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Abstract: The paper offers an edition of an unpublished ostracon from the Giessen Collections bearing the siglum O. Giss. inv. 537. It is a potsherd of an Egyptian Late Roman amphora (LR 7) carrying a short one-line name tag that was most likely used to indicate the ownership.
Keywords: Late Roman Egypt, inscription, name labels, amphora, LR7, Giessen papyrus collection.

Abstract: The article focuses on fourteen published documents opening with the phrase *ἐντάγιον ἐμοῦ*. Thirteen of these texts are receipts; in this group, some documents record payments related to taxation (*demosia*, *embole*, the freight charge – *naulon*), while others refer to loan repayments, disbursements in kind (wine), or unidentified payments. One papyrus, on the other hand, is an order of payment. The article analyses the physical features, the structure and vocabulary of the documents, and, last but not least, their provenance and date. All texts are associated – certainly or with a high degree of probablility – with Oxyrhynchos or the Oxyrhynchite nome and dated to the fifth–sixth c. AD. Therefore, they would represent a local documentary model and its variations.
Keywords: *entagia*, receipts, orders of payment, fiscality, transactions, documentary model, Oxyrhynchos.

Abstract: The paper offers an examination of the phrase *ἀργύριον δημόσιον καινόν* in *P. Dura* 129. Its main focus is a comparison of the term with numismatic evidence. After a short analysis of the document itself, different possibilities for the label 'new' are discussed. For this purpose new coin motifs, changes of the emperor's portrait, unusual coin legends, political changes, and connections with unknown victories or even new coin types are investigated.
Keywords: Dura-Europos, new coins, new money, numismatic, reverse types, *restitutio monetae*, Greek imperials, provincial coinage, *P. Dura*.

Abstract: In 1945 Wilhelm Schubart published two papyri in the Festschrift for Leopold Wenger. In the the present paper (in two subsequen parts) I wish to offer their re-edition and a new commentary to both of them. Among other things, their new dating has been established to AD 450–500. Because they deal with completely different subjects, it is assumed here that they belonged to two different codices, contrary to Schubart's opinion, who believed that they are part of one and the same manuscript. P. 16977, edited in the first part of the paper, originates from Eastern Roman leagal teaching practice. It is a fragment of a Greek index lecture about two Diocletianic codes. Greek indices were concise summaries of Latin legal texts, intended especially for law students who did not know Latin. The present fragment deals with nine constitutions about non *numerata pecunia*, 'the lack of payment for a credit'. One constitution is taken from the Hermogenian Code, the remaining ones from the Gregorian Code. Four of them are completely or partly preserved in the Justinianic Code (CI. 4, 30, 4–7).
Keywords: juristic papyrology, legal literature, teaching Roman law in Greek, index lesson, Codex Gregorianus, Codex Hermogenianus, *exceptio non numeratae pecuniae*, Hermopolis Magna.

Abstract: The present article gathers papyrological testimonies of contacts of the monastic community at Bawit and its members with 'the world outside':

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Marzena Wojtczak

LEGAL ASPECTS OF DISPUTE RESOLUTION IN LATE ANTIQUITY. THE CASE OF *P. MICH.* XIII 659[*]

THIS PAPER OFFERS A LEGAL ANALYSIS of the *P. Mich.* XIII 659 published in 1977, which belongs to the extensive Aphrodite papyri collection and constitutes a significant example of a settlement of claims. It proposes an explanation for the complex case described in the document. This reconstruction, although admittedly tentative, allows to observe correlations occurring between regulations and institutions known from Roman law and legal practice as outlined in the papyrus. On the one hand, *P. Mich.* XIII 659 provides insight into the manner the inhabitants of Egypt used law in their daily living. On the other hand, it demonstrates the practical application of the private methods of dispute resolution in Late Antiquity. The analysis of the discussed document enables also to see and better understand how Roman law made its way into the provincial legal practice.

[*] The article was prepared in the course of a research project PRELUDIUM 8 funded by the Polish National Science Centre (UMO-2014/15/N/HS3/01644).

The transcription and translation of *P. Mich.* XIII 659 cited herein is given after the editors [= *The Aphrodite Papyri in the University of Michigan Papyri Collection* (*P. Mich. XIII*), P. J. SIJPESTEIJN (ed.), Zutphen 1977] with occasional proposition of changes to the translation. All cited dates are AD unless stated otherwise.

When looking at *P. Mich.* XIII 659 in a broader context, what seems particularly interesting is the growing number of attestations of ADR (*i.e.* alternative dispute resolution) for the Late Antiquity. At the end of the paper, the reader will find a polemical commentary concerning the popularity of arbitration/mediation, a phenomenon frequently noted in literature. This is only an excerpt of a broader analysis, however. A reassessment of the prevailing views on the functioning of private dispute resolution in Late Antiquity is not the main goal of the article. It is rather – through the presented case study – to draw attention to certain problems and, it is to be hoped, provoke further discussion.

1. STRUCTURE AND CONTENT OF *P. MICH.* XIII 659

With the length of 5.17 meters and 363 lines of written text, *P. Mich.* XIII 659 is one of the longest papyri ever discovered. Unfortunately, some parts of it are badly preserved and, as duly noted by the editors, establishing the position of several fragments still presents some difficulties.

P. Mich. XIII 659 is a *dialysis* dated between 527–542 and in the aspect of its function, corresponds to the Roman *transactio*.[1] A typical *dialysis* was drawn up according to a certain pattern, detectable also – among other examples[2] – in various settlement agreements of similar date. It usually

[1] *Transactio* was an informal (*pactum*) settlement agreement concerning the reciprocal abandonment of a claim or a defence in legal proceedings. Cf. *e.g.* H. Heumann & E. Seckel, *Handlexikon zu den Quellen des römischen Rechts*, Graz 1958, p. 591; see also tit. D. 2.15; C. 2.4.

[2] The so-called *dialyseis* or *homologiai dialyseon* are notarial deeds recording the renunciation of claims between the parties. This type of documents was generally aimed at the expiration of obligations or at avoiding court proceedings for the future. However, not all documents self-presenting as *dialyseis* are the attestations of the ADR in the proper sense of the word. Stating whether or not we are dealing with a settlement agreement concluded as a result of private dispute resolution is particularly difficult when the document's provisions do not reveal the details of bringing the controversy to an end or the corrupted state of the papyrus precludes a safe reconstruction of events. *Dialyseis* that concern ADR usually provide an introduction of the disputing parties, a detailed description of the controversy (often of a long duration, that despite various attempts engaging public and private methods of dispute resolution was not met with satisfying solution) and an elaborate

comprised of the following elements: an introduction of the disputing parties, the dispute context and issues of the controversy as well as an elaborate section containing various terms, conditions and oaths taken by the parties.[3] Even though *P. Mich.* XIII 659 was discussed on several occasions,[4] its legal aspects still need further elucidation. Before moving to the heart of the matter, let me just briefly go through the content of the analysed controversy.

P. Mich. XIII 659 provides a lengthy description of a dispute settled through *mesiteia* (*i.e.* mediation/arbitration, line 54), which involved numerous persons on both sides, fortunately also known from other papyri. The defending party consisted of: Apollos, Paulus and Mary – children and heirs of a certain Ioannes,[5] represented by the presbyter Victor, son of Besarion, and by Senouthes, son of Apollos.[6] The prosecuting party, in

section containing the parties' renunciation of claims for the future. Cf. esp. A. Steinwenter, 'Das byzantinische Dialysis Formular', [in:] P. Ciapessoni (ed.), *Studi in memoria di Aldo Albertoni*, I. *Diritto romano e bizantino*, Padua 1935, pp. 71–94.

[3] Cf. for instance J. Urbanik, 'Compromesso o processo? Alternativa risoluzione di conflitti e tutela dei diritti nella prassi della tarda antichità', [in:] *Symposion 2005. Vorträge zur griechischen und hellenistischen Rechtsgeschichte (Salerno 2005)*, Vienna 2007, pp. 377–400, at pp. 382–384, see also Claudia Kreuzseler, 'Die Beurkundung außergerichtlicher Streitbeilegung in den ägyptischen Papyri', [in:] Ch. Gastgeber (ed.), *Quellen zur byzantynischen Rechstpraxis. Aspekte der Textüberlieferung, Paläographie und Diplomatik. Akten des internationalen Symposiums, Wien 5.–7.11.2007*, Vienna 2010, pp. 17–26, at pp. 23–25.

[4] Cf. *e.g.* C. Zuckerman, *Du village à l'Empire. Autour du registre fiscal d'Aphroditô*, Paris 2004, pp. 29–30, p. 49 n. 52, p. 77 n. 53; G. Ruffini, *Social Networks in Byzantine Egypt*, Cambridge 2008, pp. 171, 172, 214; J. Gascou, 'P. J. Sijpesteijn, The Aphrodite papyri in the University of Michigan papyrus collection (*P. Mich.* XIII)', *Chronique d'Égypte* 52 (1977), pp. 361–362; Urbanik, 'Compromesso o processo?' (cit. n. 3), p. 377 n. 1, p. 382 n. 16, p. 383 n. 18, p. 388.

[5] *P. Mich*. XIII 659, 60–61; identification of Ioannes is controversial and still rises some doubts, cf. Ruffini, *Social Networks in Byzantine Egypt* (cit. n. 4), pp. 171–173. Zuckerman identifies him with the local priest – Ioannes, son of Makarios: cf. Zuckerman, *Du village à l'Empire* (cit. n. 4), p. 257 l. 331, p. 264 l. 605. In favour of this proposal may also speak the fact of raising by the claimant complains against Ioannes in the local church (*P. Mich*. XIII 659, 40–44, cit. below).

[6] P. Van Minnen, 'Dioscorus and the law', [in:] A. A. MacDonald, M. W. Twomey & G. J. Reinik (eds), *Learned Antiquity. Scholarship and Society in the Near-East, the Greco-Roman World, and the Early Medieval West* (= *Groningen Studies in Cultural Change* 5), Leuven – Paris – Dudley, MA, pp. 115–134.

turn, was formed by: Psaios,[7] son of Mousaios, and his wife Talos, daughter of Heraklios.

Victor, son of Besarion[8] (the first of the defendants' representatives) was a priest of the main church of Aphrodite, and almost certainly a cousin of our perfectly known poet – Dioscorus.[9] Senouthes (the other representative) is usually identified as Dioscorus' brother.[10] This interpretation has been proposed by Giovanni Ruffini, as well as Peter van Minnen and Traianos Gagos.[11] Recently, however, Van Minnen has argued that such close family relations did not occur between those two gentlemen. According to his hypothesis, Senouthes, being a *protokometes* together

[7] Psaios also appears in *P. Cair. Masp*. I 67114 (Aphrodites Kome, 526/7) and *P. Flor.* III 297 (Aphrodites Kome, 6th cent.).

[8] Besarion was the brother of Apollos – father of Dioscorus – who is a *protokometes* in Aphrodito, cf. *P. Lond*. V 1694 (Aphrodites Kome, first half of 6th cent.), cf. as well: Zuckerman, *Du village à l'Empire* (cit. n. 4), p. 47; the attestations of Apollos in the year 514 and earlier cf. *e.g.*: *P. Flor*. III 280 (Aphrodites Kome, 514), *P. Cair. Masp*. I 67124 (Aphrodites Kome, 514); after the year 520 cf. *e.g.*: *P. Cair. Masp.* II 67125 (Aphrodites Kome, 525), *P. Lond*. V 1690 (Aphrodites Kome, 527); attestations of Victor, son of late Besarion cf. *e.g.*: *P. Cair. Masp*. II 67126, 2–3 (Constantinople, 541); *P. Flor*. III 297 (Aphrodites Kome, 6th cent.), *P. Michael.* 51 (Aphrodites Kome, first part of the 6th cent.); *P. Cair. Masp.* III 67286 (Aphrodites Kome, 543/4).

[9] Dioscorus, a well known poet and lawyer, son of Apollos (the former *protokometes* of Aphrodito), born probably around the year 520; For more information concerning his life and career cf. Leslie S. B. MacCoull, *Dioscorus of Aphrodito: His Work and His World*, Berkeley 1988, especially pp. 9–15.

