

Kreditkauf and Lieferungskauf as economical phenomena in the practice of the *agoranomoi*. Reconsideration of the contract under *BGU* I 174 and 189

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ABSTRACT

In the Egyptian–Greek legal practice the “fictitious loan agreements” are known as specific constructions of deferred purchase contracts of the ancient legal practice. While Roman law is well known from its consensual contracts, such as the sales contract (*emptio venditio*), furthermore it acknowledged constructions of sales contracts with deferred payment as valid sale, Greek law always adhered to the prompt sale and besides this, only additional solutions were applied. One of these solutions was the so-called “fictitious loan agreements” (συγγραφή δανείου), where – as Fritz Pringsheim emphasized – if the seller provided the purchase price and “disguised” the sale as a loan, he had no claim on the basis of the sale, but could only sue on the basis of the loan. There remained several documents of this kind, however, in light of recent papyrological research, new evidence suggests a revision on how we are regarding these documents.

KEYWORDS

fides, πίστις, „civilis” *causa*, fictitious loan agreement, suspended sales contract

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DESCRIPTION OF THE PROBLEM

Sine pretio nulla venditio est: non autem pretii numeratio, sed conventio perficit sine scriptis habitam emptionem – as the well-known lines written by Ulpian (D.¹ 18. 1. 2. 1)² emphasized the consensual nature³ of the Roman sales contract as opposed to contracts that require some real element, such as a loan, where the contract cannot be validly concluded without *numeratio*. The talks regarding the credit agreements in antiquity are mainly in connection with the sales contract, however, we may classify two different types of contracts according to the modern standardization. On the one hand, there is the sales contract in which the price for the purchase is credited (by German term of art: *Kreditkauf*), and on the other hand, the delivery contract is to be mentioned (by German term of art: *Lieferungskauf*). Roman law is well known from its consensual contracts, such as the *emptio venditio*, furthermore it acknowledged constructions of sales contracts with deferred payment as valid sale.⁴ In Roman law there is a possibility of litigation in the form of the *bonae fidei actiones*, i.e. the *actio empti* and *venditi*.⁵

Compared to this, Greek law⁶ always adhered to use the contract where the price was evidenced at the very time of the disposition. The nature of the prompt sale was further

¹For all sources with the abbreviation of *D.*, see the critical edition of *Digesta seu Pandectae* (KRÜGER, P. – MOMMSEN, TH.: *Corpus Iuris Civilis I. Institutiones et Digesta seu Pandectae*. Berlin 1928).

²I.e., there is no sale without a purchase price: however, it is not the discounting of the purchase price but the agreement that completes the sale without a written reservation. For the literature on this well-known sentence, without claiming to be exhaustive, see KASER, M.: *Das römische Privatrecht. Das altrömische, das vorklassische und klassische Recht*. München 1971², 550; KASER, M. – KNÜTEL, R.: *Römisches Privatrecht*. München 2014³, 242f; FÖLDI, A. – HAMZA, G.: *A római jog története és intézményei*. [History and institutions of Roman law, a Textbook]. Budapest. 2021²⁵, 513ff. In the Hungarian literature more recently, see JUSZTINGER, J.: *A vételár az ókori római adásvételnél*. [Purchase price by ancient Roman sales contract]. Budapest–Pécs 2016, 40f. In connection with the fragment, in the Hungarian literature, Iván Siklósi draws attention to the problem of the interpretation of the adjective *nulla*, i.e. that it cannot be decided on a purely grammatical basis whether the jurist refers to a non-existent or an invalid contract. However, in the author's view, since this is an essential element of the legal transaction, the purchase should be considered non-existent here. See in detail on the topic SIKLÓSI, I.: *Római magánjog I–II*. [Private Roman law I–II]. Budapest 2021, 1461f; also SIKLÓSI, I.: *A nemlétező, érvénytelen és hatálytalan jogügyletek elméleti és dogmatikai kérdései a római jogban és a modern jogokban*. [Theoretical and dogmatic questions of the inexistence, invalidity, and ineffectiveness of juridical acts in Roman law and in modern legal systems]. Budapest 2014, 94 n. 330, and English summary; továbbá FÖLDI–HAMZA (n. 2) 392¹⁰.

³*Est autem emptio iuris gentium, et ideo consensu peragitur et inter absentes contrahi potest et per nuntium et per litteras* (Paul. D. 18. 1. 1. 2). The ancient construction of sales contract, as one of the most commonly used type of contract in antiquity, stands as an institution of the *iuris gentium* in Roman law, and was formed without formalities, by a mere agreement between the parties, as described by Paulus, and required neither solemn words nor proof of transfer of the goods. For this, see the literature described in the following notes.

⁴KASER (n. 2) 546; KASER–KNÜTEL (n. 2) 209.; GUARINO, A.: *Diritto privato romano*. Napoli 2001¹², 797ff; BURDESE, A.: *Manuale di diritto Privato Romano*. Torino 1993⁴, 451; VOCI, P.: *Istituzioni di diritto romano*. Milano 2004⁶, 442; SIKLÓSI: *Római magánjog* (n. 2) 1461f.

⁵KASER (n. 2) 550 and 556f; KASER–KNÜTEL (n. 2) 227f and 245ff; BURDESE (n. 4) 451; VOCI (n. 4) 442, GUARINO (n. 4) 797ff; FÖLDI–HAMZA (n. 2) 512ff; SIKLÓSI: *Római magánjog* (n. 2) 1459f.

⁶For the sake of simplicity, I use the term Greek law, by which I refer not only the ancient Greek legal norms of the Greek polises, but also the Hellenistic law(s) of the Oriental world, since the separation of the contractual legal norms of these entities is not relevant to my subject. See RUPPRECHT, H.-A.: *Recht und Rechtsleben im ptolemäischen und römischen Ägypten: an der Schnittstelle griechischen und ägyptischen Rechts*, 332 a.C.–212 p.C. Mainz 2011, 15.



strengthened by the fact that the sales contract existed as a real contract with the immediate transfer of the goods in the contractual practice of the Greek polises and then of Hellenistic Egypt.⁷ Therefore sales on credit met a hostile response in Greek law, because these contracts were void as a sale and the parties were not entitled to any δίκη:⁸

Πότερον δὲ ἔως ἂν κομίσηται κύριον εἶναι τοῦ
κτηήματος; οὕτω γὰρ οἱ πολλοὶ νομοθετοῦσιν·
ἢ ὥσπερ Χαρώνδας καὶ Πλάτων; οὗτοι γὰρ
παραχρήμα κελεύουσι διδόναι καὶ λαμβάνειν,
ἐὰν δέ τις πιστεύσῃ, μὴ εἶναι δίκην αὐτὸν γὰρ
αἴτιον εἶναι τῆς ἀδικίας.
Fragment of Theophrastos (in fr. 21, Stobaeus
Anthology 4. 2. 20 ln. 75)⁹

The question is whether the seller is the owner of
the property until the price is paid? That's how
most legislators held. Or should it be like Plato
and Charondas say? Because they say that selling
and buying must take place immediately, and if
someone rely on the other party, he has no right
to sue because he himself was the cause of his
damage.¹⁰

As it is shown by the Theophrastos fragment, when it comes to “trusting” in the other party, the theory and practice in the Greek *polises* were not uniform. Based on the opinion of Plato¹¹ and Charondas, Theophrastos emphasized, that in case of “trusting” (ἐὰν δέ τις πιστεύσῃ), the Greek law rejected the possibility of litigation (μὴ εἶναι δίκην). Furthermore in the text of the Nicomachean Ethics of Aristotle, we can find a similar passage:

⁷The sales contract is considered as a real contract in the legal practice of the Hellenistic Egypt, just like other consensual contracts of the Roman law. Gábor Hamza mentions, that following the Roman conquest, the Greek μίσθωσις, known in the law of the Hellenistic Egypt originally as a real contract, lost more and more its character as a real contract and it was transformed into a consensual contract (see HAMZA, G.: *Comparative Law and Antiquity*. Budapest 1991, 208f). It is not clear, however, whether the same metamorphosis took place in the case of the sales contract.

⁸Edward Cohen mentions that „Purchasers did pay the full price, but often with funds lent by sellers. Financing by the seller allowed the buyer to take immediate possession of the good. In turn, if the buyer did not repay the loan on the terms agreed, the seller was able to bring legal action to recover the sums advanced”. See COHEN, E.: *Commercial law*. In GAGARIN, M. – COHEN, E. (eds): *The Cambridge Companion to Ancient Greek Law*. Cambridge 2005, 294.

⁹Based on the critical edition of the Theophrastos fragment, see Theophr. fr. 650F (cf. WACHSMUTH, C. – HENSE, O. [ed.]: *Ioannis Stobaei anthologium IV*. Berlin 1909 [repr. 1958], *ad loc.*)

¹⁰The English translations of the sources (Greek auctors, legal sources coming from the Digest, or the papyri), unless otherwise specified, are mine.

¹¹“Such indirect mechanisms for sale on credit or delayed delivery were so commonplace in Athens that Plato – deeply opposed to artful business practises and the profit-seeking business people who engaged in them (cf. Plato *Politeia* 371c; *Protagoras* 347c; *Politikos* 289e) – proposed, for the ideal state sketched in the Laws, the prohibition of all commercial exchange other than simultaneous ‘cash for goods and goods for cash’.” (see COHEN [n. 8] 294); cf. Plato *Nomoi* VIII 849e–850a (cf. BURNET, J. [ed.]: *Platonis opera*, vol. 5. Oxford 1907 [repr. 1967], *ad loc.*): τῶν δὲ ἄλλων χρημάτων πάντων καὶ σκευῶν ὅπως ἐκάστοισι χρεῖα, πωλεῖν εἰς τὴν κοινὴν ἀγορὰν φέροντας εἰς τὸν τόπον ἕκαστον, ἐν οἷς ἂν νομοφύλακές τε καὶ ἀγορανόμοι, μετ’ ἀστυνόμων τεκμηράμενοι ἔδρας πρεπούσας, ὄρους θῶνται τῶν ὀνίων, ἐν τούτοις ἀλλάττεσθαι νόμισμά τε χρημάτων καὶ χρήματα νομίματος, μὴ προϊέμενον ἄλλον ἐτέρῳ τὴν ἀλλαγὴν: ὁ δὲ προέμενος ὡς πιστεύων, ἐάντε κομίσῃται καὶ ἂν μὴ, στεργέτω ὡς οὐκέτι δίκης οὐσης τῶν τοιούτων περὶ συναλλάξεων. (“As to all other goods and utensils that each party requires, they shall be brought for sale to the public market, each kind to its appointed place, wherever the Law-wardens and market-stewards, with the help of the city-stewards, have marked out suitable sites and set up the stalls for market-stuff: there they shall exchange coins for goods and goods for coins, and no man shall give up his share to the other without receiving its equivalent; and if any does thus give it up, as it were on credit, he shall make the best of his bargain, whether or not he recovers what is due to him, since in such transactions he can no longer sue.” Transl. by BURY, R. G.: *Plato in Twelve Volumes*. Vols. 10–11. Cambridge–London 1967–1968 *ad loc.*).



δῆλον δ' ἐν ταύτῃ τὸ ὀφείλημα κοῦκ ἀμφίλογον, φιλικὸν δὲ τὴν ἀναβολὴν ἔχει διόπερ ἐνίοις οὐκ εἰσὶ τούτων δίκαι, ἀλλ' οἴονται δεῖν στέργειν τοὺς κατὰ πίστιν συναλλάξαντας. Arist. NE VIII 1162b 28–30¹²

In the case of this, the obligation is clear and cannot cause dispute, though there is an element of friendliness in the delay allowed, for which reason in some states there is no action at law in these cases, it being held that the party to a contract involving trust must abide by the consequences.¹³

Aristotle here pointed out that whenever there is an element of friendliness in the delay allowed (φιλικὸν δὲ τὴν ἀναβολὴν ἔχει) in some states no lawsuit can be brought before the courts. I believe, here, as the verb πιστεύω in the Theophrastos fragment, the noun πίστις refers to “trusting” in its strict sense, and not to “crediting” in its technical sense.¹⁴ In these philosophical texts it is always more an ethical question than a legal one. We can witness here only that according to both sources, “trusting” did not enjoy legal protection in Greek *polises*. Although the Greek word πίστις might refer to ‘faithfulness’ according to LSJ,¹⁵ it is not the exact equivalent of the Latin *bona fides* in all of its aspects.¹⁶ Therefore it cannot refer to the objective *bona fides* of the Roman law,¹⁷ which makes agreements based on πίστις not enforceable before the courts in several territory, where Greek law was applied.

In Roman law, however, the category of the objective *bona fides* allowed the legal enforceability of such agreements by means of *bonae fidei actiones* (due to the clause *quidquid dare facere oportet ex fide bona*).¹⁸ In the case of the consensual contracts of Roman law, where the parties based their agreements on the *fides*, the conception of the objective *bona fides*

¹²Based on the critical edition of BYWATER, I. (ed.): *Aristotelis ethica Nicomachea*. Oxford 1894 (repr. 1962), 1162b28.

¹³Transl. by RACKHAM, H.: *Aristotle in 23 Volumes. Vol. 19*. Cambridge–London 1934, *ad loc.*

¹⁴In the literature this fragment is usually interpreted in the legal, technical sense, and many scholars like Philipp Scheibelreiter emphasized that according to the fragment, Plato and Charondas considered these sales contracts involving crediting are not enforceables before the courts. See SCHEIBELREITER, PH.: *Der Kreditkauf im griechischen Recht. Grundlagen und Dokumentation des „fiktiven Darlehens“*. In JAKAB, É. (ed.): *Sale and Community. Documents from the Ancient World. Individuals Autonomy and State Interference in the Ancient World [Proceedings of a Colloquium supported by the University of Szeged, Budapest 5.–8.10. 2012 – Legal Documents in Ancient Societies V]*. Triest 2015, 186ff. See also PRINGSHEIM, F.: *Greek law of Sale*. Weimar 1950, 132f; ARANGIO-RUIZ, V.: *La compravendita in diritto romano I*. Napoli 1956², 17f.

