptolemaic times to the mid second century BCE. Towards the end of the century, the Pathyrite agoranomoi, by interrupting the execution of a Greek sale deed, allowed the Egyptian population to keep, also in their Greek agoranomic transactions, this Theban tradition of suspended guarantee sales. It is to this native tradition that MChr. 233 belongs.

Whether the sale reference (ὡς ἂν πράσεώς γενομένης) in the so-called menein contracts (supra V) is a last echo of this same native tradition (ibid i.f.) must remain here an open question. Important for us is to emphasise that, despite a formulation (μένειν ... τὴν κράτησιν καὶ κυρείαν) that might suggest otherwise, these first and second century CE Oxyrhynchite contracts are not a form of fiduciary transfer but a type of hypothecation: the creditor acquires only upon default, and has to follow the same execution procedure he would use to enforce an ordinary hypothec. In truth, the only anomaly of these contracts seems to be that the creditor keeps his full execution rights on him and all his property, as if no security had been given, and may freely choose between this ordinary execution and the hypothec, as the documents underline, and the evidence for execution confirms.

In 1988, Edward Harris proved that the hypothec of the Athenian orators and the so-called πρᾶσις ἐπὶ λύσει of the horoi, long seen as two entirely different types of real security —the latter usually imagined as a transfer under subsequent condition—, were in fact one and the same institution:[255] an institution, that, despite the frequent use of the language of sale, did not make the creditor acquire until the debtor defaulted and the creditor distrained on the security (Harris 2012 and 2013). In Ptolemaic Egypt, manual pledge aside, the only Greek form of real security seems to be that same hypothec. Suspended sales are instead (supra II-III) the dominant form of real security in the native Egyptian tradition. When confronted with these native suspended sales, the Ptolemaic administration (as later the Roman) treats them and taxes them as hypothecs.[256] And, when in the late second century BCE a

[255] Harris 1988.

[256] Theban Kaufpfandvertrag, supra nn. 35 and 36; Fayum Demotic guarantee sales, n. 41 and text ad nn. 38-40; Fayum sale-loan contracts, nn. 50 and 51; Pathyrite interrupted sales, nn. 74 and 76. Taxation logic aside, this characterisation exemplifies a phenomenon

Greek agoranomic expression had to be found for them, there was quite obviously no available equivalent Greek institution to resort to: the result was achieved through the remarkably crude (even if fiscally advantageous) expedient of interrupting the execution of the sale deed (supra IV). All this points to one simple conclusion: in the Greek legal grammar as received in Egypt there were no suspended sales, only hypothec.

As for title-transfer security, a review of the alleged evidence (supra VI-VII) yields an astonishingly meagre result. The only likely, even if not completely indubitable case is an Augustan synchôrêsis among Romans, BGU IV 1158 = MChr. 234 (9 BCE Alexandria). Other than that, only a suspicious transaction among Oxyrhynchite Aurelii can be mentioned as a possible, but again not quite certain, occurrence (VII sub 'e'): P. Oxy. XIV 1703 (ca. 261 CE Oxyrhynchos). It would not be surprising if more and better examples appear in the future, but, taking into account how abundant the papyrological material for all other real securities already is, it is quite improbable that they will go beyond a handful of scattered occurrences. An assiduous practice is unlikely to emerge, let alone an institutionalised form comparable to the Roman fiducia cum creditore, as Gradenwitz imagined behind MChr. 233. As for ὠνὴ ἐν πίστει, the inconclusive BGU II 464 aside (supra X sub ‹k›), the expression has not reappeared for over a century, not even to describe any other of the Pathyrite suspended sales that MChr. 233 in truth exemplifies. Significantly, the words ἐν πίστει do not appear in BGU IV 1158 or P. Oxy. XIV 1703. In truth, under a more attentive reading the expression vanishes even from MChr. 233: a simple description of the Pathyrite practice in terms of the execution ἐν πίστει, i.e. in guarantee, of a sale syngraphê, or of its keeping ἐν πίστει, i.e. in custody, at the archeion. At the present state of our sources, the term ὠνὴ ἐν πίστει does not seem to be the terminus technicus that Gradenwitz imagined, but a phantom, as the institution it was supposed to name.