[10] *P. Michael*. 51 (Aphrodites Kome, first half of the 6th cent.); *P. Cair. Masp*. I 67032 (Constantinople, 551), 67088 (Aphrodites Kome, 551), 67107 (Aphrodites Kome, 525 or 540), II 67184 (Antinoopolis, 6th cent.), III 67283 (Aphrodites Kome, 547); about the family of Dioscorus cf. *e.g.* Ruffini, *Social Networks in Byzantine Egypt* (cit. n. 4), pp. 152–160; cf. as well: J.-L. Fournet, *Hellenisme dans l'Egypte du vi^e^ siècle: La bibliothque et l'œuvre de Dioscore d'Aphrodite,* I–II, Cairo 1999; J. G. Keenan, 'Aurelius Apollos and the Aphrodite village elite', *PapCongr.* XVII, pp. 957–963.

[11] T. Gagos & P. Van Minnen, *Settling a Dispute, Toward a Legal Anthropology of Late Antique Egypt*, Ann Arbor 1994, pp. 22, 118; Ruffini, *Social networks in Byzantine Egypt* (cit. n. 4), pp. 156, 170, 256. Interesting reconstruction of Dioscorus' family presents also Zuckermann, who suggests that Dioscorus had a cousin of the same name. This reconstruction does not, however, refer to Senouthes, cf. C. Zuckerman, 'Les Deux Dioscore d'Aphroditè ou les limites de la petition', [in:] D. Feissel & J. Gascou (eds), *La pétition à Byzance*, Paris 2004, pp. 75–92.

with Apollos (*P. Cair. Masp*. III 67323 (Antinoopolis, 540), father of Dioscorus, was in fact a son of some other Apollos.[12] Van Minnen based this interpretation on the content of the *P. Hamb*. III 231, where Senouthes is presented as the son of Apollos. According to Van Minnen, if indeed any close family ties occurred between Senouthes and Dioscorus, it would have been mentioned directly in *P. Hamb*. III 231.[13] Therefore, he ruled out the earlier identification,[14] yet did not exclude that some further family bonds in fact existed between Senouthes and Dioscorus. His alternative reconstruction of the genealogical tree of Dioscorus, however possible, met with criticism.[15]

It is not stated directly in *P. Mich.* XIII 659 why Victor and Senouthes were chosen to represent heirs of Ioannes. It seems, however, that the multiplicity of ties within this community offers a suitable answer, as will be shown on the following pages.

Psaios, who submitted the claim, appears also in a highly fragmentary land lease, dated to 526/527 (thus probably earlier than *P. Mich.* XIII 659) which involved Besarion, Victor's father (*P. Cair. Masp.* I 67114). As also noted by Constantin Zuckerman[16] and Giovanni Ruffini,[17] in this text, Ioannes, son of Makarios, had leased to Besarion land registered in the name of Psaios, perhaps the very land at the heart of our discussion.[18] It

[12] Van Minnen, 'Dioscorus and the law' (cit. n. 6), pp. 115–134.

[13] Van Minnen, 'Dioscorus and the law' (cit. n. 6), pp. 122–123.

[14] Such an identification was first proposed by the editors of *P. Hamb*. III 231 (Antinoopolis, 566) but since then was not discussed much. On the career of Senouthes, cf. Zuckerman, *Du village à l'Empire* (cit. n. 4), pp. 47–50 (with literature and sources); on his activity as *protokometes* cf. *e.g. P. Cair. Masp*. III 67286 (Aphrodites Kome, 543/4); on his journey with Dioscorus to Constantinople in the year 551: *P. Cair. Masp*. I 67032 (Constantinople, 551); in reference to family ties between Senouthes and Dioscorus; cf. also Gagos & Van Minnen, *Settling a Dispute* (cit. n. 11), pp. 22, 118 commentary of lines 108–110.

[15] Cf. *e.g.*: Ruffini, *Social networks in Byzantine Egypt* (cit. n. 4), p. 156, especially note 54.

[16] Zuckerman, *Du Village à l'Empire* (cit. n. 4), pp. 29–30.

[17] Ruffini, *Social Networks in Byzantine Egypt* (cit. n. 4), pp. 171–173.

[18] Transcription proposed by the editors: *τὸ ὁλό[κλ]ηρ(ον) κτῆμα κ[…….. | ….]ιριος ὀνόμα[το]ς Ψαιῶτος Μου[σαίου]*, Zuckerman proposes the following reconstruction: *τὸ ὁλό[κλ]ηρ(ον) κτῆμα κ[αλούμενον | Ταθσ]ιριος, ὀνόμα[το]ς Ψαιῶτος Μου[σαίου]*, which makes the connection between *P. Mich*. XIII 659 and *P. Cair. Masp*. I 67114 (Aphrodites Kome, 526/7) more probable, cf. Zuckerman, *Du village à l'Empire* (cit. n. 4), p. 29.

is also worth mentioning that Apollos, son of Dioscoros who was one of the witnesses to the concluded settlement and the preparation of a dialysis, is identified as the father of the poet Dioscorus and thus also uncle of Victor who also takes part in the proceedings.[19]

The complaints that Psaios and Talos brought against the heirs of Ioannes concern first and foremost the act of sale of a holding called *Tausiris*. Psaios claims that he had not received full payment for the land (*P. Mich.* XIII 659, 145). Additional matters dealt with in the document concern: (i) the low-priced sale of two more holdings to the heirs of Ioannes (lines 94–95), (ii) Psaios' complaint regarding the fact that he was asked by Apollos for a certain amount of gold and grain, allegedly for taxes (lines 102–107), and (iii) the fact that Psaios 'executed a security for them (*i.e.* Ioannes' heirs) on a house that belongs to him for the security and freedom of encumbrances of the fourth part of the holding of Theodosios from Pakerke located in the plain of the village of Aphrodite' (lines 115–120).

The case is then an interesting and complex one. I would like to concentrate, however, on the controversies concerning the above-mentioned sale agreements, some of the applied terminology of the legal flavour, and possible motives that dictated the application of alternative means of dispute resolution in this specific case.

2. TWO DEEDS OF SALE – STORY UNFOLDS?

In the beginning of the controversy, the conclusion of two deeds of sale is recalled. The first, whose validity is questioned by Psaios, concerned the holding for which apparently only part of the price was paid, and thus the claimant is trying to obtain the remaining sum (which is not defined). The second deed, referred to by the representatives of Ioannes'

[19] For this identification argued, cf. *e.g.* Ruffini, *Social Networks in Byzantine Egypt* (cit. n. 4), p. 171 n. 151, Gascou, rev. of *P. Mich.* XIII (cit. n. 4), p. 361, Zuckerman, *Du village à l'Empire* (cit. n. 4), pp. 29–30, p. 49 n. 52; alternative identification: Gagos & Van Minnen, *Settling a Dispute* (cit. n. 11), p. 124.

heirs, involves the sale of a right of pasturing (*katanomes* in *P. Mich.* XIII 659, *e.g.* lines: 8, 19, 23) and, in addition, affirms the validity of the previous sale.

> lines 2–20: *καὶ δὴ καὶ προήγαγον τὴν ὠνιακὴν συγγραφὴν | εἰς Ἰωάννην τὸν εὐλαβέστατον γεγενημένην | τοῦ μνημονευθέντος κτήματος περιέχουσαν | καὶ τοὺς τότε καθυπογράψαντας | μάρτυρας προσμαρτυροῦντας τῇ τῶν | τριακονταὲξ νομισμάτων καταβολῇ. προήγαγον δὲ | καὶ πρᾶσιν ἑτέραν κατανομῆς τινος παρὰ | Ψαϊῶτος γεγενημένην ἑτέροις ὕστερον χρόνοις | πρὸς τὸν μνημονευθέντα Ἰωάννην τὸν τῆς | εὐλαβοῦς μνήμης μνήμην ἔχουσαν | τῆς πρότερον συντεθείσης ὠνιακῆς | συγγραφῆς τοῦ μνημονευθέντος κτήματος | καὶ ταύτην βεβαιοῦσαν, ἐκεῖθεν διϊσχυριζόμενοι | καὶ κατασκευάζοντες ὡς εἴπερ κατὰ βίαν | καὶ ἀνάγκην τινὰ πεποιηκὼς ἦν πρότερον | τὴν τοῦ κτήματος ὠνιακὴν συγγραφήν, | οὐκ ἂν μετὰ ταῦτα ταύτην ἐβεβαίου | κατὰ τὴν μεταγενεστέραν τῆς κατανομῆς | ὠνιακὴν συγγραφήν. κτλ.*
>
> And they produced the deed of sale concluded with the most discreet Ioannes concerning the aforementioned holding, which contained also (the list of) witnesses who appended their signatures and bore witness to the payment of the thirty six nomismata. They also produced another sale (agreement) of a right of pasture concluded at some other, later time from Psaios to the aforementioned Ioannes of discreet memory containing a notice of the before concluded deed of sale concerning the aforementioned holding and validating it. Hence affirming confidently and maintaining that if he had executed before the deed of sale concerning the holding by force and compulsion he would not have afterwards validated it by the later executed deed of dale concerning the right of pasture.

Apparently, the latter agreement is also made from Psaios to Ioannes (*P. Mich.* XIII 659, 8–10: *παρὰ Ψαϊῶτος πρὸς Ἰωάννην*), but the right of pasturing does not seem to refer directly to the holding being the subject of controversy, although the transferred right probably has to do with the previous agreement in some way. The reason why the agreement is being called upon is the occurrence of provisions regarding the confirmation and validation of the previously concluded deed. Would a perfectly binding and effective agreement need any further confirmation? This practice should leave us a little suspicious about the real nature of the first deed of sale.

The complications by no means end here. Another, although badly preserved part of the papyrus mentions an ambiguous security for 18 *nomismata*, presented during the proceedings by Psaios and claimed by the opposing party to be fictitious.

lines 329–337: [. . . . . *τῶν δεκ*]*α*-|*ὀκτὼ νομισμάτων παρὰ Ψάϊο διέβαλλον* | *παντελῶς φάσκοντες μὴ εἶναι ἀληθῆ* | *κατὰ μηδὲν καὶ ἀπήτουν ταύτη<ν> τὴν* | *σύστασιν. ἐδίδασκον δὲ καὶ τὴν πρᾶσιν* | *τοῦ κτήματος χωρὶς βίας καὶ ἀνάγκης* | *γεγενῆσθαι τὸ πρῶτον καὶ τὸ χρυσίον* | *τοῦ τιμήματος τῶν τριακονταὲξ νομισμάτων* | *ἐπ' αὐτὸν ἐκ πλήρους καταβεβλῆσθαι κτλ.*

the eighteen *nomismata* from Psaios they absolutely rejected as not genuine saying that it was in no regard true and they asked for that proof. They also proved, that (the deed of) sale of the holding in the first place had been executed without force and constrain and that the gold for the price of thirty six nomismata had been paid in full.

It remains unclear what exactly the passage concerns, but it seems to refer to the first deed of sale. In such a case, the document might serve as a confirmation of the security established for the amount yet unpaid. This hypothesis goes in line with Psaios' claims that he did not receive the full payment for the sold holding and would explain referring by Psaios to this document while proving his rights. Interestingly, at the end of the controversy the parties decide to destroy the document in order to prevent any future disputes (*P. Mich.* XIII 659, 130–140). In one of the final clauses of the issued decision, it is also stated that Psaios shall receive additional 14 *nomisamata* for the price of the sold holding (lines 67–71 and 141–146). Why the extra payment? As explained in the document, according to a new estimation, which takes into consideration the income that the land brings, as well as the amount of taxes usually paid, the price amounts to 50 *nomismata*, that is 14 *nomismata* more than the original 36 *nomisamata* that were supposed to be paid (lines 71–79).

Why the holding was previously underestimated? One could think of many reasons, one of them, an obvious one, being the weak financial situation of Psaios which would urge the owners to choose a low-priced but quick sale over waiting for a profitable but uncertain transaction. In fact,

according to Psaios, this was the case with the sale of two other holdings. Perhaps, however, yet another explanation may be found.