¹⁵Cf. LSJ (= LIDDEL, H. G. – SCOTT, R.: *Greek–English Lexicon with a Revised Supplement*. Oxford 1996²), s.v. *In stricto sensu* it refers to ‘trust in others’, ‘faith’ (first time attested in Hesiod’s work: *πίστιες καὶ ἀπιστίαι ὤλεσαν ἀνδρας* Op. 372; *πίστει χρήματ’ ὄλεσσα, ἀπιστίῃ δ’ ἐσάωσα* Theognis, *Elegiae* 1. 831). Also in subjective sense, it means ‘good faith’, ‘trustworthiness’, ‘honesty’ (as it is attested in Theognis, *Elegiae* 1. 1137); and also the expression *καλῇ π. π.* is equivalent to the Latin *bona fide* (cf. PG nom. 180 [2nd cent. AD]). In a commercial sense, it refers to ‘credit’ (e. g. π. τοσοῦτων χρημάτων ἐστὶ τινα παρὰ τισι ‘he has credit for so much money with them’, D. 36. 57).

¹⁶In this context Éva Jakab emphasizes that in Roman law the *praetor*, by means of his *imperium*, always tried to enforce the requirement of *pacta servabo*, as a legal policy stated in the praetorian edict. Notwithstanding she mentions that in the text of Aristotle the verb στέργειν might also refer to the fact that agreements based on “trust” should be enforced among the parties. See JAKAB, É.: *Bemerkungen zur Vertrauenshaftung im altgriechischen Recht*. In THÜR, G. (ed.): *Symposion 1993. Vorträge zur griechischen und hellenistischen Rechtsgeschichte*. Köln 1994, 194.

¹⁷FÖLDI, A.: *A jóhiszeműség és tisztesség elve. Intézménytörténeti vázlat a római jogtól napjainkig* [Das Prinzip von Treu und Glauben. Abriss der Geschichte eines Rechtsgrundsatzes vom römischen Recht bis zur Gegenwart]. Budapest 2001, 13.

¹⁸See KASER–KNÜTEL (n. 2) 196f; ARANGIO-RUIZ: *La compravendita* (n. 14) 206; VOCI (n. 4) 354f; SIKLÓSI: *Római magánjog* (n. 2) 305ff; BESSENÝÓ, A.: *Római magánjog* [Roman Private law]. Budapest–Pécs 2010⁴, 423ff.



(ie. ‘faithfulness’) and the *bonae fidei actiones*¹⁹ made the litigation possible from the classical era. Therefore, the rate of liability was based on the principle of good faith as well.²⁰

However, a much debated issue is the so-called case of the *causa “civilis”* by contracts, especially by the so-called *contractus consensuales*, in connection with which the following passage is usually quoted:

Iuris gentium conventiones quaedam actiones pariunt, quaedam exceptiones. Quae pariunt actiones, in suo nomine non stant, sed transeunt in proprium nomen contractus: ut emptio venditio, locatio conductio, societas, commodatum, depositum et ceteri similes contractus. Sed et si in alium contractum res non transeat, subsit tamen causa, eleganter Aristo Celso respondit esse obligationem. Ut puta dedi tibi rem ut mihi aliam dares, dedi ut aliquid facias: hoc συναλλάγμα esse et hinc nasci civilem obligationem. Et ideo puto recte Iulianum a Mauriciano reprehensum in hoc: dedi tibi Stichum, ut Pamphilum manumittas: manumisisti: evictus est Stichus. Iulianus scribit in factum actionem a praetore dandam: ille ait civilem incerti actionem, id est praescriptis verbis sufficere: esse enim contractum, quod Aristo συναλλάγμα dicit, unde haec nascitur actio. ... Sed cum nulla subest causa, propter conventionem hic constat non posse constitui obligationem: igitur nuda pactio obligationem non parit, sed parit exceptionem.
(Ulp. D. 2. 14. 7 pr–1 and 4)

By *ius gentium* some agreements give rise to *actiones*, some to *exceptiones*. Those which give rise to *actiones* do not have a name of their own, but take the proper name of the contract [ie. the nominated contracts]: such as sale, hire, partnership, loan, deposit, and other similar contracts. But even if the *negotium* itself does not fall under the head of another [nominated] contract, and yet a *causa* exists, even an obligation arises, as does Aristo with a nice discrimination respond Celsus. Where, for example, I gave a thing to you so that you may give another to me, or I gave so that you may do something, this is, [Aristo says,] a *συναλλάγμα* and hence an *obligatio civilis* arises. And, therefore, I think that Julian was correctly disproved by Mauricianus in the following case: I gave Stichus to you so that you would manumit Pamphilus; you have manumitted; Stichus is then acquired by a third party with a better title. Julian writes that an *actio in factum* is to be given by the praetor. But Mauricianus says that an *actio incerti civilis*,²¹ that is, an *actio praescriptis verbis*²² (on the ground of the agreement) benefits. For a contract, described by Aristo with the word *συναλλάγμα*, has been made and hence arises the *actio*. ... But, when no *causa* exists, it is certain that no obligation shall arise from the agreement: therefore, a naked agreement gives rise not to an *obligatio* but to an *exceptio*.²³

¹⁹Originally, the *oportet ex fide bona* clause could not be interpreted as a general legal standard, but merely as the legal basis for the obligation, given that *actiones* based on *bona fides* did not belong to the category of *actiones civiles*. From the preclassical age onwards, however, *bona fides* emerged as a general standard for interpreting a certain legal issue, so in the case of contracts, faithfulness became a self-evident concept in Roman law. However, the issue is highly controversial in the literature, with Kunkel, Kaser, Beck taking the same view, while Lombardi, Carcaterra, Wieacker take the opposite view, rejecting the theory that the *ex fide bona* clause could be attributed a legal basis. For the arguments expounded, see FÖLDI (n. 17) 14ff.

²⁰ARANGIO-RUIZ, V.: *Responsabilità contrattuale in diritto romano*. Napoli 1933² 32f.

²¹For the *actiones* categorised so by Géza Marton, see FÖLDI–HAMZA (n. 2) 177; more detailed, see SIKLÓSI: Római magánjog (n. 2) 259.

²²FÖLDI–HAMZA (n. 2) 506ff; SIKLÓSI: Római magánjog (n. 2) 1353f.

²³For the translation, see WATSON, A. (transl. and ed.): *Digest of Justinian, Vol. I*. Philadelphia 1998, 63. However, I revised and corrected the translation of Watson at several points for better compliance with the Latin text and interpretation of the Heumann–Seckel Handlexikon (= SECKEL, E.: *Heumanns Handlexikon zu den Quellen des römischen Rechts*. Jena 1907⁹).



In the Ulpian passage, the term *causa* stands as a condition for initiating litigation, which is also known – especially in the national textbooks and literature – as the *causa civilis*,²⁴ and clearly shows that the existence of this criterion made even unnamed agreements suable, but its absence resulted in the denial of the *actio*. In Roman law, which does not recognise the principle of *pacta sunt servanda*,²⁵ simple agreements (*pacta nuda*) concluded without forms were indisputable, and only legal transactions elevated to the rank of *contractus* or the so-called suable agreements (*pacta vestita*) had *actiones*.²⁶ In the case of contracts based on *conventio*,²⁷ the norms of Roman law always required some “surplus” as a *civilis causa* to make litigation available. This “surplus” most often manifested in solemn formalities²⁸ or in the transfer of things (*contractus reales*),²⁹ but just in the case of consensual contracts, the question of *civilis causa* is not so clear,³⁰ since in these contracts only the informal *consensus* binds the parties. Being a *bonae fidei contractus*, all consensual contracts became enforceable in classical Roman law through *bonae fidei actiones*.

In the German literature Wolfgang Kunkel,³¹ in the Hungarian literature András Földi draws attention to the fact that by the *bonae fidei actiones*, the *oportet ex fide bona* clause in the formula was initially only the legal basis of the claim, then in the classical era as a next phase, in contract law *fides* has also become to serve as the general measure of correctness.³²

Compared to this view, I believe, by use of analogy with what is described in the above-mentioned works of Greek philosophers, that in this respect, *fides* may have had a meaning of “trusting” in transactions of such a nature as a deferred sale. In fact, in Roman law such

²⁴Nevertheless, the above mentioned source is the only evidence for the existence of such a *causa*, the text never uses the term *civilis causa* itself, from which it is quite obvious that the *civilis* signifier is not original but rather a common term in the modern methodology of teaching Roman law. For this, see FÖLDI-HAMZA (n. 2) 474f; SIKLÓSI: Római magánjog (n. 2) 1339 and 1346ff.

²⁵FÖLDI-HAMZA (n. 2) 589²; SIKLÓSI: Római magánjog (n. 2) 1339.

²⁶KASER (n. 2) 486f; KASER-KNÜTEL (n. 2) 189ff and 225ff; BURDESE (n. 4) 487ff; FÖLDI-HAMZA (n. 2) 474ff; SIKLÓSI: Római magánjog (n. 2) 1353f.

²⁷E. g. ... *nullum esse contractum, nullam obligationem, quae non habeat in se conventionem* (Ped. apud Ulp. D. 2, 14, 1, 3), *contractus enim legem ex conventionem accipiunt* (Ulp. D. 16, 3, 1, 6). For this problem, see KASER-KNÜTEL (n. 2) 226; BURDESE (n. 4) 487ff; FÖLDI-HAMZA (n. 2) 474; and most recently SIKLÓSI: Római magánjog (n. 2) 1343.

²⁸In most cases it requires the use of solemn words in the form of the so-called verbal contracts of Roman law (*stipulatio*), or contracts concluded *per aes et libram* with the contribution of a libripens (*mancipatio*, *nexum*, *fiducia*). See FÖLDI-HAMZA (n. 2) 474f; KASER-KNÜTEL (n. 2) 225f and 236f; SIKLÓSI: Római magánjog (n. 2) 1352 and 1392ff.

²⁹By four nominal contracts (*mutuum*, *commodatum*, *depositum* and *contr. pignoratitius*), and by several innominal contracts the ground of litigation was a certain kind of “real element”. See KASER-KNÜTEL (n. 2) 225ff; FÖLDI-HAMZA (n. 2) 474; SIKLÓSI: Római magánjog (n. 2) 1412ff.

³⁰Cf. for this HONSELL, H. – MAYER-MALY, TH. – SELB, W.: *Römisches recht*. Berlin 1987⁴, 305 and 305³.

³¹KUNKEL, W.: „*Fides*” als schöpferisches Element im römischen Schuldrecht. In FS Paul Koschaker II. Weimar 1939, 5ff; JORS, P. – KUNKEL, W. – WENGER, L.: *Römisches Recht*. Berlin-Göttingen-Heidelberg 1949³, 164f and esp. 165¹². See also KASER (n. 2) 484ff.

³²FÖLDI (n. 17) 14. See also KUNKEL (n. 31) 10ff; KASER-KNÜTEL (n. 2) 192f; KASER (n. 2) 484ff; WIEACKER, F.: *Römische Rechtsgeschichte I*. München 1988, 505f.



constructions were also enforceable contracts based on mutual trust (*fides*) between the parties. Therefore, I believe, that in the case of the consensual contracts (not to mention atypical and mixed contracts of the legal practice; and even the category of *pacta vestita*) the *fides* stands in the meaning of “trust” as the *causa civilis* to ensure litigation. Whether it is the *fides* of Roman law or the *πίστις* of Greek law, both refer to “trusting” in the case of agreements like a deferred sale, but while in Roman law litigation on the ground of “trust” was possible through *bonae fidei actiones*, Greek law precluded it.

Another consequence of the difference between the Roman and Greek legal interpretation of the term referring to ‘trust’ is also worth mentioning here, namely the issue of contractual liability. In Roman law, the extent of liability for sales contracts (even with deferred purchase agreement) is the same as for other *bonae fidei* contracts.³³ In respect of the *emptio venditio*, according to the rules of classical Roman law, the buyer is liable for *culpa levis*,³⁴ while as for the seller – as René Robaye emphasizes – there are authors who speak about liability for *custodia*, others think that the vendor is liable only for *dolus* (as it is stated strictly based on the sources by Arangio-Ruiz)³⁵ and again there are authors mentioning liability for *culpa* only in certain cases (as it is stated by Max Kaser).³⁶ Also, there are authors who expound the whole problem next the rules of *periculum*.³⁷ Notwithstanding in certain cases the seller’s liability should include the duty of *custodia* as well.³⁸ The limits of this current study, however, not provide possibility to review the whole problem, therefore I only mentioned the main outlines of the literature.

However, in the legal practice based on Greek law the lack of this conception³⁹ resulted mainly in strict liability as it is often stated by Rafael Taubenschlag,⁴⁰ who mentioned only one

³³ ARANGIO-RUIZ: Responsabilità (n. 20) 32f; SIKLÓSI: Római magánjog (n. 2) 1478ff.

³⁴ KASER (n. 2) 551; KASER–KNÜTEL (n. 2) 246; GUARINO (n. 4) 810ff. See also SIKLÓSI: Római magánjog (n. 2) 1478ff.

³⁵ ARANGIO-RUIZ: La compravendita (n. 14) 245ff.

³⁶ KASER (n. 2) 551.

³⁷ See ROBAYE, R.: *L’obligation de garde: Essai sur la responsabilité contractuelle en droit romain*. Brussels 1987, 343; also for the whole question recently in the national lit., see SIKLÓSI: Római magánjog (n. 2) 1478ff.

³⁸ It is also notable to mention that in certain cases the vendor is liable also for *custodia*. See for this question ROBAYE (n. 37) 343; SIKLÓSI, I.: *A custodia-felelősség problémái a római jogban* [Problems of custodia liability in Roman law]. Budapest 2021, 157ff; SIKLÓSI, I.: Quelques remarques sur la responsabilité de la «custodia» en droit privé romain classique. *Revista internacional de derecho romano* 15 (2015) 223–248, here 232; KASER–KNÜTEL (n. 2) 228; GUARINO (n. 4) 810ff. For the whole question recently in the national lit., see SIKLÓSI: Római magánjog (n. 2) 1478ff.