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often remarked by Ernst Rabel: in the legal language, the actual transaction often appears as secondary with respect to its cause, as a means to an end. This is true even in highly formalized legal cultures: Rabel recalled the German expression ‚Pfandfiduzia', which indeed offers a close parallel. And, in fact, ὑποθήκη, ὑποτίθημι are occasionally used in this sense, that we may call non-technical, referred to a function rather than a legal structure: for instance, for hypallagmata, despite the deep structural differences that separate them from hypothec proper, in SB I 5676 = PSI XIV 1411 (232-233 CE Hermopolis), l. 7 (ὑπαλλάξαι), ll. 8, 9, 13, 16 (ὑποθήκη), and P. Fam. Tebt. 40 = SB IV 7364 (173-174 CE Tebtynis), l. 5 (ἐπὶ ὑπεθέμην), l. 10 (ὑ̣πο[θήκ]ης), l. 17 (ὑπαλλαγῆ[ς]).

LITERATURE

Alonso, J. L. 2010. 'The Bibliotheke Enkteseon and the Alienation of Real Securities in Roman Egypt', Journal of Juristic Papyrology 40: 11-54.

Alonso, J. L. 2012. 'Πίστις in loan transactions: A new interpretation of P. Dion. 11-12', Journal of Juristic Papyrology 42: 9-30.

Alston, R. 2002. The City in Roman and Byzantine Egypt. London: Routledge.

Arlt, C. 2009. 'Die thebanischen Notare', in G. Widmer and D. Devauchelle (eds.), Actes du IXe congrès international des études démotiques. Cairo: IFAO, 29-49.

Aschenbrenner, M. 2014. Die Sicherungsübereignung im deutschen, englischen und brasilianischen Recht. Tübingen: Mohr Siebeck

Beutler-Kränzl, F. 2007. 'Procurator ad Mercurium', in: B. Palme (ed.), Akten des 23. Internationalen Papyrologen-Kongresses, Wien: ÖAW, 53-56.

Bingen, J. 1989. 'Vente de terre par Pétéharsemtheus (Pathyris, 100 av. J.-C.)', Chronique d'Égypte 64: 235-244.

Blouin, K. 2014. Triangular Landscapes: Environment, Society, and the State in the Nile Delta under Roman Rule. Oxford: OUP.

Bortolucci, G. 1905. 'La fideiussione nell'Egitto greco-romano', Bullettino dell'Istituto di Diritto Romano 17: 265-316.

Brunner, H. 1894. Forschungen zur Geschichte des deutschen und französischen Rechtes. Stuttgart: J. G. Cotta.

Bülow-Jacobsen, A. 1982. 'Three Ptolemaic tax-receipts from Hawara (P. Carlsberg 46-48)'. Bulletin of the Institute of Classical Studies 29: 12-16.

Burdese, A. 1949. Lex commissoria e ius vendendi nella fiducia e nel pignus. Torino: Giappichelli.

Calderini, A. 1921. 'Anomalie grammaticali in papiri notarili greci della Tebaide (II-I sec. av. Cr.)', Rendiconti dell'Istituto Lombardo II 54: 604-618

Chaveau, M. 2002. 'Nouveaux documents des archives de Pétéharsemtheus fils de Panebchounis', in K. Ryholt (ed.), Acts of the 7th International Conference of Demotic Studies. Copenhagen: Museum Tusculanum Press, 45-57.

Clarysse, W. 1985. 'Greeks and Egyptians in Ptolemaic Army and Administration', Aegyptus 65: 57-66

Clarysse, W. 1993. 'Egyptian Scribes Writing Greek', Chronique d'Égypte 68: 186-201.

Corbino, A. 2004. 'Il secondo capo della "lex Aquilia"', in: O. Condorelli (ed.), Panta rei. Studi dedicati a Manlio Bellomo II. Roma: Il Cigno Galileo Galilei, 1-21.

Cuena Boy, F. 2007-2008. 'Subsignatio y praediatura. Las garantías, especialmente reales, en los contratos con las administraciones públicas', Seminarios Complutenses de derecho romano 20-21: 157-178.