While analysing the preserved document, the knowledge of two legal practices may prove especially useful. The first is the widely-attested usage of guarantee sales aimed at securing the obligations.[20] The practice of establishing a security by means of immediate or conditional transfer of ownership is recognisable in many legal cultures.[21] Certain deeds of

[20] Most recently an overview on the *ὠνὴ ἐν πίστει*, guarantee sales and title-transfer securities in the papyri was provided by José Luis Alonso, cf. J. L. Alonso, '*One en pistei*, Guarantee Sales, and Title-Transfer Security in the Papyri', [in:] *Symposion 2015. Vorträge zur griechischen und hellenistischen Rchtsgeschichte (Coimbra 2015)*, Vienna 2016, pp. 121–172 (with extensive references to earlier literature). The author rightly notes that one should be attentive not to confuse into one category two unrelated phenomena: securities by immediate property transfer, on one hand, and, on the other hand, suspended sales, whose effect is akin to that of an ordinary hypothecation. For the examples and the analysis concerning the Byzantine practice, cf. *e.g.* J. Urbanik, 'Tapia's banquet hall and Eulogios' cell: transfer of ownership as a security in some Late Byzantine papyri', [in:] P. Du Plessis (ed.), *New Frontiers: Law and Society in the Roman World*, Edinburgh 2013, pp. 151–174.

[21] Any scholar of Roman law would probably recall the old institution of Roman *fiducia cum creditore* used as a means of securing the obligations in the form of a transfer of ownership (cf. *e.g.* B. Noordraven, *Die Fiduzia im römischen Recht*, Amsterdam 1999). However, we also come across the practice of the conditional surrender of the debtor's property to the creditor from the Demotic and Graeco-Roman papyri from Egypt (cf. Alonso, '*One en pistei*' [cit. n. 20]), as well as the examples of transfer of ownership serving as a security for debt dating to the Byzantine period (cf. Urbanik, 'Tapia's banquet hall and Eulogios' cell' [cit. n. 20]). For the earlier approaches considering the transfer of ownership serving as a security in Greece (*πρᾶσις ἐπὶ λύσει*) as well as demotic pledge and mortgage: cf. F. Pringsheim, *The Greek Law of Sale*, Weimar 1950, pp. 117–118; T. Markiewicz, 'Security for debt in the Demotic papyri', *Journal of Juristic Papyrology* 35 (2005), pp. 141–167, especially pp. 156–158; and P. W. Pestman, 'Ventes provisoires de biens pour sûreté de dettes. *ὠναὶ ἐν πίστει* à Pathyris et à Krokodilopolis', [in:] P. W. Pestman (ed.), *Textes et études de papyrologie, démotique et copte* (= *P. L. Bat.* XXIII), Leiden 1985, pp. 45–59. On the so-called 'purchase on trust' (*ὠνὴ ἐν πίστει*) in the Ptolemaic and Roman papyri (which existence was persuasively challenged by José Luis Alonso, cit. above), cf. earlier works by: J. Herrmann, 'Zur *ὠνὴ ἐν πίστει* des hellenistischen Rechts', [in:] *Symposion 1985. Vorträge zur griechischen und hellenistischen Rchtsgeschichte (Ringberg 1985)*, Cologne – Vienna 1989, pp. 317–335, with literature and sources; previously on this matter: G. A. Gerhard & O. Gradenwitz, '*ὠνὴ ἐν πίστει*', *Philologus* 63 (1904), pp. 489–583; L. Mitteis & U. Wilcken, *Grundzüge und Chrestomatie der Papyruskunde*, Leipzig 1912, pp. 135–141; R. Taubenschlag, *The Law of Greco-Roman Egypt in the Light of the Papyri 332 BC – 640 AD*, Warsaw 1955, pp. 270–274; significant input to the discussion is presented in: E. Rabel, 'Nachgeformte

Byzantine legal practice provide examples of sales serving as guarantees for the simultaneously concluded loan agreements. However, the deeds from Byzantine period do not include any mention of the sum lent or the loan itself. It is mostly the interpretation of the context of the undertaken transactions that allow to assume that we are dealing with guarantees rather than typical deeds of sale.[22] This reasoning seems especially persuasive in the light of the identification of certain documents as showing exactly such practice.[23]

The second interesting practice is the tendency to limit further dispositions of the property under lien (*potestas alienandi*),[24] making them dependent on the creditor's consent, through additional stipulations.[25] The possibility of alienation was therefore dependent on the acceptance of the creditor. According to the regulations of Roman law in the case of real securities the debtor kept his *potestas alienandi*, which did not collide with the rights of the creditor, the latter being entitled to a 'real' claim, that is, a claim on the thing against anyone, including the new owner. The ownership of the debtor as well as his right to alienate the encumbered

Rechtsgeschäfte', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Römische Abteilung* 28 (1907), pp. 311–379, especially p. 355; A. B. Schwarz, 'Sicherungsübereignung und Zwangsvollstreckung in den Papyri', *Aegyptus* 17 (1937), pp. 241–282. Cf. as well Jane Rowlandson, *Landowners and Tenants in Roman Egypt, the Social Relations of Agriculture in the Oxyrhynchite Nome*, Oxford 1996, pp. 192–193.

[22] Cf. *e.g. PSI* VIII 908 (Tebtynis, 42/3), *PSI* VIII 910 (dup. *P. Mich* V 332 r., Tebtynis, 48), *PSI* VIII 911 (dup. *P. Mich.* V 335, Tebtynis, 56), *P. Mich*. V 328 (Tebtynis, 29/30), more examples and further literature cf.: Urbanik, 'Tapia's banquet hall and Eulogios' cell' (cit. n. 20), p. 152 n. 6.

[23] Cf. Urbanik, 'Tapia's banquet hall and Eulogios' cell' (cit. n. 20), pp. 151–174.

[24] This problem met with significant consideration and became an inspiration for many studies in the field of real securities in the papyri, cf. *e.g.*: E. Rabel, *Die Verfügungsbeschränkungen des Verpfänders,* Leipzig 1909; R. de Ruggiero, *Il divieto d'alienazione del pegno nel diritto Greco e romano*, Cagliari 1910. Recently also: H. A. Rupprecht, 'Veräusserungsverbot und Gewahrleistung in pfandrechtlichen Geschaften'*, PapCongr*. XXI, pp. 870–880.

[25] Cf. *P. Warr*. 10, 23–26 (Oxyrhynchos, 591/2); *PSI* XIII 1340, 14–16 (Petne, 420); about this also Gagos & Van Minnen, *Settling a Dispute* (cit. n. 11), p. 24, after them also Ruffini, *Social Networks in Byzantine Egypt* (cit. n. 4), p. 169.

thing was not suspended since only a limited 'real' right was created on behalf of the creditor.[26] Those rules were so firmly embedded that for the Roman jurisprudence even a voluntary agreement between the parties, in which the debtor renounced his faculty to alienate, posed a threat of qualifying such a practice as *contra ius*.[27] Nevertheless, it should be stressed that some restrictions to this principle were introduced and depended on the fact whether the security was established on movables or immovables. The freedom to alienate was unconditionally held in Roman law[28] for the immovables.[29] In the case of movables, however, their sale by the debtor was considered a theft (*furtum*) and constituted a liability towards the creditor.[30] The reason for such regulation stemmed from the fact that the sale of a movable could easily lead to the creditor's losing track of it and thus turning his right to claim the thing simply ineffective.

[26] On the development of limited property rights in Roman law: short summary with literature cf. J. L. Alonso, '*Hypallagma* or the dangers of Romanistic thinking', *PapCongr.* XXVI, pp. 11–18.

[27] Cf. D. 20.5.7.2 (Marcianus, *sing. ad form. hyp.*) 'Quaeritur, si pactum sit a creditore, ne liceat debitori hypothecam vendere vel pignus, quid iuris sit, et an pactio nulla sit talis, quasi contra ius sit posita, ideoque veniri possit. Et certum est nullam esse venditionem, ut pactioni stetur'; similarly on this subject: J. L. Alonso, 'The *bibliotheke enkteseon* and the alienation or real securities in Roman Egypt', *Journal of Juristic Papyrology* 40 (2010), pp. 11–54, especially pp. 11–16), Alonso notes the surprising ending of the cited fragment of Digest, which seems to be inconsistent with the logic and construction of the text; also on this matter cf. G. Schlichting, *Die Verfügungsbeschränkung des Verpfänders im klassischen römischen Recht*, Karlsruhe 1973.

[28] Contrary to Greek law, where the consent of the creditor was necessary for the conclusion of the sale agreement. Sometimes obtaining the acceptance of creditor was difficult for the debtor, especially when the value of security or the profit obtained from the security is higher than the secured debt. Cf. *e.g. P. Ryl.* II 119 (Hermopolis, 54–67); cf. also Alonso, 'The *bibliotheke enkteseon*' (cit. n. 27), pp. 13–14 n. 7.

[29] Under Roman law, obtaining the creditor's consent was unnecessary for the debtor. The sale remained perfectly valid without it and resulted in the transfer of ownership. However, the lien subsisted and was effective towards the purchaser. The consent of creditor was perceived as the resignation from his rights, unless he declared otherwise, cf. M. Kaser, *Das Römische Privatrecht*, 2nd ed., Munich 1971, p. 469 n. 74, with sources and literature; see also Alonso, 'The *bibliotheke enkteseon*' (cit. n. 27), pp. 12–14; cf.: C. 8.27.12; C. 8.13.15.

[30] Cf. D. 47.2.67 pr. (Paulus, 7 *ad Plaut.*); as well as: Gai. 3.200, D. 41.3.4.21 (Paulus, 54 *ed.*), D. 41.3.49 (Labeo, 5 *Pith. a Paul. epit.*).

In the light of these considerations, I believe that in the first agreement mentioned in the *P. Mich.* XIII 659 we may have before us one of the following possibilities: (i) not a regular deed of sale, but rather a document recording a transaction which was supposed to serve as a security for a loan, or (ii) a deed of sale of a land, on which previously some kind of a security in favour of a third party was executed.

Both of these hypotheses would explain the peculiar necessity for the ratification of the previously concluded agreement. In the first case (*i.e.* guarantee sale), the ratification would be explained by the fact that the loan has not been paid back and that the debtor (in our case – Psaios) surrenders all his rights over the property. This would enable the satisfaction of creditor's claims from the land. Concerning the second scenario (*i.e.* sale of land on which previously a security to the benefit of third party was established), if a consent of a creditor was not obtained by the vendor, even if (as previously mentioned) according to Roman law such a practice would be considered *contra ius,*[31] the later confirmation of the concluded agreement (supposedly after paying off the third party, just as in P. Mich. Inv. 6922) could be in order.[32] The purchase of property under lien would also explain the underestimation of the holding and setting a lower price than its market value.

It should be stressed, however, that we do not possess any information concerning the period between those two deeds of sale, which also hinders the proper reconstruction and interpretation of the dispute's background. If the time distance would be insignificant, we could be even more suspicious of their nature.[33]

[31] Cf. *e.g. P. War.* 10, 23–26 (591/2); *PSI* XIII 1340, 14–16 (420); *SB* I 5282, 36–42 (607); cf. Gagos & Van Minnen, *Settling a Dispute* (cit. n. 11), p. 24; The Roman debtor is free to sell; *contra ius*: D. 20.5.7.2 (Marcianus *sing. ad form. hyp.*).

[32] As for instance suggested by Van Minnen and Gagos in reference to the controversy described in P. Mich. inv. 6922 + *P. Vat. Aphrod.* 10; see: Gagos & Van Minnen, *Settling a Dispute* (cit. n. 11), pp. 24–25.

[33] This occurs in the 'mock sales' which constituted the transfer of ownership serving as a security for loan, cf. Urbanik, 'Tapia's banquet hall and Eulogios' cell' (cit. n. 20), pp. 153–166, especially p. 154, pp. 161–162. Urbanik notices that some subsequent sale agreements dated to the Byzantine period pertain to the same movable or immovable as the object of the transaction and the very same person as the seller. This practice, especially if observed

Moreover, it seems from the context of the document that following the conclusion of the first deed of sale, Psaios, was still for a certain period of time obliged to submit taxes probably (as the context indicates) for the sold parcel. Psaios complained that Apollos[34] had asked him for grain and money allegedly for taxes (*logo demosion*). In order to prove his claims he presented a document confirming the security established in connection to this case.

lines 102–107: ἔτι κεκίνηκε | πρὸς αὐτοὺς καὶ ὡς φανερὸν σῖτόν τε καὶ | χρυσίον ἀπῃτημένος παρὰ Ἀπολλῶτος | λόγῳ δημοσίων καὶ ταῦτα μηδὲν

within relatively short periods of time, brings some doubts towards the nature of the transaction. According to Urbanik, the analysis of the context of concluded transactions in some circumstances allows to presume that we are dealing with the examples of guarantee sales rather than standard sale agreements.