³⁹ Gábor Hamza notes that in Hellenic law the view that the liability arising from the non-fulfilment of a voluntary obligation would be based on the *consensus* of the contracting parties is unknown. (I would mention here that the prevailing view in the literature today is Wolff’s notion that a person who fails to fulfil an undertaking thwarts his partner’s purpose in relation to his “property sacrifice” in the hope of performance [the so-called *Zweckverfügung* theory], see WOLFF, H.-J.: *Zur Bedeutung der altgriechischen Rechtsgeschichte für die Rechtswissenschaft*. In CAEMMERER, E. VON – KAISER, J. H. – KEGEL, G. [eds]: *Xenion. Festschrift für P.J. Zepos I–III*. Athen–Freiburg– Köln 1973, I 757–763, 757ff; cf. also HAMZA [n. 7] 208ff).

⁴⁰ “Under Egyptian law the debtor is liable even if he fails to discharge his obligation on account of circumstances beyond his control. The same rule is followed in Greek law. This unrestricted liability is stressed in loans, deposits, leases and *recepta nautarum*. In all these cases the debtor is liable for *casus* and even for *vis maior*. The loan of *pecunia traiectica* adopted from ancient Greek law is an exceptional case. The lenders are liable only when they return safely back to Egypt.” See TAUBENSCHLAG, R.: *The Law of Greco-Roman Egypt in the Light of the Papyri 332 BC–640 AD*. Warsaw 1955², 316.



instance of a tendency to restrict this liability, in a contract of transportation. He also mentions that “the application of different Roman rules on *custodia* and *culpa* is seen in contracts (lease, partnership) from the V–VI cent. AD”.⁴¹ This theory was questioned in the current literature by José Luis Alonso in case of certain types of contracts such as deposit and lease contracts, where he argued that “unrestricted liability”⁴² seems to have been the rule only in those contracts where we would expect it in any legal tradition: loans for consumption and money deposits. Beyond these cases, there is no evidence of a general principle of unrestricted liability.”⁴³ Notwithstanding Alonso’s results are coming from certain types of contracts, and in case of sales contracts, more specially in the case of sale on credit and sale on delivery, we cannot say for sure whether the liability was restricted or unrestricted. However, Alonso draws his conclusions from the examination of certain contracts, namely leases and deposit agreements. At the same time, the issues of liability remain unclear in relation to purchase and, more specifically, deferred purchase arrangements developed in contractual practice. Presumably, the extent of the liability of the parties may depend on the type of contract used for such arrangements or on the subject matter of the contractual construction. But still, in these cases, it is also not an easy question of what kind of transaction we are dealing with, as we encounter mixed contracts in the practice due to the non-litigious nature of deferred sales.

THE SOLUTION OF THE LEGAL PRACTICE

In addition to this, the above mentioned “hostility towards crediting” (in German term of art *Kreditfeindlichkeit*) resulted in the fact, that Greek law applied additional solutions for sales on credit, as it is evidenced mainly in papyrological sources.⁴⁴ It is noticed by Fritz Pringsheim that “as the law of sale allowed no action for claiming the price, the best expedient was to take refuge in the law of loan”.⁴⁵ Therefore the sales contract was drafted as a “fictitious loan agreement”, in which according to Pringsheim, if the vendor granted a credit for the price of purchase and the purchase was disguised as a loan (the so-called συγγραφή δανείου)⁴⁶, the vendor had no suit by purchase, but he could bring an action only by loan.⁴⁷

⁴¹TAUBENSCHLAG (n. 40) 317.

⁴²The terms come from Taubenschlag, who uses the terms restricted and unrestricted liability. Hereinafter, the former is to be understood as the system of liability characteristic of *bonae fidei* contracts known from classical Roman law, the latter being the strict liability known by *stricti iuris* contracts of Roman law, which also covers the risk of *vis maior*.

⁴³See ALONSO, J. L.: Fault, strict liability and risk in the law of the papyri. *The Journal of Juristic Papyrology* Suppl. 19 (2012) 19–81 = URBANIK, J. (ed.): *Culpa. Facets of Liability in Ancient Legal Theory and Practice* [Proceedings of the Seminar held in Warsaw 17–19 February 2011]. Warsaw 2012, 19–81, here 48.

⁴⁴For the problem, see further from the literature especially: JAKAB, É.: *Risikomanagement beim Weinverkauf*. München 2009, 154; JAKAB, É.: „*Praedicere*” und „*cavere*” beim Marktkauf. München 1997, 62.

⁴⁵PRINGSHEIM (n. 14) 244.

⁴⁶PRINGSHEIM (n. 14) 89; RUPPRECHT (n. 6) 15 and 33.

⁴⁷PRINGSHEIM (n. 14) 89; RUPPRECHT (n. 6) 33. According to Cohen the main criteria of these contracts are the following: „Purchasers did pay the full price, but often with funds lent by sellers. Financing by the seller allowed the buyer to take immediate possession of the good. In turn, if the buyer did not repay the loan on the terms agreed, the seller was able to bring legal action to recover the sums advanced.” See COHEN (n. 8) 294.



This phenomenon can also be described as such that in case of the collision of the two types of the contracts, the loan, in the aspect of procedure law, “*quasi* absorbs” the purchase, in other words, the possibility of litigation is secured by a document containing a fictitious legal transaction, while on the ground of the real transaction no lawsuit is due.⁴⁸ Both Pringsheim and Wolff pointed out that in this way Kreditkauf emerged as an “economic phenomenon” in the Greek world, found in both the Classical and Hellenistic eras, given that the Greek economy has remained an economy based on prompt agreements throughout.⁴⁹

Lieferungskauf has also appeared in the legal practice as a kind of deferred sales contract, where the construction was formed for credit purposes, although it differs from Kreditkauf discussed earlier, since in here the purchase price is paid at the same time as the agreement was concluded but the goods are delivered later.⁵⁰ Lieferungskauf is therefore often referred to as the counterpart of Kreditkauf, as here too we are dealing with a kind of crediting, only this time it is not the money the object of the service, but the goods.⁵¹

However, the analogy between the two contracts is not clear considering the legal practice of Egyptian Hellenistic Greek law, since the Lieferungskauf had its own specific formula,⁵² while the Kreditkauf used the contractual scheme of a loan instrument. In the case of Lieferungskauf, the problem of litigation can also be traced back to the fact that Greek law did not recognize the sales of future crops,⁵³ so – as Pringsheim refers – it “did not provide for the enforcement of a promise to deliver recourse was had to the law of loan, as being more appropriate to a promise

⁴⁸“In sales on credit, however, the goods are delivered at once; the contract of sale contains a receipt for the price, and only the additional contract of loan reveals the true character of the transaction.” PRINGSHEIM (n. 14) 89 and 267. Furthermore, in the literature, Herrmann argues that the loan, as a prototype of Hellenistic rights-creating agreements, was available to the parties and was suitable for the parties to carry out their will through the loan (*Geschäftszweck*). See HERRMANN, J.: *Papyri als Zeugen hellenistischer Rechtspraxis*. In HERRMANN, J.: *Kleine Schriften zur Rechtsgeschichte*. München 1990, 134; to this question, see also WOLFF, H.-J.: Die Grundlagen des griechischen Vertragsrechts. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Rom. Abt.)* 74 (1957) 26–72, here 27; PRINGSHEIM, F.: Id quod actum est. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Rom. Abt.)* 78 (1968) 1–91, here 6ff.

⁴⁹WOLFF (n. 48) 29; PRINGSHEIM (n. 14) 161 and 245.

⁵⁰PRINGSHEIM (n. 14) 268; JÖRDENS, A.: Kaufpreisstundungen. *Zeitschrift für Papyrologie und Epigraphik* 98 (1993) 263–283, here 263 and 276; ERNST, W.: Gattungskauf und Lieferungskauf im römischen Recht. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Rom. Abt.)* 114 (1997) 272–344, here 277; ABATINO, B.: *L’«emptio venditio» di «res quae pondere numero mensura constant»*. Napoli 2006, 115.

⁵¹JÖRDENS (n. 50) 263.

⁵²JÖRDENS (n. 50) 276; JAKAB, É.: *Kauf oder Darlehen? Lieferungskäufe über Wein aus dem römischen Ägypten*. In GAGOS, T. (ed.): *Proceedings of the 25th International Congress of Papyrology (American studies in Papyrology – Special edition)*. Ann Arbor 2010, 335–344, here 343.

⁵³PRINGSHEIM (n. 14) 269; JAKAB: Kauf (n. 52) 340; ABATINO (n. 50) 116.



of generic goods”.⁵⁴ Moreover, in the province of Egypt, the Gnomon of the Idios Logos prohibited the sale of unharvested produce: [ἀ]τρύγητα γενήματα οὐκ ἐξῶν πωλεῖν (BGU V, 1210, ln. 233).⁵⁵

To resolve this, neither the loan nor the sales contract was appropriate, and we can find in the legal practice strangely mixed constructions, where half of the contract is like a sale, but ended up in a loan.⁵⁶ But this contract is neither a sale, nor a loan, and could be considered as a “crude combination” of the clauses.⁵⁷ In the Ptolemaic epoch a simplified, new form appeared, which was better adapted to its purpose and connects the receipt and promise in a mature way.⁵⁸ Pringsheim emphasized that shedding the element of loan these contracts never mention the amount of the money. This omission is characteristic to even later types.⁵⁹ Notwithstanding this mixed formula did not become the ultimate solution since the notaries rather used a different scheme of contract. Pringsheim emphasised that a new scheme of contract, which has its unique formula thankfully to the intelligence of the Greek and Hellenistic notaries, brought

⁵⁴In other systems formal promises had to resort, like in the case of Roman law, the *stipulatio* was an instrument for making promises enforceable, including promises to deliver generic things. According to San Nicolo’s study in cuneiform law the loan contract was used for forming its promissory note. However, in Greek law it was scarcely a way, due to Greek law’s aversion from strict legal forms. See PRINGSHEIM (n. 14) 268.

⁵⁵Pringsheim sees explanation to this veto in the scheme of the contracts. Firstly, in the sales contract the amount of price is often mentioned, because the payment transfers the ownership, in loan contracts the amount of money lent, because the same amount has to be returned. By the *Lieferungskauf*, however, delivery is the main purpose of the contract, the amount can be omitted. As the contract is not a loan, interest is out of the question; as it is not a sale, guarantee against eviction cannot be given. Unascertained goods are the only object of these contracts. Therefore, a new contract was needed, since such things could not be sold, but also because a duty to give future delivery could not be created by a sale. See PRINGSHEIM (n. 14) 285. For the whole text of the Gnomon and further literature, see <https://berlpap.smb.museum/03191/> (last download 21st Sept. 2021).

⁵⁶The document under P. Hib. 84a (for resolving abbreviations of papyri corpora used in the following examples taken from the Papyri.info Database, see <http://papyri.info>) from 285–284 BC starts like a sale: ἀπέδοτ[ο] ... καὶ τὴν τιμὴν ἀπέχει ... (ln. 2–3); but follows as a loan: ἀποδότω ... (ln. 3–7); and we can also find a penalty clause: ἐὰν δὲ μὴ ἀποδοῖ ἀποτεισάτω Ἐπι[μέ]/νης Τιμοκλεῖ τιμὴν τῆς ἀρτάβης ἐκάστης δραχμὰς / [τέσ]σαρας, (ln. 7–9); an execution clause, first the so-called *πράξις*-clause (its function in details, see below): καὶ ἡ πράξις ἔστω ... (ln. 9–10); and also the so-called *κυρία*-clause: ἡ δὲ συνγραφὴ ἦδε κυρία ἔστω ... (ln. 11–12); and finally the names of the witnesses (ln. 13–15). In the recto ln. 16–29 and verso ln. 30 we can read the copy of the contract. According to Pringsheim, the combination of the two different forms has the result that both sentences are introduced with the same verb (ἀπέδοτο — ἀποδότω). We also see that the delivery was secured with a penalty and execution clause. See PRINGSHEIM (n. 14) 269f.

⁵⁷PRINGSHEIM (n. 14) 284.

⁵⁸See P. Heid. Inv. G 2191 (209 BC, Oxyrhynchus): ...ἀπέχω ... τιμὴν ... ἃς ἀπομετρήσω σοι... Here we can only find one part of the receipt.

⁵⁹Pringsheim also examined the changes in the scheme of contract in different periods, and he found that the above mentioned formula, which dates back to the Ptolemaic era, did not change significantly with Roman invasion. During the Augustan age the Ptolemaic line continued, e. g. ὁμολογοῦμεν ἔχειν παρὰ σοῦ ... τιμὴν ... ἃς καὶ ἀποδώσομε[ν] σοι ... ἐὰν δὲ μὴ ἀποδοῦμεν ... τῆς πράξεώς σοι οὐσης ... (PSI 1099) See PRINGSHEIM (n. 14) 278ff. For the notion ὁμολογῶ ἔχειν, see also RUPPRECHT, H.-A.: *Untersuchungen zum Darlehen im Recht der graeco-ägyptischen Papyri der Ptolemäerzeit*. München 1967. 4f; JÖRDENS (n. 50) 274.



into existence a duty to deliver goods which could be enforced by an execution clause and guaranteed by surety.

In the literature, Éva Jakab draws high attention to the fact that the documents do not necessarily testify to a hidden loan, but rather to the meeting of other types of contracts.⁶⁰ Therefore, it is sometimes more difficult to spot a *Lieferungskauf*, as it may be more like a lease than a sale.⁶¹ These delivery services often established under Greek law as lease contracts, which did not usually indicate that the parties intended to sell only one sale. These contracts are usually concluded for one year, typically until the time the crop (e.g., grain, wine, or oil) is produced.⁶² Most of the time we meet in the provincial practice with documents issued about shipments of wine and grain.⁶³ Thus, in the case of delivery contracts, the service is usually a general service on the part of the seller, which immediately defines the liability, since it always establishes an objective liability, since it is never a specific thing which should be given, but the same quality in the same quantity of the given type of thing.