Depauw, M. 2003. 'Autograph Confirmation in Demotic Private Contracts', Chronique d'Égypte 78: 66-111.
Fogolari, G. 1921. 'Gli „agoranomi" di Pathyris-Crocodilopoli (Tebaide)', Aegyptus 2: 327-336.
Gerhard, G. A., and Gradenwitz, O. 1904. 'Ὠνὴ ἐν πίστει', Philologus 63: 498-583.
Gradenwitz, O. 1906. 'Alius mutuam dedit alius stipulatus est', Zeitschrift der Savigny Stiftung, Romanistische Abteilung, 27: 336-340.
Harris, E. M. 1988. 'When is a Sale not a Sale? Athenian Terminology for Real Security Revisited', Classical Quarterly 38: 351-381 (= Harris 2006: 163-206).
Harris, E. M. 1993. 'Apotimema: Athenian Terminology for Real Security in Leases and Dowry Agreements', Classical Quarterly 43: 73-95 (= Harris 2006: 207-239).
Harris. E. M. 2006. Democracy and the Rule of Law in Classical Athens. Cambridge: CUP.
Harris, E. M. 2008. 'Response to Gerhard Thür', in Symposion 2007. Wien: ÖAW, 189-200.
Harris, E. M. 2012. 'Hypotheca in Roman Law and ὑποθήκη in Greek Law', in B. Legras (ed.), Transferts de droit dans le monde antique. Paris: Publications de la Sorbonne, 433-441
Harris, E. M. 2013. 'Finley's studies in land and credit sixty years later'. Dike 16: 123-146.
Herrmann, J. 1989. Zur ὠνὴ ἐν πίστει des hellenistischen Rechts, in G. Thür (ed.), Symposion 1985. Köln-Wien: Böhlau, 317-324 = 1990. Kleine Schriften zur Rechtsgeschichte. München: Beck, 305-314.
Hromadka, W. 1971. Die Entwicklung des Faustfandprinzips im 18. und 19. Jahrhundert. Köln-Wien: Böhlau.
Hughes, G. R., and Jasnow, R. Oriental Institute Hawara Papyri. Demotic and Greek Texts from an Egyptian Family Archive in the Fayum. Chicago: Oriental Institute.
Jasnow, R. 2001. 'Pre-Demotic Pharaonic Sources', in R. Westbrook and R. Jasnow (eds.), Security for Debt in Ancient Near Eastern Law. Leiden: Brill, 35-45.
Jhering, R. 1865. Geist des römischen Rechts, III, 1. Leipzig: Breitkopf u. Härtel.
Johnston, D. 1988. The Roman Law of Trusts. Oxford: OUP.
Jördens, A. 2010. 'Zur Flucht von Liturgen', in Proceedings of the Twenty-Fifth International Congress of Papyrology, Ann Arbor 2007, 345-354.
Jörs, P. 1915, 1918, 1919. 'Erzrichter und Chrematisten. Untersuchungen zum Mahn- und Vollstreckungsverfahren im griechisch-römischen Ägypten, Zeitschrift der Savigny Stiftung, Romanistische Abteilung 36: 230-339; 39: 52-118; 40: 1-97.
Jouguet, P. 1937. 'Quittance de prêt en forme de contrat à six témoins, datant de l'an 7 de Ptolémée Aulète', in: Mélanges A. M. Desrousseaux. Paris: Hachette, 229-238.
Kaser, M. 1939. 'Geteiltes Eigentum im älteren römischen Recht', in Festschrift für P. Koschaker I. Weimar: Böhlau, 445-478.