[34] The identification of the mentioned Apollos calls for a short comment. The context of the document could indicate that we are dealing with the heir of Ioannes, although several other circumstances prove this assumption wrong. There is no doubt that one of the witnesses to the *dialysis* is Apollos, the father of Dioscorus (ll. 304–305), who died before 546/7 (which sets a *terminus ante quem* for the *P. Mich*. XIII 659). In the document, we also encounter the information that Apollos, who demanded from Psaios the payment allegedly for taxes, in the moment of executing the *dialysis* was already dead for about 19 years. It should be also noticed that a certain Apollos, son of Ioannes appears in several more documents from the later period (cf. *e.g. P. Cair Masp.* I 67032 (Constantinople, 551) and in 67094 (Aphrodites Kome, 553). In *P. Cair. Masp*. I 67032, next to Apollos, son of Ioannes appears also, *e.g*. Senouthes, son of Apollos and Heraclius, son of Psaios, which brings to mind the parties known from *P. Mich*. XIII 659. If we assume that those later documents mention the same Apollos, son of Ioannes, who in *P. Mich*. XIII 659 is represented by Victor and Senouthes, it seems that the examined fragment of the *dialysis* must refer to some other Apollos. It should be, however, stressed that names such as Apollos and Ioannes are widely attested for this region. Moreover, in the context of the analysed dispute the mention of a claim of a certain Apollos concerning the tax collection (without an indication who is exactly meant), unless proven differently, should be interpreted as referring to the parties at dispute. Similarly, about difficulties concerning identification of Apollos, cf. Gascou, rev. of *P. Mich.* XIII (cit. n. 4), p. 361 (dating the document between 527–542), Zuckerman, *Du village à l'Empire* (cit. n. 4), pp. 29–30, p. 49 n. 52, who argues that the document could be dated to the '30s since Apollos, Senouthes and Victor are not presented as *protokometes*; on dating the document between 539–546/7: Ruffini, *Social Networks in Byzantine Egypt* (cit. n. 4), p. 171 n. 151, with literature. Probably the incorrect identification of Ioannes, who demanded the tax payment in *P. Mich.* XIII 659 with Apollos, father of Dioscorus (who was a witness to the *dialysis*), see Gagos & Van Minnen, *Settling a Dispute* (cit. n. 11), p. 124. The authors dated the document to 564–565, assuming that Apollos, father of Dioscorus, was dead for about 19 years.

ἐποφείλων | καὶ πρὸς σύστασιν τῶν αὐτῷ εἰρημένων | προήγαγεν ἀσφάλειάν τινα περὶ τούτου. κτλ.

he also brought forward against them that he openly had been asked for corn and gold by Apollos allegedly for taxes although he did not owe anything and as a confirmation for the things having been said to him he produced a security concerning it.

This fact indicate that either no change was made in the aspect of registration of the parcel after the first deed of sale was concluded, or that the parties for some reasons agreed that the tax liability should remain with Psaios. The latter reason might have been the fact that from the point of view of the administration, especially tax-wise, the first sale was not of immediate effect, but rather a suspended one, close in its construction to the ordinary hypothecation.[35] This interpretation, in the light of our source, remains highly conjectural. However, this conjecture is all the more tempting since it provides an answer to the question why the tax-liability for the land was left with Psaios.

The ambiguity of this issue may be increased by the fact that the collection of taxes in Aphrodito was a matter for local inhabitants only, because the village dealt with the government directly through the system of *autopragia*.[36] Noteworthy is the fact that the parties decided to

[35] In this scenario only from the moment the first sale is confirmed (which should take place if the loan is not returned upon the given time) do the public duties pass to the creditor: obviously, it is only from that moment that he is considered the owner.

[36] Attestations of *autopragia* in Aphrodito cf. *P. Cair. Masp*. I 67024 (Aphrodites Kome, 551), *P. Cair. Masp*. I 67002 (Antinoopolis, 567), 67019 (Antinoopolis, 548/9), 67032 (Constantinople, 551); on the tax collection in Aphrodito cf. Miroslava Mirković, 'Les ktêtores, les syntelestai et l'impot', [in:] J-L. Fournet & Caroline Magdelaine (eds), *Les archives de Dioscore d'Aphrodité cent ans après leur découverte: histoire et culture dans l'Égypte byzantine: actes du colloque de Strasbourg (8–10 décembre 2005)*, Paris 2008, pp. 191–202, with literature; G. Geraci, 'Per una storia dell'amministrazione fiscale nell'Egitto del VI secolo d.C.: Dioscorus e l'autopragia di Aphrodito', *PapCongr.* XV, pp. 195–205; More about *syntelestai*, cf. W. Liebeschuetz, 'Civic finance in the Byzantine period: the laws and Egypt', *Byzantinische Zeitschrift* 89 (1996), pp. 389–408, especially p. 396; in the following year without the reference to the previous publication: Miroslava Mirković, 'Dioscorus als syntelestes', *PapCongr*. XXI, pp. 696–705, especially p. 703, cf. also A. Laniado, 'Συντελεστής. Notes sur un

destroy the document confirming the security established in reference to the collected tax, similarly as in the case of the security established on 18 *nomismata*.[37]

While analysing *P. Mich.* XIII 659, one must also be aware of the general practice of various land dispositions known from late antique Aphrodito. While the owners of small holdings rather tend to farm the land on their own, those with substantial holdings or middlemen leased significant parts of their estate to tenants.[38] Others still subleased land which they did not own or that was not registered to their names, which brings us again to the example of *P. Cair. Masp.* I 67114, involving some characters from our story in the fragmentary lease agreement of a parcel registered to Psaios's name. Papyri provide examples of the quasi-partnerships concluded between parties who decide to jointly cultivate the land leased by one of them and divide between themselves the costs of rent.[39]

3. AMBIGUOUS RIGHTS OF THEODOSIOS

Several more legal issues deserve a comment. The document mentions an execution of a security on Psaios' house to the benefit of the defending

terme fiscal surinterprété', *Journal of Juristic Papyrology* 26 (1996), pp. 23–51, and P. Sarris, *Economy and Society in the Age of Justinian*, Cambridge 2006, p. 157; cf. also: *LSJ s.v.*

[37] *P. Mich.* XIII 659, 130–140. In order to avoid future claims, it has been also stated that all the documents referring to the controversy that have not been disclosed by the parties will lose their force and effect.

[38] Cf. Gagos, & Van Minnen, *Settling a Dispute* (cit. n. 11), pp. 15–18; cf. also for other regions Rowlandson, *Landowners and Tenants in Roman Egypt* (cit. n. 21); on economy and land management cf. T. M. Hickey, 'Aristocratic landholding and economy', [in:] R. S. Bagnall (ed.) *Egypt in the Byzantine World*, Cambridge 2007, pp. 288–308 with literature; cf. also J. G. Keenan, 'Byzantine Egyptian villages', *ibidem*, pp. 226–243.

[39] Cf. *P. Lond.* V 1705 (Aphrodite, first half of the 6th cent.), *P. Lond.* V 1694 (Aphrodite, first half of the 6th cent.), in this vein also J. Urbanik, 'Diligent Carpenters in Dioscorus' papyri and the Justinianic (?) standard of diligence', [in:] *Culpa. Facets of Liability in Ancient Legal Theory and Practice Proceedings of the Seminar Held in Warsaw 17–19 February 2011* (= *JJurP Supplement* 19), Warsaw 2012, pp. 273–296, at pp. 286–288 (with examples also from other regions).

party, which was made because of Psaios' difficult situation caused by the fact that apparently a certain Theodosios also had some previously guaranteed rights over a part of the holding in question. This fact may indicate that on the land, which is the object of the controversy, some rights were indeed established in favour of a third party, which also probably influenced the price set for the land.[40]

The very complex, but unfortunately not entirely clear description of the parties' rights, as well as the use of the term ***katharopoieseos***, certainly of legal significance, bring to mind a figure of a guarantee against eviction.[41]

> lines 115–125: *ἔτι κεκίνηκε πρὸς αὐτοὺς Ψαϊος ὡς κατά τινα | περίστασιν ἀσφάλειάν τινα πεποιηκὼς αὐτοῖς | περὶ οἰκίας αὐτῷ προσηκούσης ἀποσοβήσεως | καὶ καθαροποιήσεως ἕνεκεν τοῦ τετάρτου μέρους | τοῦ κτήματος τοῦ κατὰ Θεοδόσιον τὸν ἀπὸ | Πακῆρκε διακειμένου ἐν πεδιάδι κώμης Ἀφροδίτης | τοῦ αὐτοῦ Ἀνταιοπολίτο\υ΄ νομοῦ καὶ ἔδοξεν καὶ συνήρησεν | τοῖς ἀφ' ἑκατέρου μέρους ὥστε τοὺς κληρονόμους | Ἰωάννου τοῦ τῆς εὐλαβοῦς μνήμης μηδένα λόγον | ἔχειν πρὸς Ψάϊον περὶ τοῦ μνημονευθέντος | οἴκου. κτλ.*
>
> Psaios also brought forward against them that he had executed a security for them on a house that belongs to him for the security and freedom of encumbrances of the fourth part of the holding of Theodosios from Pakerke located in the plain of the village of Aphrodite of the same Antaepolite nome. And each of the both parties resolved and agreed that the heirs of Ioannes of discreet memory would have no claim against Psaios concerning the aforementioned house.

It seems plausible that the security was established in the event of Theodosios pursuing the claim against the purchasers due to the right he had towards the fourth part of the holding in question. The agreement

[40] Cf. Gagos & Van Minnen, *Settling a Dispute* (cit. n. 11), pp. 24–25. For the comparison of the sale of movables and immovables under lien as well as the legal effects of such a transaction in Roman and Greek law cf. Alonso, 'The *bibliotheke enkteseon*' (cit. n. 27), pp. 11–16.

[41] *E.g. P. Petra* IV 39, 128 (Kastron Zadakathon, 574); cf. also H. A. Rupprecht, *Bebaiosis und Nichtangriffsklausel,* [in:] *Symposion 1977. Vorträge zur griechischen und hellenistischen Rechtsgeschichte (Chantilly 1977)*, Cologne – Vienna 1982, pp. 235–245.

concluded between Ioannes and Psaios probably infringed the rights of Theodosios.

Therefore, it may be assumed that the case of Theodosios forms an exception to the previously mentioned general form of a guarantee against eviction. Accordingly, the parties decide upon the measures to be taken in case Theodosios tries to reclaim his rights concerning the mentioned holding. Moreover, it should be noted that according to the concluded settlement, Psaios was obliged to 'remove' at his own risk (according to the provisions of the concluded sale agreement) everyone who would pursue claims against the heirs of Ioannes in regard to the sold landed properties or their parts.

lines 162–167: *ὁμολογεῖ δὲ Ψάϊο πάντα ἐπελευσόμενον τοῖς κληρονόμοις | Ἰωάννου τοῦ τῆς εὐλαβοῦς μνήμης τῶν πεπραμένων | ἕνεκεν παρ' αὐτοῦ κτημάτων ἢ μέρους τούτων | ἀποσοβῆσαι κινδύνῳ ἰδίῳ καὶ τῆς αὐτοῦ περιουσίας | κατὰ τὴν δύναμιν τῶν ἐπ' αὐτοῖς συντεθεισῶν | ὠνιακῶν συγγραφῶν. κτλ.*

Psaios acknowledges that he will remove at his own risk and that of his property in accordance with the force of the concerning them concluded deeds of sale everyone who will take proceedings against the heir of Ioannes of discreet memory concerning the holdings bought from him or concerning a part thereof.