Due to economic reasons, Egyptian provincial practice required both the construction of the *Kreditkauf* and *Lieferungskauf* since the Ptolemaic era.⁶⁴ The practice that the obligation of the debtor in possession of the purchase price or goods was formulated in a kind of letter of

⁶⁰JAKAB, É.: *Borvétel és kockázat. Jogtudomány és jogélet a római birodalomban* [Risikomanagement beim Weinkauf; cited in n. 44]. Budapest 2011, 80¹¹.

⁶¹See as an example P. Tebt. 379 (128 AD, Tebtynis): ...πεπράκαμέ<v> σοι τὸν κατεσπαρμένον / ἐν τῆς ὑπαρχούσης[ες] ἡμῖν ἀρούρες πέντε / περὶ Θεογονείδα χόρτον εἰς κοπὴν / καὶ ξηρασ[ί]αν τοῦ ἐνεστώτος τρισκαὶ/δεκάτου (ἔτους) κατὰ τὸ ἐπιβάλλον / ἡμῖν δι[ι]μυρον μέρος ὃν καὶ ἡμῖς / ἔσχομεν παρὰ τῶν προόντων / ἐν αὐτῷ γεωργῶν, ὧν καὶ τὴν συμ / πεφονημένην τιμὴν ἀπέχωμεν / ἐκ πλήρους καὶ βεβαίως ὡς σοι ἀπὸ / δημοσίων καὶ ἰδιωτικῶν, πρὸς ἡμᾶς / ὄντων τῶν μέχρι τέλους μερισμῶν / ἢ χίρ κυρία ἔστω... (...We have sold to you the grass sown in the 5 arouras belonging to us at Theogonis for cutting and drying in the present 13th year in respect of the two-thirds share falling to us, which we have received from the previous cultivators, and we have been paid the price agreed upon in full and will guarantee you the crop from public and private burdens, being ourselves responsible throughout for rates upon it. Let this deed be valid. ... [transl. by APIS, see <https://bit.ly/39uaWQy>, last download 22nd Sept. 2021]). Here we found that the scheme of the contract begins with the formula πεπράκαμέ<v> σοι, clearly shows the sign of a sales contract, but continued as a lease. Also, the omission of the amount of money can be witnessed here (τιμὴν ἀπέχωμεν). On the regulation of sales contracts mixed with a leasing element in Roman law, see PÓKECZ-KOVÁCS, A.: *A szerződéstől való elállás az adásvétel mellékegyezményeinél a római jogban és továbbélése során* [Withdrawal from the contract for additional conventions of sale in Roman law and during its reception in the legal History of Europe]. Pécs 2012, 80–81.

⁶²PRINGSHEIM (n. 14) 298.

⁶³JORDENS (n. 50) 272.

⁶⁴In contrast, Roman law rather applies constructions, where the seller, in so far as he credited the purchase price, sought to ensure, by certain “reservation of title clauses”, that he retains the goods until the price is paid. Usually, *arra* or the clause *lex commissoria* has been added to the sales contract. Next to this, the other solution was a *locatio conductio rei* or a *precarium* mixed with the sale serving as a kind of *pactum reservati dominii*, where the rent ensured the payment of the purchase price: in fact, the parties entered a deferred sales contract at the same time. See ZIMMERMANN, R.: *The law of obligations. Roman foundations of the civilian tradition*. Oxford 1996³, 276; PÓKECZ-KOVÁCS (n. 61) 15, 61 and 82f. On *pactum reservati dominii* and its possibilities in Roman law, recently see SIKLÓSI: *Római magánjog* (n. 2) 1508f.



indebtedness (litteral contracts) even despite the influence of Roman law remained a practice existing in the imperial era in Egyptian practice.⁶⁵

There remained several receipts from the practice of the Egyptian provinces which are great examples for this custom. Pringsheim was the first to conduct an in-depth analysis of the nature of these documents and classified some 50 documents as deferred purchase schemes. This collection was most recently reviewed by Philipp Scheibelreiter in relation to Kreditkauf, who has differentiated the documents in which there is sure to have been a fictitious loan,⁶⁶ from the ones that have been qualified to be fictitious only by Pringsheim himself, and on the other hand, finally, he has covered a broader range of documents too that are questioned in the literature.⁶⁷

In the case of these atypical contracts, it is not clear in the literature (1) how many documents can be included in this circle by province; (2) in which offices run by notaries (esp. *agoranomoi*)⁶⁸ within each province, the practice of these documents can be observed; and (3) to what extent the construction of these documents described by Pringsheim can be justified in the light of recent studies on these legal constructions and new papyrological evidences.⁶⁹

In the following, to show the difficulties of identification of such legal constructions, I will examine a contract, originally entered under BGU I 189, categorized as a fictitious loan by both Pringsheim (Mitteis as well) and Scheibelreiter, which needs to be reinterpreted in the light of recent papyrological research.

⁶⁵JAKAB: Kauf (n. 52) 342; JÖRDENS (n. 50) 263.

⁶⁶The following papyri, that both Pringsheim and Rupprecht qualified as fictitious loans, can be enlisted into this group, namely: P. Cair. Zen. I 59001; BGU I 189; P. Rein. 7 and P. Par. 8. Scheibelreiter regards the following papyri as well: P. München III, 52; P. Oxy. X 1281; P. Hamb. 32 (See SCHEIBELREITER [n. 14] 196ff). However, Andrea Jördens highlights the fact that since the number of the documents of these types are relatively small, any conclusions to be drawn can be possible only regarding the fact of this very small number. See JÖRDENS (n. 50) 263ff.

⁶⁷SCHEIBELREITER (n. 14) 198. Furthermore, he qualifies as fictitious loans the following documents as well: P. Oxy. VI 914 and P. Oxy. X 1320.

⁶⁸The publicity required by Greek law when concluding legal transactions (disclosure of the contract in official “authentic places”, before officials such as the ἀγορανόμος or with participation of witnesses and a so-called συγγραφοφύλαξ) resulted in liability, even if the parties did not conclude the deal with an oath, but with a mere promise. See WOLFF, H.-J.: *Das Recht der griechischen Papyri Ägyptens in der Zeit der Ptolemäer und des Prinzipats I–II*. München 1978–2002, here Vol. II, 59; JAKAB: Cavere (n. 44) 74f; MITTEIS, L.: *Römisches Privatrecht bis auf die Zeit Diokletians*. 1. Bd. *Grundbegriffe und Lehre von den juristischen Personen*. Leipzig 1908, 52ff.

⁶⁹Currently, the most extensive papyrological database, <http://papyri.info>, seeks to provide information on all available papyri by organizing DDBDP, HGV, APIS, and DCLP data, faithfully to exact critical editions (see <http://papyri.info/docs/about>), and uses ratings that can be observed in critical editions, which makes it difficult to search for such documents, as it records fictitious loan agreements either under a loan (685 documents in total) or under a sale (579 documents in total). The Lieferungskauf character is indicated (103 documents in total), but here too, due to the nature of such a construction, it is classified as a contract of sale or lease (646 documents in total). Furthermore, 16414 items in the database without qualification can hide such constructions. However, summarizing and exploring these is not part of the present study.



The case of BGU I 174+189 (7 AD – Arsinoites)⁷⁰



⁷⁰For the interpretation of the papyrus, I mainly accepted Claytor's reading with minor adjustments. This edition was also made from the high-quality images available in the Berliner Papyrusdatenbank (<http://ww2.smb.museum/berlpap>, accessed Oct. 8, 2021). Hereby I also would like to thank W. Graham Claytor for helping me with the reading and providing me information on the original papyrus. See CLAYTOR, W. G.: BGU I 174+189: An Early Roman Contract from Soknopaiou Nesos. *Archiv für Papyrusforschung und verwandte Gebiete* 63.2 (2017) 273–281, here 273ff. Furthermore, see <http://papyri.info/ddbdp/bgu;1;174>; <http://papyri.info/ddbdp/bgu;1;189>.

The Text of the Contract:⁷¹

Recto

(This part comes from the original BGU I 174 r:)

(2nd Hand) ἔτους ἔ[κ]του καὶ τριακοστοῦ τ[ῆς] Καίσαρος κρατήσεως
θεοῦ υἱόν, μηνὸς Ὑπερβελεται[ου] ἐνάτει καὶ εἰκάτει, Μεσορῇ
ἐνάτει καὶ εἰκάτει, ἐν τῇ Σοκνοπαίου Νήσου⁷² τῆς Ἡρα-
κλείδου μερίδος τοῦ Ἀρσι[νο]ίτου νομοῦ
vacat (ca. 8 cm)

(ἔτρους) [λ] 15 Καίσα[ρ]ος [Μ]εσορ[ῇ] κῆ ἀναγέγρα[πται]⁷³

5

δι[α]⁷⁴ [τ]οῦ ἐν τῇ γραφείου⁷⁵ Σοκνοπαίου⁷⁶ \Νήσου/⁷⁷

⁷¹I accepted the critical edition of the papyrus in Claytor's reading but corrected the first readable line of BGU I 189 based on the original edition of the BGU. For all Koine language phenomena and reading problems, see in detail CLAYTOR (n. 70) 273ff.

⁷²For the occurrence of the name of settlement on papyri, see MITTHOF, F.: Ἐν τῇ Σοκνοπαίου Νήσου. Zur Bezeichnung des Errichtungs-bzw. Registerungortes in den Notariatsurkunden aus Soknopaiu Nesos. *Zeitschrift für Papyrologie und Epigraphik* 133 (2000) 193–196, here 193ff.

⁷³Here the reading is partially influenced by parallels, which suggest that we should have reference to the notary. Similarly cf. the text running vertically on the left edge of *Chr. Mitt.* 159 ms 37 (ἀντίγραφον χαραγμοῦ. (ἔτους) [ι]β Τιβερίου Κλαυδίου Καίσαρος Σεβαστοῦ Γερμανικοῦ Αυτοκράτορος / μηνὸς Καισαρείου) ἰδ. ἀναγέγραπται διὰ τοῦ ἐν Ἡρακλείᾳ γραφείου., ie. Antigraphon – stamped document. Year 12 of Tiberius Claudius, Caesar Augustus Germanicus Imperator/14th in month of Kaisareios. Registered through the grapheion of Herakleia).

⁷⁴Claytor notes that there is also some more faded ink to the left, before the suggested δι start, but it is not clear what could it be. According to my papyri.info database research, there are 95 documents (see <https://bit.ly/3upwmYF>), where after the date the phrase ἀναγέγραπται διὰ ... γραφείου can be traced. However, between ἀναγέγραπται and διὰ usually nothing stands. For example, see CPR XV 47, ln. 7–8: (Hand 2) [ἔτους – ca.15 – Τιβερ]ίου Κλαυδίου Καίσαρος Σεβαστοῦ Γερμανικ[ο]ῦ Αυτοκράτορος – ca.?-]/[ἀναγέγραπται διὰ τοῦ ἐν τῇ Σοκνο]παίου Νήσ[ω] γραφείου., ie. “Year ... of Tiberius Claudius, Caesar Augustus Germanicus Imperator ... Registered through the grapheion of Soknopaiou Nesos.” (for this phrasing, see also cf. LIPPERT, L. – SCHENTULEIT, M. – REITER, F.: *Demotische Dokumente aus Dime III. Urkunden*. Wiesbaden 2006, 49f). Therefore, I believe that here we face the same phrasing, however, as Claytor points out the reading here is partially had to be influenced by parallels, due to the problems of fitting the characters at the joint. Claytor suggests also that after ἀναγέγραπται διὰ the name of the notary should come, which ends in Σοκνοπαίου \Νήσου/. He cites another example as a possible solution from CPR XV 1, ln. 23: ἔτους κη Καίσαρος Θῶθ ... ἀναγέγραπται διὰ ... νομο]γράφου καὶ συναλλα[γματογ]ρ[ά]φου Σοκνοπαίου Νήσου. As he points out unfortunately the name of the notary could not be deciphered on the papyrus, notwithstanding he mentions that no grapheion officials in Soknopaiou Nesos are known by name between 2 and 37 CE (cf. LIPPERT–SCHENTULEIT–REITER 105). For this, see also CLAYTOR (n. 70) 279.

⁷⁵According to the previous editions of BGU I 189 (and the length of the blank space on the papyrus), before Σοκνοπαίου (which is also missing), there must have been ca. 12 characters, which is completely missing or only some faded traces remained. This 12-character section is just as long as the phrase δι[α] [τ]οῦ ἐν τῇ γραφείου, which makes it very tempting to restore the 7th line of the document accordingly. Still, it is just a tempting possibility.

⁷⁶According to Claytor's suggestion, there are three lines. Line 5 begins with the date, line 6 with δι, probably for διὰ indicating the notary through whom the contract was registered. This can be supported by other contracts from the practice of the nome of Soknopaiou Nesos, where we find clear traces of the notation regarding the office, through which the registration took place. There are ca. 65 documents from Arsinoites (see <https://bit.ly/3oi5g4J>), and ca. 314 documents overall (see <https://bit.ly/3AUhwvY>), most of them from Soknopaiou Nesos with a docet of registration worded as such. For example, see BGU I 87 r ln. 33 ([Hand 4] ἐντέτακ[ται] διὰ γραφείου) Σοκνοπ[αίου] Νήσου), ie. “The contract was registered through the grapheion of Soknopaiou Nesos.”. cf. a similar ending in BGU I 153 ln. 45 (διὰ γραφείου[υ(?)]) Διογ[εν]ιδ[ος(?)], ie. “The contract was registered through the grapheion of Dionysias.”).

⁷⁷Line 7 contains just Νήσου, written in the next line because there wasn't enough room at the end of line 6. It seems, that the name of the place Σοκνοπαίου Νήσου was too long for the row, and they place Νήσου somehow below, but it belongs to the 2nd row (this could be called as a new line, but I chose to print it as a sublinear addition).