Kaser, M. 1971. Das römische Privatrecht, I. München: Beck.
Kaser, M. 1976. 'Studien zum römichen Pfandrecht', TR 44: 233-289 = Kaser, M. 1982. Studien zum römischen Pfandrecht. Napoli: Jovene, 1-57.
Kaser, M. and Hackl, K. 1996. Das römische Zivilprozessrecht. München: Beck.
Keenan, J. G., Manning, J. G., and Yiftach-Firanko, U. 2014. Law and Legal Practice in Egypt from Alexander to the Arab Conquest. Cambridge: CUP.
Koschaker, P. 1928. Neue keilschriftliche Rechtsurkunden aus der El-Amarna-Zeit (Abhandlungen der Sächsischen Akademie der Wissenschaften 39.5), Leipzig: S. Hirzel.
Koschaker, P. 1931. Über einige griechische Rechtsurkunden aus den östlichen Randgebieten des Hellenismus: mit Beiträgen zum Eigentums- und Pfandbegriff nach griechischen und orientalischen Rechten (Abhandlungen der Sächsischen Akademie der Wissenschaften 42.1). Leipzig: S. Hirzel.
Koschaker, P. 1938. Review E. Bussi, La formazione dei dogmi di diritto privato nel diritto commune (diritti reali e diritti di obbligazione), Zeitschrift der Savigny Stiftung, Romanistische Abteilung 58: 252-266.
Krüger, P., and Mommsen, Th. 1890. Collectio Librorum Iuris Anteiustiniani in usum scholarum III. Berlin: Weidmann.
Kruse, Th. 2002. Der Königliche Schreiber und die Gauverwaltung. Untersuchungen zur Verwaltungsgeschichte Ägyptens in der Zeit von Augustus bis Philippus Arabs (30 v. Chr. - 245 n. Chr.) I-II. München-Leipzig: K. G. Saur.
Lambrini, P. 2006. La novazione. Pensiero classico e disciplina giustinianea. Padova: CEDAM.
Lenel, O. 1882. 'Quellenforschungen in den Edictcommentaren', Zeitschrift der Savigny Stiftung, Romanistische Abteilung 3: 104-120, 177-197.
Lenel, O., and Partsch, J. 1920. Zum sog. Gnomon des Idios Logos. Heidelberg: C. Winter.
Lenel, O. 1927. Das Edictum Perpetuum, 3rd. ed. Leipzig: B. Tauchnitz.
Lewis, N. 1996. 'Notationes Legentis', Bulletin of the American Society of Papyrologists 33: 61-66.
Lippert, S., and Schentuleit, M. 2010. Demotische Dokumente aus Dime III: Urkunden. Wiesbaden: Harrassowitz.
Lippert, S. 2012. Einführung in die Altägyptische Rechtsgeschichte. 2nd ed. Münster: Lit Verlag.
Manigk, A. 1909a. 'Fiducia', in Pauly-Wissowa Realencyclopädie der classischen Altertumswissenschaft VI 2. Stuttgart: Metzler, col. 2287-2316.
Manigk, A. 1909b. 'Gräko-ägyptisches Pfandrecht', Zeitschrift der Savigny Stiftung, Romanistische Abteilung 30: 272-328.
Manning, J. G. 2001. 'Demotic Papyry (664-30 BCE)', in R. Westbrook & R. Jasnow, Security for Debt in Ancient Near Eastern Law, Leiden: Brill, pp. 307-326.
Maresch, K. 1996. Bronze und Silber. Papyrologische Beiträge zur Geschichte der Währung im ptolemäischen und römischen Ägypten bis zum 2. Jahrhundert n.