Parties subsequently made arrangements regarding Theodosios' rights, which, as it seems, forms an exception to the previously mentioned general form of a guarantee against eviction.

lines 167–198: *εἰ δὲ καὶ Θεοδόσιος ὁ΄ ἀπὸ Πακῆρκε | κατά τινα χρόνον ἤ τρόπον ἐπέλῃ μέρος τῶν αὐτῶν | κτημάτων ἐπιζητῶν ἤγουν οἱ τούτου κληρονόμοι | ἢ καί τινες ἐξ αὐτῶν, ἔδοξεν ὥστε τοὺς αὐτοὺς κληρονόμους | Ἰωάννου τοῦ τῆς εὐλαβοῦς μνήμης ἤτοι Βίκτορα τὸν | εὐλαβέστατον καὶ Σενούθην τοὺς ὑπὲρ αὐτῶν νῦν | τοὺς λόγους ποιουμένους προενεγκεῖν τὴν πρὸς αὐτοὺς | γεγενημένην παρὰ τοῦ μνημονευθέντος Θεοδοσίου | διαλυτικὴν ὁμολογίαν τὴν καὶ παρ' αὐτοῖς ἀποκειμένην |ἧς καὶ τὸ ἴσον ἐκδεδώκασιν ἀρτίως μεθ' ὑπογραφῆς | ἑαυτῶν καὶ οὕτως τὴν διάλυσιν ἐκείνην λαμβάνοντα | Ψάϊον καὶ ταύτῃ χρώμενον καὶ ἑτέροις οἷς βούλεται δικαίοις | ἀποσοβῆσαι*

καὶ τὸν μνημονευθέντα Θεοδόσιον | ἐπ'ερχόμενον τοῖς αὐτοῖς πράγμασιν ἢ μέρει αὐτῶν | ἢ τοὺς τούτου κληρονόμους καὶ οὕτως μετὰ τοὺς ἀγῶνας | αὖθις ἀναδιδόναι τὸ αὐθεντικὸν τῆς αὐτῆς διαλυτικῆς | ὁμολογίας τοῖς κληρονόμοις Ἰωάννου τοῦ τῆς εὐλαβοῦς | μνήμης. εἰ δὲ κατά τινα καιρὸν ἢ τρόπον ὑπέρθωνται | προενεγκεῖν τὴν μνημονευθεῖσαν ἐκείνην διάλυσιν | οἱ κληρονόμοι Ἰωάννου τοῦ τῆς εὐλαβοῦς μνήμης | ἤτοι Βίκτωρ ὁ εὐλαβέσταος καὶ Σενούθης οἱ νῦν | ὑπὲρ αὐτῶν τοὺς λόγους ποιούμενοι ζητήσεως | γινομένης παρὰ Θεοδοσίου τοῦ μνημονευθέντος | περὶ μέρους τῶν αὐτῶν κτημάτων, ἔδοξεν ὥστε | Ψαϊῶτα μὴ ἀποσοβεῖν τὸν μνημονευθέντα Θεοδόσιον | μήτε τοὺς ὑπὲρ τούτου κληρονόμους ἀντιποιουμένους | μέρους τῶν αὐτῶν κτημάτων ἀλλὰ τὸν κίνδυνον | τῆς ἀποσοβήσεως ἤτοι καθαροποιήσεως τῆς πρὸς | Θεοδόσιον ὁρᾶν τοὺς κληρονόμους Ἰωάννου τοῦ τῆς | εὐλαβοῦς μνήμης ἤτοι τοὺς ὑπὲρ αὐτῶν τοὺς λόγους | ποιουμένους ἐφ' οἷς τὴν διάλυσιν προενεγκεῖν | οὐκ ἠνέσχοντο διὰ τὸ οὕτω δεδόχθαι τοῖς μέρεσι. κτλ.

And if Theodosios of Pakerke takes at any time or in any way proceedings against a part of the same holdings making a request or his heirs or someone of his family it has been resolved that the same heirs of Ioannes of discreet memory or Victor, the most discreet, and Senouthes now undertaking business for them will produce the between them and the aforementioned Theodosios concluded agreement which embodies a settlement and which lies with them and of which agreement they newly have handed out a copy with their subscriptions and that Psaios thus having taken this settlement and using it and whatever other lawful rights he wants removes the aforementioned Theodosios taking proceedings against the same things or against a part thereof or his heirs and thus after the conflicts returns again the warranted copy of the same agreement to the heirs of Ioannes of discreet memory. If at any time or in any way they defer to produce this aforementioned settlement, the heirs of Ioannes of discreet memory or Victor, the most discreet, and Senouthes who now undertake business for them, when an inquiry is being made by Theodosios, the aforementioned, concerning a part of the same holdings it has been resolved that not Psaios will remove the aforementioned Theodosios nor his heirs who may oppose for him concerning a part of the same holdings but that the risk of the removal and the clearance of Theodosios will lay with the heirs of Ioannes of discreet memory or the persons who undertake business for them because they refused to produce the settlement as it has been thus resolved by the parties.

The parties decided upon the steps to be taken in regard to Theodosios' rights towards the mentioned holding. The heirs of Ioannes were

obliged to settle with Theodosios and it is stated they would be responsible for removing all of Theodosios' claims, thus probably also those concerning violation of his rights by Psaios.[42] Furthermore, it was decided that the heirs of Ioannes would have no claim against Psaios concerning his house, on which a security to their benefit was executed (*P. Mich.* XIII 659, 121–125, cit. above).

4. LONGI TEMPORIS PRAESCRIPTIO?

In the course of the analysis, a question rises whether the group of legal institutions referred to in *P. Mich.* XIII 659 contains *longi temporis praescriptio*.[43] The representatives of Ioannes' heirs pointed out that they were not legally obliged to present witnesses for the payment of 36 *nomismata*, since already the period of more or less twenty years has passed from the moment of conclusion of the sale agreement.

lines 33–40: *οἱ δὲ μάρτυρας ἢ καὶ ἀποδείξεις ἑτέρας | τῆς τῶν τριακονταἐξ νομισμάτων καταβολῆς | ἔφησαν ἔχειν μὴ δύνασθαι μηδὲ νομίμως | ἀπαιτεῖσθαι τὰς περὶ τούτου τοῦ μέρους | ἀποδείξεις παρῳχηκότος λοιπὸν εἰκοσαετοῦς | χρόνον πλέω ἔλαττον ἐξ οὗπερ τὸ κτῆμα | πέπραται καὶ ἡ ἐπὶ τούτῳ συντέθειται | {ἡ} ὠνιακὴ συγγραφή. κτλ.*

They said that they could not produce other witnesses or other (proofs) of the payment of the thirty six *nomismata* and that such (proofs) concerning that part (of the deal) could not be legally demanded from them as already a period of twenty years, more or less, had passed since the holding had been sold and the deed of sale concerning it had been drawn up.

According to the provisions of Roman law, acquiring ownership of a land on the basis of *longi temporis praescriptio* depends on the lapse of a

[42] Stemming from a lease, a fiduciary sale, or a security executed to the benefit of Theodoros; cf. F. Pringsheim, *The Greek Law of Sale* (cit. n. 21), pp. 429–450 (warranty against eviction).

[43] As it was suggested by the editors of *P. Mich.* XIII 659, notes to lines 35–40.

period of (i) ten years of undisturbed possession of the land started in good faith if the parties are from the same province (ii) and twenty years, if the parties come from different provinces.[44] After forty years, according to the Constantine's law on the acquisition of prescriptive possession by the length of tenure, the right to the land should come irrespectively of the legality of the inception of possession that, moreover, is not to be investigated.[45]

It is not certain whether the defendant refers to the Roman institution, but if so, the context suggests that the scenario of the parties coming from the same province is applicable. Thus, under the assumption that the parties were aware of the legal regulations in force, proving the lapse of ten years would be sufficient. The reference to the period of twenty years could indicate that the parties were aware of the regulation but did not know the details or that they found recalling the longer period appropriate, since this could only prove their better right towards the landed property. Based on this passage, it is difficult to make any statements concerning the legal awareness of the parties of the controversy, since the lapse of the specified period of time does not eliminate the prerequisite of good faith and legal title, to which no reference is made by the parties. It seems sensible to put the claims of Psaios and Talos, who mention that they have raised complains against Ioannes in the church[46]

[44] Cf. C. 7.33.12.

[45] Cf. P. Columbia inv. 181 (19) + 182 (proceedings before *defensor civitatis* in the year 339, regarding the ownership of land in Karanis), where the institution of *longi temporis praescriptio* is being referred to; cf. *Fontes Iuris Romani Anteiustiniani*, III. *Negotia*, ed. V. Arangio-Ruiz, Florence 1943, pp. 318–328, with cited literature and sources; cf. also: C. J. Kraemer & N. Lewis, 'A referee's hearing on ownership', *Transactions of the American Philological Association* 68 (1937), pp. 357–387, in reference to the sources regarding *longi temporis praescriptio* especially p. 358 n. 3; cf. also idem, 'Constantine's law on *longissimi temporis praescriptio*', *PapCongr.* V, pp. 245–248; U. Wilcken, 'Urkunden-Referat', *Archiv für Papyrusforschung* 13 (1939), pp. 242–243; L. Wenger, 'Juristische Literaturübersicht VIII (bis 1939)', *Archiv für Papyrusforschung* 13 (1939), pp. 257–259, and idem, 'Verschollene Kaiserkonstitutionen', *Historisches Jahrbuch der Görres-Gesellschaft* 60 (1940), pp. 353–390, especially p. 359; on *longi temporis praescriptio* in Roman law cf. J. Partsch, *Die Longi Temporis Praescriptio im klassischen römischen Rechte*, Leipzig 1906, pp. 49–56; R. Taubenschlag, *Das römische Privatrecht zur Zeit Diokletians,* Cracow 1923, p. 172 n. 9.

[46] The place where the claimant was raising complaints against Ioannes persuaded Constan-

in the context of the above-mentioned considerations. Psaios and Talos also pointed out that other legal steps have been taken, but had probably proven ineffective, since the need for the conclusion of the present settlement persisted.

> lines 40–46: *Δικαιολογούμενοι | πρὸς ταῦτα οἱ τοῦ διώκοντος μέρους ἐδίδαξαν | πολλάκις ἐκβοήσεσι κεχρῆσθαι κατὰ τὴν | ἁγίαν ἐκκλησίαν κατὰ Ἰωάννου τοῦ τῆς | εὐλαβοῦς μνήμης, προσεληλυθέναι δὲ | πολλάκις καὶ τῷ τῆς ἐπαρχείας ἄρχοντι | περὶ ταύτης τῆς αἰτίας, κτλ.*
>
> Pleading against this the people of the prosecuting party proved that they had often used loud complaints in the Holy Church against Ioannes of discreet memory and that they also often had approached the office of archon regarding this reason, (...).

If one accepts the assumption that the defendants (heirs of Ioannes represented by Victor and Senouthes) referred to the institution of *longi temporis praescriptio* it seems that the actions undertaken by the claimants (Psaios and Talos) might have been aimed at the acquisition of witnesses needed in case of escalation of conflict and initiation of the proceedings, as well as at the manifestation of due rights. Because of the imprecise formulation of *P. Mich.* XIII 659, however, this hypothesis may only remain tentative. One not only cannot exclude a reference to a different legal tradition, but also a natural argumentation of the parties in case of the inability to present any witnesses to the transaction due to their death or simple faults of the memory caused by the time passed. It should be, however, stressed that the parties refer to an impediment that to their mind has a legal meaning.[47]

Victor and Senouthes decided to take an oath to the benefit of Psaios and Talos confirming the payment – to their best knowledge – of 36 *nomismata* for the purchased land.

tin Zuckerman to the identification of the defendant with Ioannes, son of Makarios, who was a priest in the local church, cf. Zuckerman, *Du village à l'Empire* (cit. n. 4), pp. 29–30.

[47] *P. Mich.* XIII 659, 33–40, especially 35–36: *μηδὲ νομίμως | ἀπαιτεῖσθαι κτλ.*

5. PARTIES' SETTLEMENT AND PROMISE TO OBEY ITS PROVISIONS

It is also to be noted that the document mentions an oath sworn by the holy and consubstantial Trinity and by the victory and safety of the emperor Flavius Iustinianus (which is a typical clause attested for Aphrodito),[48] as well as a penalty of a hundred gold *nomismata* in the case of a breach of the settlements' provisions (penalty clause).