(This part comes from the original BGU I 189 (= Chr. Mitt. 226) recto:)

(1st Hand) Σαταβουὺς Τεσηῖος Πέρσ[ι]ς⁷⁸ τῆς ἐπ[ι]κονῆς
 ὁμολοκῶ ἔχιν[ι] τὸ δά[ν]ηον παρὰ Μαρή⁷⁹
 τοῦ Μεσουήρις⁸⁰ διὰ χειρ[ι]δὸς ἐκξ οἱ[κ]ου ἀργυρίου 10
 ἐπισήμου κεφαλαίου [ν]ομίματος δρα-
 χμᾶς ἐβδομήκοντα δύο τόκου ὡς ἐκ
 δραχμῇ μία τριοβού[λο]υ τῇ μνᾷ τὸν μῆ-
 να ἕκαστον, ἃς καὶ ἀποδόσω ἐν μηνί
 Μεχίρ τοῦ ἰσιόντος ἐβδόμου [καὶ] τρια- 15
 κωστοῦ ἔτους Καίσαρος καὶ ποιήσω, καθό-
 τι προέγραπ>ται. ἔγραψεν ὑπὲρ αὐτοῦ
 Πανεφρύμις Στοθήτιος διὰ τὸ μὴ εἶδέ-
 γαι αὐτὸν γράμ<μ>ατα.
vacat (5 cm)
 (ἔτους) λ<ς> Καί[σα]ρος [[επαγομ]] Μεσορή κθ⁸¹ 20

Verso

(Starts with the original BGU I 189 verso:)

(2nd Hand) a demotic line ([pʰ (?)] ʿs^h-tʿ n ʿn (?) (n-)ḏr.t ʿHʿtbʰ (sʰ) Tše])
vacat
 [Δάνει]ον ἀργυρίου (δραχμῶν) οβ⁸² *vacat* (– ca. 5 characters –) καὶ πρᾶσις ὄνου *vacat*
 (– ca. 10–12 characters –) Χατταβούτος Τεσηῖος⁸³
 παρὰ Μαρή[ο]υς Μεσουήρις *vacat* (– ca. 12 characters –) ξ⁸⁴ *vacat*⁸⁵

⁷⁸Even Claytor has doubts about, that how the writer's typically large eta could be fit in the small gap between the sigmas in this line. He suggests two solutions: 1) the two strips of the papyrus on either side of the lacuna can perhaps be separated a bit more, or else 2) Πέρσ[ι]ς was written. I accept the second suggestion not only due to the fact, that the lacuna between the sigmas could not be larger as the strips of the papyrus fit perfectly well several rows down, but since similar koine phenomena (namely the so-called itacism) occur several times in the text of the papyrus, e. g. δά[ν]ηον pro δάνειον in ln. 9; ἔχιν[ι] pro ἔχειν in ln. 9; Μεχίρ pro Μεχείρ in ln. 15. For the language of the inscription, see LIPPERT–SCHENTULEIT–REITER (n. 74) 79ff.

⁷⁹The original reading of the BGU I 189 did not contain after δά[ν]ηον the end of the line. This deficiency was corrected by Claytor since the end of the line (παρὰ Μαρή[ο]ς) can be clearly read on the papyrus. See CLAYTOR (n. 70) 275f.

⁸⁰The BGU's previous edition has Μεσουήρις due to difference of convention in accenting Egyptian names in Greek. I accepted Claytor's solution, which is based on the article of Clarysse. See CLARYSSE, W.: Greek accents on Egyptian names. *Zeitschrift für Papyrologie und Epigraphik* 119 (1997) 177–184, here 179ff; CLAYTOR (n. 70) 276.

⁸¹The BGU's previous reading was [[επαμ[ι]ν]] Μεσορή κθ. Claytor mainly adjusts the numbers, and the word (επαγομ) which is hardly readable on the papyrus. See CLAYTOR (n. 70) 276f.

⁸²Previous editions read here ξβ, and refer it as misspelling of the number, but οβ can be clearly read on the papyrus.

⁸³The original BGU I 174 verso with space but approximately in the same line. In Claytor's edition it is showed without the space. The continuing of the original BGU I 189 verso, 2nd line of the Greek text: παρὰ Μαρή[ο]ς Μεσουήρις follows the name. See CLAYTOR (n. 70) 276f. Claytor notes, that the docket is spaced out on the verso, as there is also a space between (δρ.) οβ and καὶ πρᾶσις ὄνου as well. However, I believe, that the phrase καὶ πρᾶσις ὄνου might be spaced out to signalize the true nature of this bilingual document. The demotic line refers only to the loan, but not to the sale. But the official language registered that this is not an ordinary loan contract but something else. In the notary it is explicated that there is an element of sale inside the contract. Therefore, I also believe that the name Χατταβούτος Τεσηῖος was probably written at the very end, to indicate whose copy was the document written in the papyrus, maybe after the papyrus was folded.



Translation of the Text of the Contract:⁸⁶

Recto

(Body of contract begins with the opening protocol) Year thirty-six of the dominion of Caesar, son of a God, in the month of Hyperberetaios, the twenty-ninth, Mesore the twenty-ninth, in Soknopaiou Nesos of the Herakleides district of the Arsinoite nome.

(blank [ca. 8 cm])

(Notary's registration docket:) Year 36 of Caesar, Mesore 29. (The contract) was registered through NN, ... in the grapheion of Soknopaiou Nesos.

(Main body of the contract, subscription [signalized by the usual dot on the papyrus]:) ... I, Satabous, son of Teses, Persian of the epigone, acknowledge that I have received the loan from Marres, son of Mesoueris, hand-to-hand, from the house, seventy-two drachmas of coined issue as the principal, at an interest of one drachma, three obols per mina each month, which I will repay in the month of Mecheir of the coming 37th year of Caesar, and I will do as has been written above. Panephrymis, son of Stothetis, wrote on his behalf because he does not know letters.

(blank [ca. 5 cm])

(Date:) Year 36 of Caesar, Mesore 29.

Verso (bilingual docket on the Verso:)

(Demotic line) [the (?)] loan (?) document (?) from the hand of Satabous, (son) of Teses.

(blank)

(Greek) Loan of 72 silver drachmas and sale of a donkey of Chatabous, from Marres, son of Mesoueris. Copy of (Satabous) son of Teses.

⁸⁴After the word Μεσουήρις, all editions finish the lines. However, on the papyrus there are traces of faded ink to the right. Part of these come from the recto (at this part the papyrus is thinned due to the folding of the document), but there are parts which cannot come from the recto (since there is no text at that part on the recto). I can only trace one letter in a sublinear position to line 3 (maybe an ε [?]) with a lot of doubts, as it is indicated above in the Greek text.

⁸⁵The Apparatus is mainly according to the reading and suggestions of Claytor. See CLAYTOR (n. 70) 276f.

Apparatus

(for the part belongs to the original BGU I 174)

^r.2. ln. υιοῦ; Ὑπερβερεταίου ἐνάτη καὶ εἰκάδι, μεσορⁿ
pap.; BGU I 174: εἰκάδι, i.e. ἐνάτη; BL 1, 23: ἐνάτου καὶ
εἰκοστοῦ prev. ed.

^r.3. ln. ἐνάτη καὶ εἰκάδι Νήσω; BGU I 174: εἰκάδι, i.e.
ἐνάτη; BL 1, 23: ἐνάτου καὶ εἰκοστοῦ prev. ed.

^r.4. ln. Ἀρσινόϊτου

^r.5. ln. BGU I 174: [...], [...] prev. ed.

^r.7. ln. Νήσω

^v. ln. BGU 2 p. 354: prev. ed.

(for the part belongs to the original BGU I 189)

^r.8. ln. Τεῆος prev. ed. ln. ἐπιγονῆς; BGU 2 p. 354:
Περσηίς prev. ed.; ln. ἐπ[ι]γονῆς; ἐ[π]ιγονῆς prev. ed.

^r.9. ln. ὁμολογῶ ἔχειν τὸ δάνειον παρὰ Μαρρήους, ἔχιν
v. corr.

^r.10. ln. τοῦ Μεσουήριος, ἐξ

^r.13. ln. δραχμῆς μιᾶς τριωβόλου; BGU 2 (p. 354): τῆς
μᾶς prev. ed.; ln. τὸν corr. ex τῷ

^r.14. ln. ἕκαστον: α corr. ex ρ (corr. ex εραστον prev.
ed.); ἀποδόσω: δ corr. ex ο (?) (corr. ex απονοσω prev.
ed.), ln. ἀποδόσω; μηνί corr. ex μηνά

^r.15. ln. Μεχεῖρ l. εἰσιόντος; 15-16. ln. τριακοστοῦ

^r.17. ln. προέγρα<π>ται, BGU 2 p. 354: προέγραπται
prev. ed.

^r. 19. ln. γράμματα;

^r. 20. ln. [ἐπαμ[η]να] Μεσορή κδ prev. ed.

^r. 23. ln. Μαρή[ος] prev. ed., ln. Μεσουήριος

For phenomena of the koine Greek on the papyri, see
LIPPERT-SCHENTULEIT-REITER (n. 74) 79ff

⁸⁶Translation by Graham Claytor with my minor adjustments. See CLAYTOR (n. 70) 276f.



The interpretation of the 7 BC dated⁸⁷ document is problematic. As it can be seen in the high-resolution pictures above, the contract was originally included as two different documents in Volume I of *BGU*, and until Claytor's new interpretation in 2017, the two documents were not linked. The papyrus was visibly damaged due to folding, and as a result, the upper one-third, which contains the usual protocol of official registry of the contract, was separated from the lower part, which contains the main text of a loan agreement. Claytor noticed that the two documents were most likely to belong together, which could be confirmed by both the date and the place name and the identity of the parties.⁸⁸

However, in the literature, *BGU* I 189 was only analysed on its own prior to Claytor's interpretation, and that is why the classification of the contract was adjusted accordingly.

According to the older interpretation, the beginning of the document is a subjectively worded so-called *ὁμολογία*,⁸⁹ but the receipt on the back shows a more objective wording. According to Pringsheim, the deed is an average loan agreement in which the debtor, the son of Tesés Satabous, a descendant of a Persian soldier,⁹⁰ admits that he has publicly received the money (*ὁμολοκῶ ἔχιν τὸ δά[ν]ιον παρὰ Μαρή[ο]ς / τοῦ Μεσοῦῆρις διὰ χε[ιρ]ὸς ἐκξ οἱ[κ]οῦ ἀργυρίου / ἐπισήμιον κεφαλαίο[ν] ν[ο]μίσμ[α]τος δρα/χμὰς ἑβδομήκοντα δύο*). This is followed by a section on the repayment of the loan, according to which the debtor will repay the principal together with a 18% interest⁹¹ (*τόκου ὡς ἐκ / δραχμὴ μία τριοβού[λο]ν τῇ μνᾷ τὸν μῆνα ἕκαστον, ἃς καὶ ἀποδόσω... καὶ ποιήσω, καθό[τ]ι προγέγρα<π>ται ...*).⁹²

Up to this point, we find the usual text of a loan document, but the bilingual docket on the verso, giving a brief description of the contract in both Demotic and Greek. The Greek refers not only to the loan, but also to a sale of a donkey (*[Δάνει]ον ἀργυρίου (δραχμῶν) οβ⁹³ καὶ πρᾶσις*

⁸⁷Claytor indicates that the document is based on earlier interpretations, which are also dated it back (by the clause *τ[ῆς] Καίσαρος κρατήσεως / Θεοῦ υἱ[ο]ν*) to the Augustan period, but not later, than 10 AD. See CLAYTOR (n. 70) 274; furthermore, see CLAYTOR, W. G.: *Rogue Notaries? Two Unusual Double Documents from the Late Ptolemaic Fayum. The Journal of Juristic Papyrology* 44 (2014) 93–116, here 95ff. In the latter study, the author provides a list of similar documents in the appendix (so this document can also be found here: *BGU* I 174+189 is #10).

⁸⁸For evidence and detailed analysis for the date, see CLAYTOR (n. 70) 273ff.

⁸⁹LIPPERT-SCHENTULEIT-REITER (n. 74) 51 and 55. For *ὁμολογία*, see from the rich literature, e. g. BAGNALL, R. (ed.): *The Oxford Handbook of Papyrology*. Oxford 2009, 367f; RUPPRECHT, H.-A.: *Kleine Einführung in die Papyruskunde*. Darmstadt 2005, 6ff; MITTEIS, L.: *Grundzüge und Chrestomathie der Papyruskunde. 2. Band Juristischer Teil, 1. Hälfte: Grundzüge*. Leipzig 1912, 72f; SCHWARZ, A. B.: *Homologie und Protokoll in den Papyrusurkunden der Ptolemäerzeit: zugleich ein Beitrag zur Theorie der Abstandsgeschäfte (Aus der Festschrift für Ernst Zitelmann)*. Leipzig–Berlin 1913, 3ff.

⁹⁰Several papyri found in the Fayum area also use the term *Πέρσης τῆς ἐπιγονῆς*, which, however, should not be taken literally but refers to the fact, that the person belongs to a lower social status in these documents. See, e. g. *BGU* I 183; 189; 190; 232; 252; 290; 339; 538; (all of them from Arsinoite). For the notion *Πέρσης τῆς ἐπιγονῆς*, see CLAYTOR, W. G. – LITINAS, N. – NABNEY, E.: *Labor Contracts from the Harthotes Archive. Bulletin of the American Society of Papyrologists* 53 (2016) 79–119, here 96; SÄNGER, P.: *Die ptolemäische Organisationsform politeuma: Ein Herrschaftsinstrument zugunsten jüdischer und anderer hellenischer Gemeinschaften*. Tübingen 2019, 92⁵⁴; LIPPERT-SCHENTULEIT-REITER (n. 74) 51.