Chr. Opladen: Westdeutscher Verlag.
Markiewicz, T. 2005. 'Security for debt in the demotic papyri', Journal of Juristic Papyrology 35: 141-167.
Mentxaka, R. 2001. 'Algunas consideraciones en torno a las concesiones administrativas y sus garantías: capítulos 63-65 de la lex Malacitana', Mainake 23: 71-96.
Messeri Savorelli, G. 1980. 'Lista degli agoranomi di età tolemaica', in R. Pintaudi (ed), Miscellanea Papyrologica (Papyrologica Florentina 7). Firenze: Gonnelli, 185-271.
Messeri Savorelli, G. 1990. 'Un nuovo documento dell'archivio di Horos figlio di Nechutes', Analecta Papyrologica 2: 53-62.
Meyer, P. M. 1921. 'Neue juristische Papyrusurkunden und Literatur', Zeitschrift für vergleichende Rechtswissenschaft 39: 220-282.
Meyer, E. A. 2004. Legitimacy and Law in the Roman World. Tabulae in Roman Belief and Practice. Cambridge: CUP.
Milne, J. G. 1925. 'Double Entries in Ptolemaic Tax-Receipts', Journal of Egyptian Archaeology 11: 269-283.
Mitteis, L. 1912a. Grundzüge und Chrestomathie der Papyruskunde II. Juristischer Teil. Grundzüge. Leipzig - Berlin: Teubner.
Mitteis, L. 1912b. Grundzüge und Chrestomathie der Papyruskunde II. Juristischer Teil. Chrestomathie. Leipzig - Berlin: Teubner.
Mommsen, Th. 1855. 'Die Stadtrechte der Latinischen Gemeinden Salpensa und Malaca in der Provinz Baetica', Abhandlungen der Sächsischen Akademie der Wissenschaften 3: 361-507 [= 1905. Gesammelte Schriften I Berlin: Weidmann, 264-382].
Monson, A. 2012. From the Ptolemies to the Romans: political and economic change in Egypt. Cambridge: CUP.
Müller-Eiselt, K.P. 1982. Divus Pius Constituit. Kaiserliches Erbrecht. Berlin: Duncker & Humblot.
Noordraven, B. 1999. Die Fiduzia im römischen Recht. Amsterdam: J. C. Gieben.
Nowicka, M. 1973. 'A propos d' οἰκία διπυργία dans le monde Grec', Archaeologia Polona 14: 175-178.
Parassoglou, G. M. 1978. Imperial Estates in Roman Egypt. Amsterdam: Hakkert.
Pestman, P. W. 1961. Marriage and Matrimonial Property in Ancient Egypt. Leiden: Brill.
Pestman, P. W. 1978a. 'L'Agoranomie: un avant-poste de l'administration grecque enlevé par les Égyptiens?', in H. Maehler and V.M. Strocka (eds.), Das ptolemäische Ägypten. Akten des internationalen Symposions 27.–29. September 1976 in Berlin. Mainz am Rhein: Ph. von Zabern, 203-210.
Pestman, P. W. 1978b. 'L'impôt-ἐνκύκλιον à Pathyris et à Krokodilopolis (2ème - 1er siècle av. J.-C.)', in E. Boswinkel and P. W. Pestman (eds.), Textes Grecs, Démotiques et Bilingues (P. L. Bat. XIX). Leiden: Brill, 214-222 (Appendix C).
Pestman, P. W. 1985a. 'Agoranomoi et actes agoranomiques. Krokodilopolis

et Pathyris. 145-88 av. J.-C.', in Textes et Études de Papyrologie Grecque, Démotique et Copte (P. L. Bat. XXIII). Leiden: Brill, 9-44.

Pestman, P. W. 1985b. 'Ventes provisoires de biens pour sûreté des dettes: ὠναὶ ἐν πίστει à Pathyris et à Krokodilopolis', in Textes et Études de Papyrologie Grecque, Démotique et Copte (P. L. Bat. XXIII). Leiden: Brill, 45-59.

Pestman, P. W. 1989. 'Egizi sotto dominazioni straniere', in L. Criscuolo and G. Geraci (eds.), Egitto e storia antica dall'ellenismo all'età araba. Atti del colloquio internazionale, Bologna, 31 agosto - 2 settembre 1987. Bologna: CLUEB, 137-158.

Pestman, P. W. 1995. 'Harronophris and Chaonnophris. Two indigenous pharaohs in Ptolemaic Egypt (205–186 B.C.)', in S.P. Vleeming (ed.), Hundred–gated Thebes, Acts of a colloquium on Thebes and the Theban area in the Graeco–Roman period, Papyrologica Lugduno–Batava 27. Leiden: Brill, 101-137.

Pierce, R. H. 1972. Three Demotic Papyri in the Brooklyn Museum, Oslo: Universitetsforlaget

Pringsheim, F. 1916. Der Kauf mit fremdem Geld: Studien über die Bedeutung der Preiszahlung für den Eigentumserwerb nach griechischen und römischem Recht. Leipzig: Veit.

Pringsheim, F. 1950. The Greek Law of Sale. Weimar: Böhlau.

Purpura, G. 1978. 'Il concorso tra fisco e creditore ipotecario in Pap. Oxy. XXIV, 2411', Studia et Documenta Historiae et Iuris 44: 452-460.

Raape, L. 1912. Der Verfall des griechischen Pfandes. Halle: Waisenhaus.