> lines 262–267: *εἰ δέ τις ἐξ αὐτῶν τολμήσειεν | παραβῆναι καὶ ὑπεναντίον ταύτης τῆς | διαλύσεως διαπράξασθαί τι ὁμολογεῖ τὸ | παραβαῖνον μέρος διδόναι τῷ ἐμμένοντι μέρει | λόγῳ προστίμου ὑπὲρ μόνης τῆς παραβασίας | χρυσοῦ νο̣μίσματα ἑκατὸν κτλ.*
>
> If anyone of them shall dare to transgress it or to do something contrary to this settlement the party which does not abide to it acknowledges to give to the party which abides to it as a fine for the reason of only the transgression a hundred gold nomismata (...).

As it was mentioned before the exact date of the document is unknown. Therefore, it is impossible to state whether Justinian's provisions concerning oaths were already or still (at least in legal terms) in force at that time. Justinian had decreed in 529 that the parties would have to confirm arbitration by oath, instead of the obligatory penalty for its violation (C. 2.55(56).4.1–3). Further regulation refers to the acknowledgement of a compromise secured only by an oath and (C. 2.55(56).4.4) granting *actio in factum/actio in rem utilis* or *condictio ex lege*, in case of the infringement of the concluded agreement.[49] Moreover, it is stated (in §6) that if the parties

[48] *P. Mich.* XIII 659, 257–262; cf. *e.g. SB* V 8029, 23 (Antinoopolis, 537); this clause allows dating this document to the period between the year 527 and 565; cf. K. A. Worp, 'Byzantine imperial titulature in the Greek documentary papyri: the oath formulas', *Zeitschrift für Papyrologie und Epigraphik* 45 (1982), pp. 199–223, at p. 211.

[49] The *actio in factum* (as depicted in C. 2.55.4.4; cf. also C. 2.55.4.6, C. 2.55.5 pr–2) was an action for the enforcement (also on the *actio iudicati* in the Justinian's civil litigation, cf. M. Kaser & K. Hackl, *Das römische Zivilprozessrecht*, 2nd ed., Munich 1996, p. 624), whereas *actio in rem utilis* as well as *condictio ex lege* (C. 2.55.4.4) were clearly added by the editors of the

agreed to comply with the award of an arbiter in writing using various terms, regardless of referring to *stipulatio* (therefore it is stated clearly that any type of an oath or acknowledgement expressed by the parties shall be considered sufficient), the award will be considered binding and *actio in factum* shall be granted accordingly.[50] This basically meant that *stipulatio*, which until now was the only legal way for guaranteeing the execution of the provisions of the concluded agreement, was no longer necessary. Nev-

second Code, yet their purpose was not to introduce any factual changes. *Condictio ex lege* (cf. Kaser, *Das römische Privatrecht* [cit. n. 29], pp. 592–600, and a mention in T. Mayer-Maly, 'Das Gesetz als Entstehungsgrund von Obligationen', *Revue internationale des droits de l'antiquité* 12 (1965), pp. 437–451, at p. 447 with note 40) was, in this particular case, nothing more than an attempt at a systematic ordering of *actio in factum*, whereas *actio in rem utilis* concerned cases in which the award about a non-pecuniary commitment was issued through *sententia arbitri*. About *actiones in rem* in the postclassical and Justinian's notion, cf. E. Levy, *West Roman Vulgar Law: The Law of Property*, Philadelphia 1951, pp. 202ff., esp. pp. 238–239; Kaser, *Das römische Privatrecht* (cit. n. 29), pp. 224–226; Kaser & Hackl, *Das römische Zivilprozeßrecht* (cit. above), pp. 577–580. The plausible later addition of *condictio ex lege* and *actio in rem utilis* into C. 2.55.4.4 causes difficulties. It is unclear why it does not appear in other situations, where *actio in factum* functions as the enforcement claim. Cf. on the latter also K. H. Ziegler, *Das private Schiedsgericht im antiken römischen Recht*, Munich 1971, p. 209. Urbanik analyses C. 2.55.4.6 in strict correlation to C. 2.55.4.1–4. According to him, *actio in factum*, *actio in rem utilis* or *condictio ex lege* are offered if parties confirmed their *compromissum* by the verb *ἐμμένειν* or similar (as frequently attested in the papyri). This has been met with criticism from Rinolfi, who notices that in case of C. 2.55.4.6 (which outlines the possibility of using various terms instead of '*ὁμολογῶ*') only *actio in factum* is explicitly mentioned, cf. Cristiana M. A. Rinolfi, 'Episcopalis audientia e arbitrato', [in:] *Principi generali e tecniche operative del processo civile Romano nei secoli IV–VI d.C.,* Parma 2010, p. 201, n. 32.

The correlation between those passages comes down to indicating all cases in which the arbitration agreement acquires enforceability. And so C. 2.55.4.1–3 depict cases of concluding *compromissum iuratum,* which obtains *actio in factum, in rem utilis* and *condictio ex lege* as means of legal enforcement. C. 2.55.4.5 concerns a situation when none of the requirements provided in §§ 1–3 is met (neither in writing nor in the statements made), and only one party alleges to have been sworn. In such a case, all the rules which the ancient authorities laid down with reference to the selection of arbiters should be observed. C. 2.55.4.6, in turn, describes a case when the parties decide to confirm the already issued arbiter's award through terms usually applied in practice, which do not directly refer to solemn promises (as it seems regardless whether the parties have concluded a *compromissum,* either according to the rules outlined by Justinian or a as regulated by the *veteres*).

[50] It seems unlikely, however, that in comparison to C. 2.55.4.4 any substantive difference can be noted. On that, see Ziegler, *Das private Schiedsgericht* (cit. n. 49), p. 209.

ertheless, it seems that the earlier provisions concerning *compromissum* are also kept (in §5).[51] The year 530 brings further regulations outlined in C. 2.55(56).5, where the protection in case of accepting the award by the parties in written form or by a silent consent (without *poena compromissi*) is being widened by granting *actio in factum* next to the earlier *exceptio pacti*.[52]

[51] If the applied term *veteres* can be understood as referring to the classical jurisprudence, then it is stated that the parties' agreement to submit a case to the recognition of an arbiter and the latter's acceptance may be concluded without any oath or written confirmation of a sentence as long as a *poena compromissi* is established. In this scenario a claim for the payment would be granted. If, however, a *poena compromissi* is not established, the only legal measure granted would be *exceptio pacti*; cf. also Rinolfi, 'Episcopalis audientia e arbitrato' (cit. n. 49), pp. 201–202.

[52] The constitution refers to an 'earlier' (we do not know when exactly) sanctioned rule, according to which in case of *compromissum sine poena* a victorious defendant would be granted an *exceptio.* Certain scholars have attributed the introduction and development of an *exceptio* '*veluti pacti*' to the postclassical jurisprudence and thus they have suspected D. 4.8.13.1 (Ulpianus, 13 *ed.*) to be interpolated. Cf. *e.g.* G. Rotondi, 'Un nuovo esempio di innovazioni pregiustinianee – l'exceptio veluti pacti ex compromisso', [in:] idem, *Scritti giuridici,* I. *Studi sulla storia delle fonti sul diritto pubblico romano*, Milan 1922, pp. 284–297. The latter view is also shared by P. Bonfante, *Istituzioni di diritto romano*, Florence 1896; 10th ed. Turin 1946, p. 511; G. La Pira, '"Compromissum" e "litis contestation" formulare', [in:] *Studi in Onore di Salvatore Riccobono, Aalen Scientia-Verlag, reprint of Palermo*, vol. II, 1936, pp. 191ff. and n. 7; P. Collinet, *La genèse du Digeste, du Code et des Institutes de Justinien*, Paris 1952, pp. 128ff.; F. Bonifacio, 'Compromesso (Diritto romano)', [in:] *Novissimo digesto italiano*, vol. III, Turin 1964, pp. 784-786; J. Paricio, 'Notas sobre la sentencia del 'arbiter ex compromisso'. Sanción contra el árbitro que no dió sentenzia', *Revue internationale des droits de l'antiquité* 31 (1984), pp. 283–306, at pp. 286, 304. Contrary opinion has been presented by M. Talamanca, *Ricerche in tema di «compromissum»*, Milan 1958, pp. 108ff., esp. pp. 128–129. Talamanca excludes the possibility of substantial interpolations.

It is controversial whether the term *exceptio veluti pacti* should be understood as a technical term rather than a description of a normal *exceptio*. In the latter case one could argue that an exception cannot arise from *conventio compromissi* as long as we are dealing with *compromissum cum poena*, whereas in case of *compromissum sine poena* a standard *exceptio pacti* arises. This seems to be Ulpian's thinking as well. It has been claimed that the citied fragment contains, however, a certain logical inconsequence. Pomponius, on whom Ulpian comments, wonders if a *compromissum* only one-sidedly secured by stipulation is valid. Ulpian's commentary may appear to be misleading. At first it seems that he considers this kind of *compromissum* to be valid ('cui re moveatur, non video') and he offers arguments in favour of this thesis ('si vero ideo, quia ex altera dumtaxat parte stipulatio intervenit, est ratio. quamquam si petitor fuit qui stipulatus est, possit dici plenum esse compromissum, quia is qui convenitur tutus est veluti pacti exceptione, is qui convenit, si arbitro non

Implementation of those changes should be considered crucial since by *actio in factum* actually a claim of an executive character towards the provisions of the issued award is being ensured.[53] The intention to guarantee the observance of the award issued in the course of arbitration is in accordance with the economy of the procedural measures, which seems to be a distinctive principle of the Justinian's legislative policy.[54]

However, if we compare the laws concerning arbitration/mediation with the picture of those institutions emerging from the sources of legal practice in Late Antiquity, we will note that the practice remained relatively stable and unchanged, even after the renunciation of the abovementioned reforms in 539 by Nov. 82.11.[55] In the light of latter provisions, the *stipulatio poenae* became again the only guarantee in case of the infringement of settlement's provisions.

In the part of the document containing the terms and conditions of the settlement the parties waived all their due claims as well as those that could belong in the future to their heirs. What is worth noticing is that the waiver includes also claims that weren't thoroughly analysed during the proceedings.

In the final clause of the document the parties renounced all claims concerning this controversy belonging to them or to their heirs for the future.

pareatur, habet stipulationem'). Finally, however, he denies the praetorial coercion in the case of such *compromissum* ('sed id verum esse non puto'), since, as he puts it: 'neque enim sufficit exceptionem habere, ut arbiter sententiam dicere cogatur'. For more on that passage, cf. also Talamanca, *Ricerche in tema di «compromissum»* (cit. above), pp. 128–134; F. Schulz, *Einführung in das Studium der Digesten,* Tübingen 1916, p. 124; a mention also in Rinolfi, 'Episcopalis audientia e arbitrato' (cit. n. 49), pp. 197–198 n. 21. Cf. also in relation to this passage D. 4.8.11.3–4 (Ulpianus, 13 *ed.*). On the relation between the validity of *compromissum* and granting praetor's coercion, cf. Talamanca, *Ricerche in tema di «compromissum»* (cit. above), pp. 134–138.

[53] Therefore a definitely wider scope of protection is guaranteed than for instance the one established in D. 4.8.27.7 (Ulpianus, 13 *ed.*); cf. also: Talamanca, *Ricerche in tema di «compromissum»* (cit. n. 52), p. 105 n. 149.

[54] As already pointed out by U. Zilletti, *Studi sul processo civile giustinianeo*, Milan 1965, pp. 235–279.