⁹¹As Claytor points it out, the 18% interest in this loan contract “seems to have been a kind of transitional rate” between the Ptolemaic maximum of 24% and the Roman standard of 12% (see CLAYTOR [n. 70] 280). See also MINNEN, P. VAN: *An Antichretic Loan from Early Roman Alexandria Revisited (BGU IV 1053). Zeitschrift für Papyrologie und Epigraphik* 199 (2016), 144–154, here 146 with note 12. cf. WOLFF: *Das Recht* (n. 68), here Vol. I 190.

⁹²For the typical formulas (esp. of sales contracts), cf. LIPPERT-SCHENTULEIT-REITER (n. 74) 42ff and 50ff.

⁹³As mentioned above, previous editions read here *ξβ*, and refer it as misspelling of the number, but *οβ* can be clearly read on the papyrus.



δovou), which reveals that either the loan was fictitious (with Pringsheim's term of art: συγγραφή δανείου), or the loan was secured by a fictitious sale (ὥνῃ or πρῶσις ἐν πίστει). Pringsheim notes that "the fact that somebody purchases a donkey from a person from whom at the same time he borrows money can only be explained by the suggestion that the δάνειον is nothing else than the price credited."⁹⁴ In other words it is a sale on credit, where the loan is fictitious. Referring to Mitteis' conception, Scheibelreiter points out that nothing is further from the scheme of a loan contract than a reference to the payment of the purchase price, an example of which can be seen on the back of our document.⁹⁵ In the case of a loan of money, the repayment would have to be made with money, but here we find payment with goods, moreover, the goods are not even fall under the category of *praestatio generica*, but its nature is in *praestatio specifica*.

Based on all this, it was natural, that in the literature the opinion was formed, that we are obviously facing a deferred purchase scheme in BGU I 189, as several researchers in the literature pointed it out, so the intention of the parties was concluding a sale on credit (Kreditkauf). However, there is a difference in the literature as to whether the legal construction can be treated as a fictitious loan or not, and even before Claytor's correction there were several viewpoints that it was not the loan, which is fictitious, but the sales contract instead (a so-called ὥνῃ or πρῶσις ἐν πίστει was concluded).⁹⁶ Pringsheim – and based on his view Scheibelreiter as well – falls into the group, which acknowledges a fictitious loan here (based on Mitteis' suggestion), thus speak about Kreditkauf;⁹⁷ but others, following Herrmann's view, recognise ὥνῃ or πρῶσις ἐν πίστει in the case of BGU I 189.⁹⁸

However, following Claytor's correction, the classification of the contract as Kreditkauf became doubtful and exceeded. Claytor on the ground of Herrmann's work spoke about ὥνῃ or πρῶσις ἐν πίστει, but we need to examine this term closely. The construction of ὥνῃ or πρῶσις ἐν πίστει was most recently examined in the literature by José Luis Alonso in 2015 along with guarantee sales of the law of the papyri.

⁹⁴PRINGSHEIM (n. 14) 257.

⁹⁵SCHEIBELREITER (n. 14) 15.

⁹⁶According to Pringsheim, πρῶσις only became a general term on papyri in the Roman period, replacing the ὥνῃ designation typical of the earlier period. He also analyses the terms (esp. ἡ πρῶσις καὶ ἡ ὥνῃ) noting that while ὥνῃ can be used in wider sense, but referring mainly for selling, πρῶσις can refer to purchase only from the side of the buyer. Similarly, Pringsheim cites other documents as well: BGU 464 (AD 132–3); P. Oxy. 472, II, 22–29 (= Chr. Mitt. 235) (AD 130); P. Oxy. 486, 7, 26 (= Chr. Mitt. 59) (AD 131); P. Oxy. 980 descr. (AD III); P. Lond. II p. 172 No. 358,9 (= Chr. Mitt. 52) (AD 150). See PRINGSHEIM (n. 14) 124ff.

⁹⁷See also LIPPERT, S. L.: *Einführung in die altägyptische Rechtsgeschichte* [Einführungen und Quellentexte zur Ägyptologie Bd. 5]. Münster 2012², 102.

⁹⁸CLAYTOR (n. 70) 274f; see also HERRMANN, J.: *Zur ὥνῃ ἐν πίστει des hellenistischen Rechts*. In THÜR, G. (ed.): *Symposion 1985. Vorträge zur griechischen und hellenistischen Rechtsgeschichte* (Ringberg, 24–26. Juli 1985). Cologne–Vienna 1989, 317–324, here 320f. Also by MONTEVECCHI, O.: *La Papirologia*. Milano 2008 (3rd reprint of the original 1988), 227; Rupprecht qualified the contract similarly, see RUPPRECHT: *Untersuchungen* (n. 59) 127. See also ALONSO, J. L.: *One en pistei, guarantee sales, and title-transfer security in the papyri*. In LEÃO, D. F. – THÜR, G. (eds): *Symposion 2015. Vorträge zur griechischen und hellenistischen Rechtsgeschichte*. Wien 2016, 121–192, here 159, note 163.



The term ‘ὥνῃ ἐν πίστει’ has actually been introduced on the basis of just one document — the so famous papyrus *Chr. Mitt.* 233⁹⁹ — by Otto Gradenwitz, who believed that the Heidelberg papyrus attested a new type of real security, the ‘ὥνῃ ἐν πίστει’, that had been the Hellenistic equivalent of the Roman *mancipatio fiduciae causa* (even in the formula could be regarded analogous with the well-known formula of *emit manipioque accepit*, as it can be witnessed e. g. on pompeian wax tablets)¹⁰⁰ and of the old Greek *πρῶσις ἐπὶ λύσει*. Gradenwitz hailed the text as the missing link between sale and hypothec in the Greek tradition, and even between this and the Roman *fiducia cum creditore*.¹⁰¹ Moreover, on the grounds of Gradenwitz’s theory it is generally accepted today, that this is one type of real security (as evidence for title-transfer security) in the law of papyri next to the widely accepted ones, such as those of ὑποθήκη or ὑπάλλαγμα.

Alonso, however, demonstrated in his study how far each papyrus classified and so assumed is from this approach. Alonso draws attentions on the weak point of Gradenwitz’s view, namely the interpretation of the word *πίστις*, also examining the whole material regarding the occurrence of ἐν πίστει or κατὰ πίστιν in the papyri.¹⁰² Alonso’s review of the alleged evidence yields an astonishing result: the only likely, even if not completely indubitable case is an Augustan συγχώρησις among Romans (*BGU IV* 1158 = *Chr. Mitt.* 234 [9 BCE Alexandria]); other than that, only a suspicious transaction among Oxyrhynchite Aurelii can be mentioned as a possible, but again not quite certain, occurrence (*P. Oxy.* XIV 1703 [ca. 261 CE Oxyrhynchos]). Although Alonso sees an opportunity that additional documents being better examples in the future might appear — given the large number of papyrological material for all other real securities already is — yet he also gives voice to his doubts that it is unlikely for an assiduous practice to emerge.¹⁰³ Therefore Alonso concludes that “at the present state of our sources, the term ὥνῃ ἐν πίστει does not seem to be the terminus technicus that Gradenwitz imagined, but a phantom, as the institution it was supposed to name”.¹⁰⁴

⁹⁹The document from 111 BCE Pathyris discharging debt and security, became immediately famous, and was included by Mitteis in the *Chrestomathie* as Nr. 233 (MITTEIS, L.: *Grundzüge und Chrestomathie der Papyruskunde. 2. Band Juristischer Teil, 2. Hälfte: Chrestomathie*. Leipzig 1912, 257f). The document was discovered in 1903, it is a papyrus from the Heidelberg collection, inventoried as Nr. 1278, and it was edited by Gustav Gerhard and Otto Gradenwitz (see in GERHARD, G. A. – GRADENWITZ, O.: ‘Ὦνῃ ἐν πίστει’. *Philologus* 63 (1904) 498–583, here 577ff). In details, see ALONSO: One (n. 98) 159ff.

¹⁰⁰GERHARD–GRADENWITZ (n. 99) 582000.

¹⁰¹Many followers like Herrmann, Markiewicz, Taubenschlag and others continued this viewpoint (recently see LIPPERT [n. 97] 152; URBANIK, J.: ‘*Tapia’s Banquet Hall and Eulogios’ Cell: Transfer of Ownership as a Security in Some Late Byzantine Papyri*’. In DU PLESSIS, P. J. [ed.]: *New Frontiers: Law and Society in the Roman World*. Edinburgh 2013, 151–174, here 152). For further lit., see ALONSO: One (n. 98) 159.

¹⁰²See ALONSO: One (n. 98) 160ff. See also, in details LIPPERT (n. 97) 106ff.

¹⁰³As for ὥνῃ ἐν πίστει, as Alonso emphasizes, the inconclusive *BGU II* 464 aside, the expression has not reappeared for over a century, not even to describe any other of the Pathyrite suspended sales that *Chr. Mitt.* 233 in truth exemplifies. Significantly, the words ἐν πίστει do not appear in *BGU IV* 1158 or *P. Oxy.* XIV 1703. In truth, under a more attentive reading the expression vanishes even from *Chr. Mitt.* 233 (“a simple description of the Pathyrite practice in terms of the execution ἐν πίστει, i.e. in guarantee, of a sale, or of its keeping ἐν πίστει, i.e. in custody, at the archeion” as Alonso quotes). See ALONSO: One (n. 98) 185.

¹⁰⁴ALONSO: One (n. 98) 185.



Based on Alonso's achievements, which I consider to be followed, and I will continue to do so in my present study, it is clear by now, that the classification of BGU I 174+189 cannot be ὡνὴ ἐν πίστει, as Claytor suggested on the basis of the same theoretical maze created from the beginning of the 20th century. However Claytor's suggested reading was published in 2017, and since Alonso's article was published before it in 2015, even Alonso classified only the part BGU I 189 according to Mitteis' way, the old way of Kreditkauf, i.e. the loan should be regarded as fictitious, connected to a deferred purchase agreement of a donkey.¹⁰⁵

However, three years before the new edition, Claytor became aware that BGU I 174+189 was not the only document where a blank space on the papyrus can be found in the contract between the official protocol registered in the office of the agoranomos and the main text of the contract (namely the part of the subscription). In his article published in 2014, Claytor deals with this practice of a somewhat "rogue notaries" of the late Ptolemaic Fayum area, more specifically from the office of Soknopaiu Nesos and Tebtynis.¹⁰⁶

Documents included in this legal practice can be recognised by the phenomenon that the registered contract has a missing or incomplete body. This implementation, as Claytor examined the matter, has so far not been found in documents of the Ptolemaic period, but can be paralleled in a common type of early Roman grapheion contract from the Arsinoite nome (ranging in date from 26 BC to 10 AD¹⁰⁷ and written in seven different grapheia).¹⁰⁸ These documents have a large blank space above the registration docket and subscription, where normally in the Roman period the body of the contract (the old scriptura exterior) would have been written out in full.

Two major questions arise from facing these kind of documents: 1) can such contracts be regarded as valid contracts; and 2) what is the classification of such a contract.

According to the literature – the views of Ulrich Wilcken,¹⁰⁹ Elinor Husselman¹¹⁰ and Hans Julius Wolff – despite their apparent incompleteness, their full validity is accepted, although

¹⁰⁵ Alonso also classifies the document in BGU I 189 = *Chr. Mitt.* 226 (7 CE Arsinoites) according to the old way, since the fact that the summary at the verso unexpectedly mentions, together with the loan documented in the recto, the sale of a donkey, is best explained, as Mitteis suggested (see MITTEIS: *Chrestomathie* [n. 99] 246f), understanding the loan document as fictitious, connected to a sale of credit of the donkey. See ALONSO: *One* (n. 98) 158, note 163.

¹⁰⁶ CLAYTOR: *Rogue Notaries?* (n. 87) 95ff. For this issue and the different solutions of the legal practice, see ALONSO: *One* (n. 98) 121ff.

¹⁰⁷ Incomplete contracts bearing a registration mark have so far not been found after 10 AD. For details, see CLAYTOR: *Rogue Notaries?* (n. 87) 98.

¹⁰⁸ Claytor also describes that the standard double document of this late period consists of five sections: 1) abstract of the contract (*scriptura interior*); 2) body of the contract (*scriptura exterior*); 3) subscription of the party under obligation; 4) acknowledgement of the syngrophylax (ὁ δεῖναι ἔχω κυρίαν); 5) registration docket of the grapheion. In addition, the scriptura interior could still be rolled up, tied, and sealed, with the names of the witnesses, which were also recorded in the body contract (and occasionally in the abstract), written around the seals. See CLAYTOR: *Rogue Notaries?* (n. 87) 95.

¹⁰⁹ WILCKEN, U.: *Referate und Besprechungen. Papyrus-Urkunden. Archiv für Papyrussforschung und verwandte Gebiete* 5 (1913), 198–300, here 206; CLAYTOR: *Rogue Notaries?* (n. 87) 96.

¹¹⁰ HUSSELMAN, E. M.: *'The subscriptions'*. In HUSSELMAN, E. M. – BOAK, A. E. R. – EDGERTON, W. F. (eds): *Michigan Papyri (P. Mich.) V: Papyri from Tebtunis, Part II*. Ann Arbor 1944, 10f.



with Wolff's note on the narrow time frame of these documents as suggestive of a 'besondere Methode' of notarial contract writing limited to the early period of Roman rule.¹¹¹ However, Claytor confirms that this practice originated already in the late Ptolemaic grapheion, moreover the validity of these contracts, at least in the eyes of local notaries and their clients, is beyond doubt.¹¹² At least, as Claytor confirms, the high number of Augustan examples suggests that this practice was at least tolerated for a time.¹¹³

Claytor collected in the Appendix of his 2014 article those contracts, which have been evidence for this practice, and altogether there are fifteen contracts (three are late Ptolemaic double documents, and the remaining ones are early Roman grapheion contracts) written between 74 BC and 10 AD in eight different grapheia (all in the Arsinoite nome) whose body contract is either incomplete or not written at all. Their classifications vary, among these we can find loans, sales, leases, even un-classified contracts.¹¹⁴ Among these fifteen contracts Claytor included the BGU I 174+189 as a loan of money,¹¹⁵ which suggests that the classification of the document was still an open question.