Rabel, E. 1906. 'Nachgeformte Rechtsgeschäfte', Zeitschrift der Savigny Stiftung, Romanistische Abteilung 27: 290-335.

Rabel, E. 1907. 'Nachgeformte Rechtsgeschäfte', Zeitschrift der Savigny Stiftung, Romanistische Abteilung 28: 311-379.

Rabel, E. 1909. Die Verfügungsbeschränkungen des Verpfänders, besonders in den Papyri. Leipzig: von Veit.

Riccobono Jr., S. 1950. Il Gnomon dell'Idios Logos. Palermo: Palumbo.

Rostowzew, M. Studien zur Geschichte des römischen Kolonates. Leipzig-Berlin: Teubner.

Rupprecht, H.-A. 1984. 'Rechtsübertragung in den Papyri. Zur Entwicklung von Parachoresis und Ekchoresis', in: D. Nörr and D. Simon (eds.), Gedächtnisschrift für Wolfgang Kunkel. Frankfurt a. M.: Klostermann, 365-390.

Rupprecht, H.-A. 1995. 'Die dinglichen Sicherungsrechte nach der Praxis der Papyri', in: Collatio Iuris Romani. Études dédiées a H. Ankum, ii, Amsterdam: J. C. Gieben, 425-436.

Rupprecht, H.-A. 1997a. 'Veräußerungsverbot und Gewährleistung in pfandrechtlichen Geschäften', in: B. Kramer et al. (eds.), Akten des 21. Internationalen Papyrologenkongresses, Berlin 1995. Stuttgart-Leipzig: Teubner, 870-880.

Rupprecht, H.-A. 1997b. 'Zwangsvollstreckung und dingliche Sicherung in den Papyri der ptolemäischen und römischen Zeit', in: G. Thür, J. Vélisserapoulos (eds.), Symposion 1995. Köln-Weimar-Wien: Böhlau, 291-302.

Schanbacher, D. 2002a. 'Die Gegenwart der Geschichte in der Rechtsprechung des Bundesgerichthofs - BGHZ 130, 101', in: M.J. Schermaier, J.M. Rainer, and L.C. Winkel (eds.), Iurisprudentia Universalis. Festschrift für Th. Mayer-Maly. Köln: Böhlau, 639-659.

Schanbacher, D. 2002b. 'Römisches Internationales Privatrecht in Scaev. 7 dig. (D. 18,1,81pr.)', Tijdschrift voor Rechtsgeschiedenis 70: 251-264.

Schmidt, Th. S. 1999. 'Trois rescapés de la Grande Guerre: Les papyrus grecs de la Collection Fernand Mayence', Zeitschrift für Papyrologie und Epigraphik 127: 149-156.

Schmitz, W. 1963. Ἡ πίστις in den Papyri. Diss. Köln.

Schubart, W. 1913. 'Alexandrinische Urkunden aus der Zeit des Augustus', Archiv für Papyrusforschung 5: 35-131.

Seidl, E. 1967. 'Šᶜr, der öffentliche Protest im altägyptischen Recht', Zeitschrift für Ägyptische Sprache 94: 131-134.

Selb, W., und Kaufhold, H. 2002. Das Syrisch-römische Rechtsbuch, I. Einleitung. II. Texte und Übersetzungen. III. Kommentar. Wien: OÄW.

Sethe, K. und Partsch, J. 1920. Demotische Urkunden zum ägyptischen Bürgschaftsrechte vorzüglich der Ptolemäerzeit (Abhandlungen der Sächsischen Akademie der Wissenschaften 32). Leipzig: Teubner.

Spiegelberg, W. 1909. 'Demotische Kaufpfandverträge (Darlehen auf Hypothek)', Recueil de travaux rélatifs à la philologie et à l'archéologie égyptiennes et assyriennes 31 (1909) 91-106.

Spiegelberg, W. 1913. Die demotischen Papyri Hauswaldt. Verträge der ersten Hälfte der Ptolemäerzeit (Ptolemaios II–IV) aus Apollinopolos (Edfu). Leipzig: J. C. Hinrichs.