[55] As *e.g.* in case of *P. Lond.* V 1707 (566), contrary to an example coming from Petra: *P. Petra* IV 39 (574).

lines 241–254: *οἱ ἀφ' ἑκατέρου μέρους ἅπαντες ἀλλήλοις καὶ ἕκαστος | αὐτῶν καὶ ἑκάτερος τῷ ἑτέρῳ κεχωρισμένος μηδένα λόγον | ἔχειν πρὸς ἀλλήλους περὶ οἱουδήποτε πράγματος μικροῦ | ἢ μεγάλου ἐγγράφου ἢ ἀγράφου νοηθέντος ἢ μὴ νοηθέντος | εἰς νοῦν ἐλθόντος ἢ μὴ ἐλθόντος λεχθέντος ἢ μὴ | λεχθέντος κριθέντος ἢ μὴ κριθέντος καὶ τοῦ | λοιποῦ μὴ ἐγκαλεῖν αὐτοὺς ἀλλήλοις μήτε | ἐγκαλέσειν μήτε ἐν ἐπιχωρίῳ δικαστηρίῳ | μήτε ἐν ὑπερορίῳ μήτε ἐκτὸς δικαστηρίων | μὴ δι' ἑαυτῶν μὴ δι' ἐντολέως μὴ διὰ παρενθέτου | οἱουδήποτε προσώπου οὐκ αὐτοὶ οὐ κληρονόμοι | αὐτῶν οὐ διάδοχοι οὐ διακάτοχοι πρὸς | ἀλλήλους καὶ κληρονόμους ἀλλ<ήλ>ων καὶ διαδόχους | καὶ διακατόχους διὰ τὸ ἐν ἅπασι αὐτοὺς | ἀπηλλάχθαι κτλ.*

The people of each party acknowledge all to all others and each to each separately that they have no longer any claim against each other concerning whatsoever matter, small or big, written or unwritten, though of or not thought of, remembered or not remembered, said or unsaid, judged or unjudged and that they for the future do not prosecute not shall prosecute each other either in a lawcourt in the country nor in a lawcourt abroad or outside the lawcourts not they by themselves nor by a representative or by man of straw whosoever not they themselves nor their heirs nor their assigns nor their successors not they each other nor the heirs not the assigns nor the successors of each other because they have settled (...).[56]

Of particular interest is also the distinction that is being made in reference to the parties' claims between those they are entitled to and those that could be attributed to them: *ἁρμόττοντα αὐτοῖς ἢ καὶ ἁρμόσαι δυνάμενον* (*P. Mich*. XIII 659, 204–205). This division is often interpreted as referring to *actiones ex lege* and *actiones utiles*,[57] where the former are

[56] On the types of heirs: cf. R. Taubenschlag, *The Law of Greco-Roman Egypt in the Light of Papyri* (cit. n. 21), p. 183, cf. also H. Kreller, '*Διάδοχος* und *κληρονόμος*', [in:] W. Otto & L. Wenger (eds), *Papyri und Altertumswissenschaft. Vorträge des 3. Internationalen Papyrologentages in München 1933*, Munich 1934, pp. 233–242; on the distinction between the courts 'in the country' and 'abroad', interpreted as within and outside the boarders of Antinoopolis cf.: Gagos & Van Minnen, *Settling a Dispute* (cit. n. 11), pp. 104–105 with further examples of sources.

[57] Cf. Gagos & Van Minnen, *Settling a Dispute* (cit. n. 11), p. 103; on the differences between those claims cf. V. Arangio–Ruiz, *Cours de droit Romain (les actions)*, Naples 1935. This observation gains on significance when considering concerning *res iudicata* and the legal status of arbitration awards and settlements concluded between the parties. It

based on the *ius civile* and the latter are being introduced thought the activity of a praetor. Moreover, the parties agreed to what has been written down by exchanging formal questions (analogous to Roman *stipulatio*).

> lines 274–277: καὶ πρὸς πάντα τὰ προγεγραμμένα καὶ πρὸς ἕκαστον | κεφάλαιον ἐπερωτήσαντες ἀλλήλους καὶ παρ' ἀλλή[λων] | ἐπερωτηθέντες ταῦθ' ο[ὕ]τως ἔχειν δώσειν ποιεῖ[ν] | φυλάττειν ἐμμένειν ὡμολόγησαν. κτλ.
>
> Having asked each other the formal question and having been asked by each other the formal question they agreed to all that has been written above and to every point that they were so, and so to give, do, keep and abide by.

They validate the settlement with the standard clause concluded by ἐμμεῖναι (line 277: φυλάττειν ἐμμένειν ὡμολόγησαν), which is attested both for papyrological and juridical sources.[58]

In addition, they guarantee with all their possessions (*hypotheca generalis*) the observance of the settlement's provisions and the penalty clause.[59]

should be remembered that in the classical Roman law the awards given in the arbitration proceedings weren't considered *res iudicata*. As a consequence, in case of the infringement of award's provisions the parties could not proceed with *actio iudicati*. The only way of guaranteeing the effectiveness of the settlement was through penalty stipulations taken by the parties. In Justinian's law, the status of *compromissum* was subject to some changes. Since then, in case of a breach, parties were entitled to proceed with a claim constructed on the basis of *actio iudicati – actio in factum*, whose effectiveness was not dependent on the previously taken stipulations and came only from the fact of concluding a *compromissum*. It should be, however, noted that in the times of the procedure *extra ordinem* the division between the claims based on *ius civile* and those granted by the praetor was no longer of greater significance. It seems therefore that by the clause included in *P. Mich.* XIII 659 the parties aimed at stressing the exclusion of any future proceedings regarding the matter at dispute, both based on the claims foreseen by the law or granted by the praetor.

[58] Cf. *e.g. P. Cair. Masp.* I 67032, 84–85 (Constantinople, 551), II 67156.33–34 (Antinoopolis, 570); cf. also: C. 2.55(56).4.4; C. 2.55(56).4.6; similarly on the subject: Urbanik, 'Compromesso o processo?' (cit. n. 3), p. 381, cf. also Gagos & Van Minnen, *Settling a Dispute* (cit. n. 11), pp. 115–116 with the presentation of different variations of this clause present in papyri.

[59] This is a typical clause present in the late antique documents, cf. Urbanik, 'Tapia's banquet hall and Eulogios' cell' (cit. n. 20), p. 155, as well as in different legal traditions, cf. A. F. Botta, *The Aramaic and Egyptian Legal Traditions at Elephantine*, London 2009, pp. 61–71, especially in the 'general warranty' see p. 69.

lines 280–282: *εἰς ἀπαίτησιν πάντα τὰ ὄντα καὶ ἐσόμενα αὐτοῖς | πράγματα κινητά τε καὶ ἀκίνητα καὶ αὐτοκίνητα | δικαίῳ ὑποθήκης καὶ λόγῳ ἐνεχύρου. κτλ.*

They have submitted to each other all their possessions, present and future, movable, immovable and self-movable as a pledge and with the force of a mortgage.

The part of the document that contains the statements aimed at reaching a settlement between the parties draws particular attention. The formulation of the provisions included in the document brings to mind the *stipulatio Aquiliana*.[60] It lacks, admittedly, the formal *acceptilatio*,[61] but the

[60] On the identification of this clause in the papyri, cf. Steinwenter, 'Das byzantinische Dialysis-Formular' (cit. n. 2), pp. 73–97. Cf. also the discussion between G. La Pira, 'La *stipulatio aquiliana* nei papyri', *PapCongr.* IV, pp. 479–484, and S. Solazzi, 'Transazione e stipulatio aquiliana nei giuristi e nei papyri', *Studia et Documenta Historiae et Iuris* 5 (1939), pp. 479–483. For other documents cf. *e.g. SB* VI 8988, which describes itself as *Ἀκυλιανὴ καὶ περιεκτικὴ καὶ διαλθτική* (ll. 3–4), or *Ἀκυλιανὴ διάλυσις* (cf. ll. 72–73, 83, 92 and 108–114).

[61] More on the formulation and interpretation of *stipulatio Aquiliana* cf. F. Sturm, *Stipulatio Aquiliana. Textgestalt und Tragweite der aquilianischen Ausgleichsquittung im klassischen römischen Recht*, *Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte Band 59*, Munich 1972, especially pp. 1–48, the late antique examples are discussed on pp. 44–48. Cf. also: M. Wlassak, 'Die Aquilianische Stipulation', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Römische Abteilung* 42 (1922), pp. 394–451. Cf. also: I. 3.29.2; D. 46.4.18.1 (Florentinus, 8 *inst.*). On the Byzantine 'shape' of *stipulatio Aquiliana* and its application in the sources of legal practice, cf. also Steinwenter, 'Das byzantinische Dialysis Formular' (cit. n. 2), pp. 87–92; J. Partsch, 'Byzantinische Papyri der K. Hof- und Staatsbibliothek zu München', *Göttingische Gelehrte Anzeigen* 177 (1915), pp. 427–439, at p. 432 (who noted that in the analysed forms, the clause regarding the scope of the application of *dialysis* appears indeed frequently; he also stated its dependency on the form of the Byzantine *stipulatio Aquiliana*). On that also: H. Lewald, 'Review of: G. Maspero, *Papyrus grecs d'époque byzantine*, 1911', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Römische Abteilung* 41 (1920), pp. 310–319, at p. 315; R. Taubenschlag, 'Geschichte der Rezeption des römischen Privatsrecht in Aegypten', [in:] *Studi in onore di P. Bonfante*, vol. I, Milan 1930, pp. 367–440, at p. 433 (= *Opera Minora,* vol. I, Warsaw 1959, pp. 181–289). The parties were naturally capable to limit the waiver of their claims to the sole claims pertaining to the controversy. For example, in the *dialysis*, which describes itself as *Ἀκυλιανὴ καὶ περιεκτική*, *i.e.* BM inv. 2017, it is clearly stated that the waiver concerns exclusively the claims brought about in the document (l. 73, 83). As a rule, the documents which describe themselves as *γενική* (cf. also *P. Münch.* I 7, *P. Münch.* I 14, *P. Ryl. Copt.* 184) or *περιεκτικὴ*

influence of Roman law seems undeniable. In this sort of documents, instead of the *acceptilatio*, we usually encounter the parties' acknowledgements and promises (at least made by the party acting as the issuer of the *dialysis)* not to pursue one another with any claims now or in the future. This was often additionally strengthened by provisions regarding a penalty for breaching the agreement.[62] In this aspect, more important than the precise formulation of the waiver of claims or its similarity to other withdrawal forms encountered in the documents of legal practice,[63] is the question about the relation between the Roman shape of *stipulatio Aquiliana* and the practice emerging from the Egyptian documents of dispute resolution. The textual analysis discloses a noticeable connection between the documents of *dialyseis* and the Byzantine law. There are examples, even if admittedly rare, of documents describing themselves as διάλυσις Ἀκυλιανή, despite the fact that they contain neither *stipulatio Aquiliana*, nor the *acceptilatio* that belongs to them. Naturally, one could not exclude the possibility that in case of late antique legal practice we deal with the lack of understanding of the Roman legal *termini technici* and their intuitive application.[64] It seems also plausible, however, that the Roman *stipulatio Aquiliana* transferred onto the Byzantine practice undergoes a certain modification. It even seems that the existing waiver forms developed in the course of legal practice, were reshaped to fit the Roman requirements.[65] At the same time,

διαλύσις (cf. *P. Lond.* III 1008, BM inv. 2017, *P. Münch.* I 7.43) – terms common also for the Byzantine legal language (cf. *e.g.* Basilica Schol. Heimb. I 670, 686, 693) – contain the waiver that has broader meaning extending beyond the claims pertaining to a given controversy. Cf. also *e.g. P. Princ.* II 82 + *SB* III 7033; *P. Münch.* I 1; *P. Lond.* V 1712; *P. Lond.* V 1717; *P. Cair. Masp*. II 67154.

[62] Cf. *e.g. P. Münch.* I 1.48–50; *P. Münch.* I 7.67–71; *P. Lond*. V 1728.7–20; *P. Lond*. V 1731.27–30; *P. Münch.* I 14.74–79, 89–91.

[63] As Steinwenter notes, the clauses regarding the waiver of claims attested in *dialyseis* are connected to the known clause encountered in the forms of withdrawal-forms: Steinwenter, 'Das byzantinische Dialysis-Formular' (cit. n. 2), p. 87; A. B. Schwarz, *Die öffentliche und private Urkunde im römischen Ägypten*, Leipzig 1920, pp. 99–100, 121.