This is the point where we should paying attention back to Alonso's work on ὥνῃ ἐν πίστει and guarantee sales of the law of papyri, which will helps us find the true nature of our joint papyrus of BGU I 174+189.

¹¹¹WOLFF: Das Recht (n. 68), here Vol. II 42f; also WOLFF, H. J.: Registration of conveyances in Ptolemaic Egypt. *Aegyptus* 28.1–2 (1948) 17–96, here 85. In the Roman period this tolerated practice was exceptional comparing to the stricter attitude of Roman law. In the national literature SIKLÓSI emphasizes – dealing with *response*, esp. with the famous fragment in Paul. *D.* 18, 6, 8 pr. – the importance to distinguish between inexistence and invalidity of a contract esp. in the case of sales contracts. For this question in accordance with Roman law, esp. in respect of sales contracts, see SIKLÓSI: A nemlétező (n. 2) 106 n. 366; see also SIKLÓSI: Római magánjog (n. 2) 1461f.

¹¹²Claytor emphasizes that the peculiarities of these documents, however, should be attributed not to a 'special procedure', but rather to local experimentation with the bounds of late Ptolemaic and early Roman contracts and to a shared belief in the subscription as the operative part of the contract. He also notes that similarly, scribes of Demotic grapheion contracts in the early Roman period omitted clauses and even left them incomplete, presumably because the detailed Greek hypographe contained all the necessary contractual information. The practice seems to be a glaring 'divergence of prescription and practice', which – according to Claytor's theory – suggests an occasional lack of supervision over the growing authority of the grapheion, at least in the Fayum of the 70s BC, although it is less certain whether the lack of a body contract went against explicit state regulations. See CLAYTOR: Rogue Notaries? (n. 87) 97.

¹¹³Claytor notes that already in the third century BC, royal law laid out detailed rules for the identification of parties to loans, while the procedures published in 146 BC regarding the registration of Demotic contracts naturally also require identification of the parties involved (e. g. P. *Par.* 65 with the analysis of PESTMAN, P. W.: Registration of Demotic contracts in Egypt. P. *Par.* 65; 2nd cent. B.C. In ANKUM, J. A. – SPRUIT, J. E. – WUBBE F. B. J. [eds]: *Satura Roberto Feenstra Sexagesimum Quintum Annum Aetatis Complenti ab Alumnis Collegis Amicis Oblata*. Fribourg 1985, 17–25, here 17ff). Roman decrees have similar provisions. Regulations of this sort must have been in force regarding double documents in the first century BC (Claytor cites as an example the edict of the prefect T. Flavius Titianus: P. *Oxy.* I 34 verso [= *Chr. Mitt.* 188], cols. I–II [22 March ad 127]). See CLAYTOR: Rogue Notaries? (n. 87) 100f.

¹¹⁴See CLAYTOR: Rogue Notaries? (n. 87) 113ff.

¹¹⁵Only 3 years later, the renewed edition of the BGU I 174+189 was published by him, where he follows Herrmann's view, and classifies the documentum as ὥνῃ ἐν πίστει, as it was discussed above.



In the literature, ‘juristische Ökonomie’ is a well-quoted notion from Rudolf von Jhering, yet we face this phenomenon in so many cases in ancient legal practice. As Alonso notes one of the simplest ways to secure a debt is to surrender property to the creditor, thus in ancient (esp. in the Graeco-Egyptian) legal practice, where the debt is usually contracted as a money loan, the security may quite naturally appear as a sale, which means that the money borrowed acting as price for the property that was given in guarantee.¹¹⁶ Alonso describes the purest expression of this phenomenon as follows: “the security formalised as a sale with immediate effect, so that the creditor acquires the property at the time of the contract, with the explicit or implicit agreement of returning it upon payment. But the sale may also be explicitly or implicitly understood as suspended, effective only upon default. Such suspended sale differs from forfeit-hypothec only in its formality.¹¹⁷ Their effect, instead, is virtually identical: after forfeit, the position of the creditor is that of a buyer.”¹¹⁸

Therefore, Alonso emphasizes that the line between real securities and sale can easily be blurry. He also classifies different types of contracts where, in addition to a loan agreement, a sales contract is used to provide security, instead of a pledge or other contract specifically

¹¹⁶ALONSO: One (n. 98) 121f. As Sandra Lippert and long before her Rafael Taubenschlag noted there are different ways of securing debt in Egypt depending on the era and tradition (Taubenschlag also mentions ὥν ἐν πίστει, but in the lights of Alonso’s work, it is no longer standing as an option). As Taubenschlag notes 1) the typical form of lien in the native Egyptian law is conceived as a suspended sale, the so-called Demotic guarantee sales or purchase lien (with German term of art: *Kaufpfandurkunde*). Lippert also mentions this option adding that it is also possible to conclude it as a money payment certificate with or without a certificate of indemnity (with German term of art: *Geldbezahlsurkunde ohne Abstandurkunde*). As for the basic native solution Lippert considers that 2) security, according to the native Egyptian legal practice, often drafted as a security clause (so it shows the evidence of demotic papyri), forming a collateral clause creating a general liability on “anything and everything that the debtor owns, and what he shall acquire are security for” (as it is usually stated in demotic documents). This is the basic native forms of security in the Ptolemaic era. From Greek law other forms were inherited, as both Taubenschlag and Lippert note, 3) the security is usually formed through a ὑποθήκη, or 4) especially in the Roman era through ὑπάλλαγμα (about which Taubenschlag notes that it is originated from the Egyptian practice). Another option mentioned by Taubenschlag, is 4) the ἐνέχυρον or dead pledge (pignus); and finally 5) the ἀντίρρησις (with its subtypes). It is thanks to the classical studies of András Bertalan Schwarz, that we have a clearer picture and understand much better the system of ‘real’ securities for debt in the law of papyri (see SCHWARZ, A. B.: *Hypothek und Hypallagma. Beitrag zum Pfand- und Vollstreckungsrecht der griechischen Papyri*. Leipzig–Berlin 1911, 69ff). For the differences of securities in Roman law and law of papyri, see ALONSO, J. L.: *Hypallagma or the dangers of Romanistic thinking*. In SCHUBERT, P. (ed.): *Actes du 26e Congrès international de papyrologie Genève, 16–21 août 2010*. Genève 2012, 11–18, here esp. 15ff. For detailed examination, see TAUBENSCHLAG (n. 40) 271ff; LIPPERT (n. 97) 107 and 150ff; also MARKIEWICZ, T.: ‘Security for debt in the demotic papyri’. *Journal of Juristic Papyrology* 35 (2005) 141–167, here 156ff; MONTEVECCHI (n. 98) 227f; URBANIK: *Tapia’s Banquet Hall* (n. 101) 152f.

¹¹⁷Alonso also notes that the differences between suspended sale and hypothec may arise in the way forfeit is enforced, especially in the Egyptian system, where there is a requirement for the creditor to go through a specific execution procedure. However, Alonso tends to assume that the suspended sales of the native Egyptian tradition did not require such execution procedure, but in truth the assumption is sustained only by an argument a silentio, and the tax equivalence of these sales and hypothecs might suggest otherwise: cf. in particular the case of *P. Chic. Haw. 9*. See ALONSO: One (n. 98) 123, note 8 and lit. quoted there.

¹¹⁸ALONSO: One (n. 98) 122ff.



introduced for this purpose (like the ὑποθήκη or ὑπάλλαγμα).¹¹⁹ He distinguishes among suspended sales and notes three major types depending on whether default (1) is by itself sufficient to make the creditor acquire, or (2) merely allows him to take unilaterally the necessary steps to become owner (v.gr. registration or tax payment), or (3) just to compel the debtor to surrender his rights on the property.¹²⁰ It is also important to note that none of these constructions means title-transfer security (*Sicherungsübereignung*)¹²¹ in the law of papyri, since it is essential to separate between security by immediate property transfer, in whatever way it may be formalised, and securities formalised as suspended sales. Reviewing the material Alonso distinguishes them into three major group: 1) Demotic guarantee sales; 2) bilingual Fayum sale–loan deeds and 3) the interrupted Pathryite sales (Pestman’s group).¹²²

As for our joint papyrus of BGU I 174+189, my suspicion is, that it might fall into the second group of papyri of early Roman bilingual documents from Soknopaiu Nesos and from the

¹¹⁹It is beyond the limits of this study to examine this question in details, therefore, here I would like to summarize briefly the main standpoints in the literature. As it is well known, in the literature, the identification of hypallagma as a real security distinct from hypothec is due to András Bertalan Schwarz, who published a groundbreaking study „*Hypothek und Hypallagma*” in 1911, and Ernst Rabel, in his study „*Die Verfügungsbeschränkungen des Verpfänders*” in 1909. Rabel and Schwarz’s thesis has been almost universally accepted. It is based upon two main differences between the documents referred to ὑποθήκη and those referred to ὑπάλλαγμα: 1) a document styled as ὑποθήκη contains a more or less detailed forfeiture clause (the *lex commissoria* of the Roman tradition, which remained in effect in the Egyptian practice even after the constitution of Constantine I.); 2) among the documents concerning the execution of securities, those referring to ὑπάλλαγμα, mention a procedure of ἐνεχυράσια, through which the object was attributed to the creditor, culminating – in the case of land – in the registration to his name in the βιβλιοθήκη ἐγκτήσεων or the *catoecic* land register, which is exactly the same procedure that one would have to follow for the execution against the debtor regarding any object not previously mortgaged. Only after this ἐνεχυράσια is it possible for the creditor to start a second procedure for ἐμβαδεῖα, the actual entry into possession of the pledge. Revealingly, the hypothecarian documents do not mention ἐνεχυράσια, the creditor being entitled to request ἐμβαδεῖα directly. And finally, 3) contrary to ὑποθήκη, ὑπάλλαγμα does not cause direct forfeit, and thus forces the creditor to go through the whole ordinary executive procedure, as if the object had not been mortgaged at all. Then it is clear, that the security of a ὑπάλλαγμα lies not in anything the creditor acquires but in something the debtor renounces, namely his right to dispose of the pledged property. A clause surrendering this *facultas alienandi vel pignorerandi* is in fact the key element of every hypallagma contract, by which surrender the object is secured for the ordinary execution (see ALONSO, J. L.: The Alpha and Omega of Hypallagma. *The Journal of Juristic Papyrology* 38 [2008] 19–51, here 22ff). As for the origin of this institution, next to Alonso’s work, see also TAUBENSCHLAG (n. 40) 276f; LIPPERT (n. 97) 107. Also, for its relation to the βιβλιοθήκη ἐγκτήσεων, see in details from the rich lit., e. g.: WOLFF: *Das Recht* (n. 68), here Vol. I 222ff; recently esp. on the basis of Fayum documents, see ALONSO, J. L.: The bibliothek enkteseon and the alienation of real securities in Roman Egypt. *The Journal of Juristic Papyrology* 40 (2010) 11–54, here 14ff. Also for later material, see URBANIK: Tapia’s Banquet Hall (n. 101) 153ff.

¹²⁰For this see in details ALONSO: One (n. 98) 122, note 7, and lit. quoted there.

¹²¹Alonso defines it as follows: “Strictly speaking, title–transfer security (*Sicherungsübereignung*) implies immediate transfer of ownership, formalised or not as a sale.” Alonso rejects the trend of those legal historians, who have tended to use the term also for guarantees that are formalised as sales but lack immediate effect, i.e. for conditional sales, because there may be cases where our information is insufficient to decide whether the creditor’s acquisition is immediate or not. As Alonso emphasizes not one uncertainty justifies the terminological inaccuracy of extending the term title–transfer security (*Sicherungsübereignung*) to something that is not a title transfer (*Übereignung*). See ALONSO: One (n. 98) 125f. See also URBANIK: Tapia’s Banquet Hall (n. 101) 152f.

¹²²See ALONSO: One (n. 98) 126ff.



grapheion of Tebtynis, where a certain way of combining sale and loan is documented.¹²³ By such documents, first, the sale (typically written in demotic Egyptian language)¹²⁴ and then the loan (typically written in Greek)¹²⁵ are edited separately in two columns, both without referring to each other; so if someone were to cut out the papyrus into two, no one would ever know that the sale was connected to the loan.¹²⁶

Among this type of suspended sales contracts Alonso creates three groups: 1) those that carry a label in the verso, are labelled as hypothecs;¹²⁷ 2) the case of P. Mich. V 332 dupl. PSI VIII 910;¹²⁸ and finally 3) the documents from the Tebtynis grapheion, which are actually unfinished. These unfinished contracts have the following scheme: the papyrus sheet begins with date/place or the protocol of register; then a blank space was left; and the subscription of the loan by the

¹²³See ALONSO: One (n. 98) 126 ff and 130f.

¹²⁴Alonso notes that the bilingualism of these documents follows a constant pattern. The sale is typically drawn up in Demotic, and comprehends both the sale proper and the cession, whereby the seller surrenders all his rights on the property. Under them, a Greek subscription summarising both the former (as πρᾶσις) and the latter (as ἀποστάσιον). The loan, instead (also with subscription) is only in Greek. For this issue, with examples, see ALONSO: One (n. 98) 131.

¹²⁵Alonso explains these language choices originate in practical reasons, such as, if the debtor defaults, the sale document is destined to the family archive, while the loan contract is destined to court, which suggests that upon default the creditor could choose between keeping the property or claiming the loan, which carries the usual πρᾶξις–clause granting execution on the person and the entire property of the debtor. And this in turn suggests that, despite the appearances – a sales contract formulated as entirely unconditional, and accompanied by a cession–apostasion –, the sale had no immediate effect, contrary to what is commonly assumed. See ALONSO: One (n. 98).