Theisen, F. 2001. 'Die Sicherungsübereignung und ihre römischrechtlichen Grundlagen in der Klassik. Betrachtungen des deutschen gemeinen Rechts des 19. Jahrhunderts', Tijdschrift voor Rechtsgeschiedenis 69: 119-138.

Thür, G. 2008. 'Ownership and Security in Macedonian Sale Documents', in Symposion 2007. Wien: ÖAW, 173-187.

Urbanik, J. 2013. 'Tapia's Banquet Hall and Eulogios' Cell: Transfer of Ownership as a Security in Some Late Byzantine Papyri', in P. J. du Plessis (ed.), New Frontiers: Law and Society in the Roman World. Edinburgh: EUP, 151-174.

Vandorpe, K. 2002. The Bilingual Family Archive of Dryton, His Wife Apollonia, and their Daughter Senmouthis. Brussels: Peeters.

Vandorpe, K., and Waebens S. 2009. Reconstructing Pathyris' Archives. A Multicultural Community in Hellenistic Egypt. Brussels: Peeters.

Vandorpe, K. 2011. 'A successful, but fragile biculturalism. The hellenization process in the Upper-Egyptian town of Pathyris under Ptolemy VI and VIII', in: A. Jördens and J. F. Quack (eds.), Ägypten zwischen innerem Zwist und äusserem Druck: die Zeit Ptolemaios' VI. bis VIII. Wiesbaden: Harrassowitz, 292-308.

Veïsse, A.-E. 2004. Les "révoltes égyptiennes": Recherches sur les troubles intérieurs

en Égypte du règne de Ptolémée III à la conquête romaine. Leuven: Peeters
Vierros, M. 2003. 'Everything is Relative. The Relative Clause Constructions of an Egyptian Scribe Writing Greek', in L. Pietilä-Castrén and M. Vesterinen, Grapta Poikila I. Helsinki: Finnish Institute at Athens, 13-23.
Vierros, M. 2007. 'The language of Hermias, an Egyptian notary form Pathyris (c. 100 BC)', in B. Palme (ed.), Akten des 23. Internationalen Papyrologenkongres ses, Wien, 22.-28. Juli 2001. Wien: OÄW, 719-723.
Vierros, M. 2008. 'Greek or Egyptian? The Language Choice in Ptolemaic documents from Pathyris', in A. Delattre and P. Heilporn, 'Et maintenant ce ne sont plus que des villages ... Thèbes et sa région aux époques hellénistique, romaine et byzantine', Bruxelles: Association Égyptologique Reine Élisabeth, 73-86.
Vierros, M. 2012. 'Phraseological Variation in the Agoranomic Contracts from Pathyris', in M. Leiwo, H. Halla-aho and M. Vierros, Variation and Change in Greek and Latin, Helsinki: Finnish Institute at Athens, 43-56.
Weiß, E. 1909 Pfandrechtliche Untersuchungen I. Beiträge zum römischen und hellenischen Pfandrecht enthaltend. Weimar: Böhlau.
Wilcken, U. 1932. 'Papyrus-Urkunden (P.Lond. III und BGU IV)', Archiv für Papyrusforschung 10: 70-98.
Wolff, H. J. 1940. 'An Oxyrhynchus Receipt for Repayment of Loans', Transactions of the American Philological Association 71: 616-622.
Wolff, H. J. 1975. 'Zum Prinzip der notwendigen Entgeltlichkeit' in H. Hübner, E. Klingmüller, A. Wacke (eds.), Festschrift für E. Seidl, Köln: P. Hanstein, 231-241.
Wolff, H. J. 1978. Das Recht der griechischen Papyri Ägyptens in der Zeit der Ptolemäer und des Prinzipats II. München: Beck.
Wolff, H. J. 1998. Vorlesungen über Juristische Papyruskunde. Berlin: Duncker & Humblot.
Wolff, H. J., and Rupprecht, H.-A., 2002. Das Recht der griechischen Papyri Ägyptens in der Zeit der Ptolemäer und des Prinzipats I. München: Beck
Yiftach-Firanko, U. 2002. 'Deeds of Last Will in Graeco-Roman Egypt: A Case Study in Regionalism', Bulletin of the American Society of Papyrologists 39:149-164.