[64] Steinwenter also considers this possibility, yet leans toward the reformulation of the *stipulatio Aquiliana* in the Byzantine period, cf. Steinwenter, 'Das byzantinische Dialysis-Formular' (cit. n. 2), p. 88.

[65] Cf. *e.g.* Schwarz, *Die öffentliche und private Urkunde im römischen Ägypten* (cit. n. 63),

Basilica do not seem to understand under the term *Ἀκυλιανῶς διαλύσιν* anything else but the *dialysis* together with *πρόστιμον*.[66]

It should be also noted that in *P. Mich.* XIII 659 the construction of the renunciation clause, which involves the detailed enumeration of the claims that parties decided to wave, makes the *dialysis*' provisions seem unnecessarily 'heavy'. The detailed formulary goes far beyond the legal necessity.[67] Despite this fact, the parties considered it appropriate to clarify their claims in a detailed manner, which allows for an interesting insight into the legal awareness of the participants of the proceedings.

All in all, both parties reach some of their goals. On the one hand, Psaios receives the missing 14 *nomismata* for the selling of the holding and it is clearly stated that Psaios and Talos will not be liable to penalty (probably in reference to Theodosios' case), and they shall remain undisturbed with regard to all public taxes that concern the holdings (*P. Mich*. XIII 659, 230–240). On the other hand, heirs of Ioannes enjoy the confirmation of both their proprietary rights and the validity of previously concluded agreements. In addition, they receive a guarantee against the eviction in reference to the purchased holdings (lines 162–167).[68]

pp. 123–124; L. Wenger, *Aus Novellenindex und Papyruswörterbuch,* Munich 1928, pp. 38–39; Partsch, 'Byzantinische Papyri der K. Hof- und Staatsbibliothek zu München' (cit. n. 61), pp. 427–439, esp. pp. 432–433. According to this view, the changes were introduced to the Hellenistic form of the waiver of claims. Of note are also Byzantine terms in our documentation, which are not attested in the Hellenistic forms, cf. Steinwenter, 'Das byzantinische Dialysis-Formular' (cit. n. 2), pp. 89–90.

[66] Cf. Bas. 11.2.9; Bas. 11.2.15; Bas. 11.2.34. Most of the Greek documents of *dialysis*, including divorce contracts, were secured against breaching by the penalty (*πρόστιμον*). This is unsurprising for the legal practice exhibited by the papyri (cf. *e.g.* A. Berger, *Die Strafklauseln in den Papyrusurkunden. Ein Beitrag zum gräko–ägyptischen Obligationenrecht*, Berlin – Leipzig 1911, pp. 4–5). Interesting, however, with regard to the *dialysis* in the normative sources, is the focus placed on the *πρόστιμον*. Cf. Steinwenter, 'Das byzantinische Dialysis-Formular' (cit. n. 2), p. 92, with esp. n. 80–84.

[67] Cf. Kreuzseler, 'Die Beurkundung' (cit. n. 3), pp. 23–25, also Urbanik, 'Compromesso o processo?' (cit. n. 3), pp. 382–384.

[68] *P. Mich*. XIII 659, 162–167, cit. above.

6. A NOTE ON THE STILL TROUBLING QUESTION OF 'ATTRACTIVENESS'

The last issue I would only like to touch upon are the probable reasons for which the parties decided to apply the private dispute resolution, instead of submitting the case to the state jurisdiction. It is often claimed that a settlement was a less risky solution and guaranteed that both parties would get something out of the deal.[69] This fact is considered to make the solution of the controversy more acceptable for the parties and thus guarantees its better effectiveness.

There is a recurring common conviction that the private methods were more 'amicable', and that people who turned to those methods aimed more at maintaining a satisfying relation with their adversaries rather than winning the object of dispute. In the light of the sources, however, these suppositions prove often false. The resolution of a dispute through private methods does not have to necessarily indicate that parties managed to repair or continue their relationship. In fact, the interference of power relations and submission of one of the disputants to the will of the other could have the same destructive effect for their relationship in the public and in the private disputing process. Moreover, the absence of the state involvement in no way guarantees the exclusion of coercion or threats during the private dispute processing – as clearly visible in the discussed *P. Mich.* XIII 659.[70]

Another often repeated solution of the problem has been that the private methods were more effective than the public. The short-term post-hearing 'effectiveness' is not only a legal but also a socio-psychological phenomenon. The answer to the question how frequently the court rulings and private settlements were observed by the parties, was usually treated as a factor which can help to explain the alleged attractiveness of the private methods when compared to the public. The documents, how-

[69] Cf. *e.g.* Gagos & Van Minnen, *Settling a Dispute* (cit. n. 11), pp. 35–46, esp. at p. 44.

[70] Cf. B. Kelly, *Petitions, Litigation and Social Control in Roman Egypt*, Oxford 2011, p. 246. In *P. Mich.* XIII 659 see especially ll. 40–44 (cit. above).

ever, seem to indicate that the greater effectiveness of the private methods was frequently not the case. There are examples to show that the decisions made in the course of ADR were as short-lived and ineffective as those reached through public proceedings.[71] The disputants could attempt to solve the same long-lasting dispute with the use of various strategies, fora and agencies. In addition, reaching a solution in result of public or private dispute resolution did not necessarily mean a happy ending of the case. The later execution could prove ineffective in the case of all methods of dispute resolution, public as well as private.[72]

What could, however, draw attention in case of the analysed *P. Mich.* XIII 659 is the economic situation of the claimant, indirectly mentioned

[71] Cf. *e.g. P. Lond.* V 1708 (Antinoopolis, 567–568) – it appears that the first agreements concerning the division of inheritance were made some time earlier (ll. 42–53); *P. Petra* IV 39 (Kastron Zadakathon, 574) – some of the controversial issues had been subject to earlier agreements, among which we find those concluded as a result of mediation/arbitration carried out by the country bishop Sergios and the phylarch Abu Karib (ll. 69–79; 119–133; 163–187; 378–389; 485–495); *P. Münch.* I 6 (Syene, 683) – in this document one also finds a reference to previous private dispute resolution that took place between the parties (ll. 3–8); *P. Münch.* I 7 (Antinoopolis, second half of 6th cent.) – here one may reconstruct the process of dispute resolution between the siblings, which consisted of at least two attempts at dispute resolution through private methods (ll. 41–47); When we shift the focus from private dispute resolution to public measures it quickly turns out that the texts attesting to ADR occasionally mention also public methods of dispute resolution (that proved ineffective and led to private settlement). In *P. Mich.* XIII 659 (Antinoopolis, 527–547) Psaios and Talos – one of the parties to the controversy – claimed that before the mediation/arbitration that led to a compromise other legal steps have been taken. The plaintiffs note that they often had approached the office of archon in regard to the matter at dispute (ll. 40–46). Cf. also *e.g. P. Princ.* II 82 + *SB* III 7033 (Lykopolis, 481) – the events described in the document reach back to the first decision made in the case, διαλαλία, as well as to the previous lawsuit (ll. 8–12). Two of the adversaries suggested in ἀντίρρησις for the case to be moved to an arbiter (ll. 15–16); *P. Lond.* V 1709 (Antinoopolis, 570) – where one comes across an information that the parties before turning to arbitration had their case presented before *ekdikos of Siout* (ll. 80–95). In the lucky event of finding multiple documents coming from one archive, we are able to notice that matters of similar character could find different solutions, sometimes by means of state jurisdiction, and sometimes by the way of mediation and arbitration. Returning to the archive of Patermouthis and Kako, we find a relevant example of the above practice in *P. Münch.* I 14 (Syene, 594).

[72] Cf. Zuckerman, 'Les Deux Dioscore d'Aphroditè ou les limites de la petition' (cit. n. 11), pp. 85–92.

on several occasions. This factor could indeed justify choosing the quickest and cheapest way of bringing the dispute to a favourable conclusion (lines 91–102 and 115–117). It is a common assumption in modern scholarship that the costs of court proceedings were high in Late Antiquity (though, as persuasively argued by Haensch, not necessarily much higher than in earlier periods).[73] One of the major reasons for such an assumption were the officially sanctioned judicial fees.[74] The disputants had to additionally pay for the drafting and the writing material for private copies of the proceedings and rendered decisions. The amount of fees depended on the hierarchical position in the system of the administration of justice of the court to which one applied for adjudication.[75] As a result – it was postulated – the disputants turned more eagerly to arbitration and *audientia episcopalis*.[76] Indeed, some documents pertaining to ADR seem to support this conviction. In *SB* III 7033, l. 29, the reasons for settling the dispute privately are given, namely the distress connected with the court proceedings as well as the costs of the trial. *SB* VI 8988, 41–42 mentions both the danger of losing a case in the public proceedings and the judges fees.

It seems plausible that in *P. Mich.* XIII 659 the complexity of the controversy as well as the character of the relationship between the parties

[73] Cf. R. Haensch, 'From Free to Fee? Judicial Fees and Other Litigation Costs during the High Empire and Late Antiquity', [in:] D. Kehoe, D. M. Ratzan & U. Yiftach (eds), *Law and Transaction Costs in the Ancient Economy*, Ann Arbor 2015, pp. 253–272.

[74] Cf. *e.g.* C. 3.2 (*de sportulis*); C. 1.3.32; C. 3.10.2; C. 10.11.8.4; C. 12.19.12; C. 12.21.8; C. 12.25.4; C. 12.28.3; C. 12.29.3; C. 12.35.18. Cf. also hints in I. 4.6.25; Nov. 17.3; Nov. 82.7; Nov. 86.9; For the inscriptions concerning judicial fees cf. *CIL* VIII 17896 = *FIRA* I, p. 64 = A. Chastagnol, *L'album municipal de Timgad* (= *Antiquitas* III 22), Bonn 1978, pp. 75–88; L. Di Segni, J. Patrich & K. G. Holum, 'A schedule of fees (*sportulae*) for official services from Caesarea Maritima, Israel', *Zeitschrift für Papyrologie und Epigraphik* 145 (2003), pp. 273–300. With correction by D. Feissel, *Chroniques d'épigraphie byzantine 1987–2004*, Paris 2006, p. 718; See now *CIIP* II 1197.

[75] As it was already pointed out by Palme, fees taken by the officials of the praetorian prefect were, naturally, higher than those collected by the provincial governor, cf. B. Palme, 'Die officia der Statthalter in der Spätantike. Forschungsstand und Perspektiven', *Antiquité tardive* 7 (1999 [2000]), pp. 85–133, at pp. 114 and 117–118.

[76] As suggested by *e.g.* Di Segni, Patrich & Holum, 'A schedule of fees' (cit. n. 74), p. 293.

spoke in favour of arbitration/mediation performed by a member of community who was better familiarised with the context of dispute.[77]

However, in search for a more general answer to the question about the reasons behind the influx of attestations for ADR in Late Antiquity one should, it seems, take into account also the legislative context. Doubtlessly, Justinian's reforms concerning *arbitrium ex compromisso* were not needed for the legal enforcement of a private settlement of claims. Rather, thanks to the introduced laws, something that earlier was (from a legal standpoint) only an agreement between disputants aided by a third party through the means of informal ADR, could now be considered arbitration. On the one hand, the legislation already acknowledges the practice; on the other hand, it encourages its further development. In this light, the growing number of attestations of ADR could be also interpreted as a sign of further romanisation of legal practice.

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[77] For other factors that had been claimed to advocate for the attractiveness of private methods of dispute resolution cf. Urbanik, 'Compromesso o processo?' (cit. n. 3), pp. 398–399; also on the probable reasons for avoiding the state jurisdiction cf. also: R. S. Bagnall, 'Official and private violence in Roman Egypt', *Bulletin of the American Society of Papyrologists* 26 (1989), pp. 201–216 (= idem, *Later Roman Egypt: Society, Religion, Economy and Administration, Variorum Collected Studies Series*, Aldershot 2003). However, Palme is treating with due caution the hypothesis about the growth of popularity of alternative methods of dispute resolution in the analysed period in the light of the number and accidentally of the evidence at hand. Cf. B. Palme, 'Antwort auf Jakub Urbanik', [in:] *Symposion 2005. Vorträge zur griechischen und hellenistischen Rechtsgeschichte* (*Salerno 2005*), Vienna 2007, pp. 401–410.