¹²⁶In the usual scheme of fictitious loan agreements the clause referring to the sales and the loan can be traced next to each other in the same document. From the Ptolemaic era e. g. the document P. Cair. Zen. 59001 (Kr. e. 273. Pitos [Memphis]): ... ἐδάνεισεν Διονύσιος Ἀπολλωνίου Γαζαῖος τῶν περὶ Δεῖωνα Ἰσιδώρῳ / Θράκι τεσσαρακονταρούρῳ τῶν Λυκόφρονος / ἀργυρίου δραχμὰς τριακοντατέσσαρας, τοῦτο / δ' ἐστὶν ἡ τιμὴ τοῦ βασιλικοῦ σίτου ... (“... Dionysios son of Apollonios, Gazaean, in the service of Dinon, has lent to Isidoros, Thracian, of the troops of Lykophron, holder of 40 arouras, 34 drachmas of silver, this being the price of the royal grain, ...” [with the translation of J. G. Keenan, see KEENAN, J. G. – MANNING, J. G. – YIFTACH–PIRANKO, U. (eds): *Law and Legal Practice in Egypt from Alexander to the Arab Conquest*. Cambridge 2014, 37ff]). Similarly from the Roman era e. g. the document P. Oxy. X 1281 (21 AD Oxyrhynchus): [recto] Ἀρπᾶσις Πανρῦμιος λίνυφος δεδάνισμαι τὴν τειμὴν τῶν ἑκατὸν λίνων Σινυρατικῶν φαμκαμυκῶ[ν], τὰς τοῦ ἀργ(υρίου) (δραχμὰς) τ κεφαλαίου, καὶ ἀποδώ[σω] καθότι πρόκειται, ἐφ' ᾧ κομιζομένου [τοῦ] Ἰωσήπου ταῦτα πρότερον δώσει λόγ[ο]ν τούτων ἵνα μὴ κατὴ τὰς ἐσταμ[έν]ας ἀργ(υρίου) (δραχμὰς)] πενήτηκοντα (“[I, Harpaeis, son of Panrymis, weaver, I am indebted with 300 drachmas, which is equal to the value of 100 synyritic linen clothes, and I will repay it, as it is written above, under the condition that Iosephos, who collects these, promises first, that he repays the above mentioned 50 drachmas.]. In the literature, this contract is considered a συγγραφή δανείου as well. See SCHEIBELREITER (n. 14) 204f.

¹²⁷In the anagraphic records of the grapheion also, there is unmistakably reference to this phenomenon, the contract that accompanies the loan is not designated as a sale, but as a ὑποθήκη or μεστρεῖα (the latter being the terminus technicus used by the grapheion instead of ὑποθήκη for ordinary hypothecations on *catoecic* land). This suggests that from the point of view of the grapheion, and certainly of the administration, also taxwise, these were not sales with immediate effect, but suspended sales akin to ordinary hypothecs. See ALONSO: One (n. 98) 132.

¹²⁸Where βεβαίωσις secures the property from public debts not up to the date of the contract, but up to a later date: this later date, as one would imagine, and the right column confirms, coincides with the term set for returning the loan. Only from that moment do public duties pass to the creditor: obviously, it is only from that moment that he is considered owner. To deal with this case in details is far beyond the aims of this study. See ALONSO: One (n. 98) 132, and lit. quoted here.



debtor stands at the bottom. What is usually missing: the body of contract, the grapheion registration notes, and usually also the subscriptions of the creditor/buyer.

Alonso confirms that three of the five extant sale-loan documents from Tebtynis have actually arrived to us in duplicate, both copies in the same unfinished state. As Claytor's study showed us the phenomenon is not limited to guarantee sales or loans. Claytor found fifteen documents in 2014 ("tolerated practice of rogue notaries in the Fayum area"), while Alonso – also aware of this problem – cites other forty-seven similar subscriptions from the archive, lacking the body of the contract in 2015. Moreover I believe that our joint papyrus *BGU I 174+189* also belongs to this group. Therefore the *BGU I 174+189* can be finally classified as an evidence for this practice coming from the Fayum area, this time from the office of Soknopaiou Nesos, next to the Tebtynis unfinished documents.

Although in the literature the complex phenomenon raises many doubts,¹²⁹ Husselman's hypothesis seems confirmed beyond any doubt at least for some of the documents. Husselman believes that these original subscriptions were left at the grapheion ready to be completed upon request of any of the parties, as extra 'authentic' copies.¹³⁰

Alonso also notes that still many aspects of the phenomenon remain puzzling, moreover we should not forget that different reasons may have operated in different cases. But he describes the probable procedure as follows: "1) until the term for the loan arrives, all copies are kept incomplete in the grapheion; 2) upon payment, there is no need to complete them: one wonders if this might not have been understood in the sense that no transaction had been made, so that there would have been no need to pay any sale or mortgage tax; 3) upon default, the document can be completed without the cooperation of the debtor, who has already subscribed; 4) decisively: before the term arrives, the creditor does not have any copy, so there is no danger that he might cut out the sale part and try to enforce it: the incompleteness of the document protects the debtor by literally suspending the sale."¹³¹ Therefore the grapheion could serve the interest of both the creditor and the debtor by initially keeping all copies of the contract.

The papyrus in *BGU I 174+189* – as far as my research were done – has not been included in the group of bilingual Fayum suspended sales so far, however, due to the scheme of contract, I believe, it should fall to this group on the basis of three reasons. Firstly, it is a bilingual document from 7 AD Soknopaiou Nesos (Arsinoite nome) with a blank space after the registration protocol. Below comes the Greek subscription, and on the verso a label in Demotic and Greek summarises the content of the contract, which ensures that on default the creditor either demand the property (if the debtor fails to pay, the creditor will have, in fact, as proof of his ownership, a perfectly independent, ordinary sale document), or the repayment of the

¹²⁹The former hypothesis of Depauw, which connects the phenomenon to the loss of legal value of the Demotic contract in early Roman times, so that 'contractants may well have decided to omit it completely and just settle for the subscriptions only', was rejected by Alonso on the basis of non-arguable reasons. Alonso also excludes the possibility that these were transactions that the parties for some reason withdrew from (see ALONSO: One [n. 98] 133, n. 56).

¹³⁰For Husselman's view, see HUSSELMAN (n. 110) 3ff.

¹³¹ALONSO: One (n. 98) 133f.



loan. What is missing here is the so-called executive clause (πρᾶξις-clause)¹³² from our loan contract.¹³³

Secondly, since we found demotic writing only on the verso, therefore one could argue that the document is not a truly bilingual one, yet this argument can be easily neutralized by the matter of language choice and the procedure described above by Alonso and others. It is important to note what Alonso also emphasize that a strong native Egyptian tradition of guarantee sales (combining a sale with a loan), which usually written in demotic or bilingual must keep the researchers alert when they confront the Greek materials. As Alonso highly recommends, we need to “distinguish, in the measure that the documents allow, between the Greek tradition and the mere continuation of the Egyptian practice in a new language”.¹³⁴ In the case of our joint papyrus BGU I 174+189, it is quite obvious that we face this situation, since it attests the construction of suspended sales combined with a loan (moreover the document falls to the group of unfinished schemes).

Thirdly, although this wasn't the only practice where blank spaces can be found in the text of the contract in accordance with guarantee sales (suspended sales contracts), arguments can be brought in favour of the above mentioned classification. It is also well-known, that a similar practice of interrupted sales is actually attested in late Ptolemaic Pathyris. According to Pestman's hypothesis the document was executed in two stages: 1) initially left incomplete, with the tax unpaid or deposited in a blocked account; 2) in some cases, never completed, as we know because other documents prove that the seller retained the property, or, more revealingly, because on a later date an explicit renunciation (apostasion) of the buyer is preserved; in other cases, completed only later – between four months and six years later –, sometimes together with a second document of cession in favour of the buyer.¹³⁵ However, these documents are coming from the 2nd–1st century BCE (our document of BGU I 174+189 is a later one from 7 AD); a different nome, moreover in our case there is no hint of such a two staged procedure, which Pestman's described, and these documents usually refer to it somehow.

¹³²In the German literature, Hans Julius Wolff (see further WOLFF, H.-J.: *Die Praxisklausel in Papyrusverträgen. Beiträge zur Rechtsgeschichte Altgriechenlands und des hellenistisch-römischen Ägypten*. In WOLFF, H.-J. (ed.): *Beiträge zur Rechtsgeschichte Altgriechenlands und des hellenistisch-römischen Ägypten*. Weimar 1961, 102–128, passim; WOLFF: *Die Grundlagen* (n. 48) 26ff; WOLFF: *Das Recht* (n. 68), here Vol. I 145ff. and 155ff.) while based on his theory, in the Hungarian literature, Gábor Hamza (see HAMZA [n. 7] 141f and 209) points it out that the purpose of the πρᾶξις-clause is often to supplement the imperfect lawsuits for which the legal ground is either the law or the acceptance of the opposing other party. If the πρᾶξις-clause is drafted in an agreement by the parties, the execution becomes available in cases when the behaviour of the debtor is not regarded to be βλάβη. Thus, the liability of the debtor can be identified in cases where the litigation is not supported by the lawsuits rooted in the laws themselves. Thus, on Hamza's opinion: “Owing to the πρᾶξις clause and the κυρία-clause, it was possible to sue for an agreement of any contents, i.e. for sanctioning it. In addition to this, with mainly the πρᾶξις-clause playing a role, it is possible to construct some legal institutions, known only in the more developed Roman law or to be found not even in that.” (see HAMZA [n. 7] 142, and 209). The πρᾶξις-clause therefore has a significant importance in an atypical legal constructions. For the importance of πρᾶξις-clause in fictitious loan contracts, see my other study on fictitious loan agreements: NEMES, SZ.: «τοῦτο δ' ἔστιν ἡ τιμὴ τοῦ βασιλικοῦ σίτου» A unique clause and its function from the practice of the Ptolemaic Egypt. In PETRUCCI, A. (ed.): *I rapporti fiduciari: temi e problem*. Torino 2020, 319–334, here esp. 328.

¹³³cf. ALONSO: *One* (n. 98) 131f; LIPPERT–SCHENTULEIT–REITER (n. 74) 53.

¹³⁴ALONSO: *One* (n. 98) 127.

¹³⁵Pieter Pestman's interrupted sales contracts from the agoranomeion of Krokodilopolis and Pathyris, in the Pathyrite nome of the Thebaid, in the turn of the 2nd to the 1st century BCE. See ALONSO: *One* (n. 98) 134ff.



CONCLUSION

We saw that in Roman law, mixed (atypical) contracts, which arose in essentially two ways, (1) as a *pacta adiecta* as a clause attached to the main contract, or (2) as a contract protected by an act of *praescriptis verbis* (innominate real contracts), such as the so-called consensual contracts (e. g. the *emptio venditio*) are based on *fides* (which here means “trust”/“trusting the other party”) have been recognized as litigable legal constructions by the classical age onwards. Thankfully to this legal acceptance deferred purchase agreements and mixed contracts could be litigated without problems.

In the Greek law and based on it, the Graeco–Egyptian legal practice did not recognise such constructions, therefore the mixed contract practice based on Greek law was forced to resort to quite different solutions, as the enforceability of “trust” in contract law did not gain much recognition. The Greek word πίστις – as it was showed by Alonso recently – shows great variety in its meaning, but, although it is already showing fidelity in its semantical field, could not have been the legal basis for suing. Under Greek law, enforceability is guaranteed by registration in the appropriate offices and, in the case of atypical contracts, by clauses included in the contract, such as the πράξις- and the κυρία-clause. It is important to note that even in the case of atypical contracts, the question may legitimately arise as to whether an enforcement clause is a mandatory element in order to ensure the litigation of an atypical contract, or the registration would be enough.

One of the well-known constructions which suffers from this aspect of Greek law, was the deferred purchase agreement, therefore the “hostility towards crediting” resulted in the fact, that Greek law applied additional solutions for sales on credit like the “fictitious loan agreements” in the law of papyri. Pringsheim and Wolff pointed out several times that in this way Kreditkauf (and also the Lieferungskauf) emerged as an “economic phenomenon” in the Greek world. Up until now several documents considered as fictitious loan agreements, but in the lights of new papyrological evidences, it is unavoidable that in certain cases a review is needed.

In the case of BGU I 189, which – as it was shown by Claytor – belongs to BGU I 174, the new readings of Claytor (in 2017) opened up possibilities for a new interpretation, since the classification of the joint document is questioned. The main problem is, that in the law of the papyri, combining a sales contract with a loan contract is not only for the purpose of making litigable deferred purchase agreements, but also a certain way of securing debts. Therefore in these cases it is essential to be alert to the nature of the document in order to make the right classification. This is exactly the case with our joint papyrus of BGU I 174+189.

The BGU I 174+189 was originally considered first as a Kreditkauf, but even in its joint form as an ὥνῃ ἐν πίστει. The problem with this interpretation was discussed thoroughly by Alonso, who showed the theoretical maze created on the basis of the interpretation of only one document, the famous papyrus *Chr. Mitt.* 233 by Gradenwitz. This theory was accepted so generally, that even the joint papyrus of BGU I 174+189 has felt victim to this.

However, in the case of BGU I 174+189 I believe, it rather falls into the group Alonso called bilingual Fayum sale-loan deeds. These Fayum double contracts were not sales with immediate effect, but suspended sales, akin to ordinary hypothecs. A sale that functions as conditional even if unconditionally formulated is a remarkable phenomenon, but not without parallel in legal history (a clear precedent for this, is the Demotic Fayum ‘Kaufpfandvertrag’ of the type attested in *P. Chic. Haw.* 7, as Alonso also refer to this clearly).



In connection with this case, it is natural, that the older theories need reviews from time to time as more and more papyrological sources are available for us to study the legal practice of Egypt. However, this does not mean that all of the older interpretations need changes of all the documents Pringsheim, Mitteis or Herrmann studied, but it suggests that for all such deferred purchase schemes might be revised in the light of recent legal papyrological researches. Therefore our joint document *BGU* I 174+189 stands as a good example for the need to reconsider the practice of fictitious loan and fictitious sales contracts, moreover to make a revision on our sources where the elements of different contracts are combined in order to fulfil the purpose of the parties.

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