Chapter 8  

*Tapia’s Banquet Hall and Eulogios’ Cell: Transfer of Ownership as a Security in Some Late Byzantine Papyri*

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1. INTRODUCTION: SECURING A LOAN IN THE LATE BYZANTINE PAPYRI

Modern scholarship has devoted much attention to pignus and hypotheca as forms of real security in classical Roman law.¹ The same could be said about the research on the practical application of these forms, or vice versa, the apparent practical origins of the later dogmatic forms: there has been an extensive study on real securities in Greek and Hellenistic traditions. Much attention has also been devoted to the documents constituting, revoking, and accepting a real security in the Demotic and Graeco-Roman legal traditions in Egypt. Thanks above all to the classical studies of Andreas Bertalan Schwartz, we understand much better the system of ‘real’ – in the civil law vocabulary – securities for debt in the law of papyri.² However, apart from Steinwenter’s remarks in his Recht der koptischen Urkunden, the Byzantine practice and doctrine remains of much less scientific interest. Yet, my purpose in this chapter is not to provide an all-embracing general overview of Byzantine securities, even though they merit particular attention in themselves, but to discuss their particularity. The deeds of legal practice bring about a few cases of guarantees of obligations in the form of transfer of ownership.

¹  This paper started as a short presentation delivered in December 2006 in Vienna at a symposium to honour Peter E. Pieler’s sixty-fifth birthday. I have developed the idea as a part of my research project on legal consciousness in late Antiquity financed by the Polish Ministry of Science and Higher Education. The draft has been read by José Luis Alonso (San Sebastian and Warsaw) and I thank him for the fruitful discussions and suggestions. I owe modern references and discussion to Kamil Zaradkiewicz and the practical modern examples of bank law to the kind advice of solicitor Elżbieta Krakowiak.

² The English translations of the papyri in Parts 1 and 2 have been taken from McGing (1990) and Porten and Farber (1996), respectively, and I have allowed myself minor alterations to keep the consistency of the texts. Other texts, unless otherwise specified, have been translated by me.

¹ See, above a collection of studies devoted to pledges by Kaser (1982), passim.

² Schwarz (1911); and see most recently on the subject, Alonso (2008) and (2010). See also a very general overview in Ruprecht (1995) and Alonso (2008).
Obviously, this type of collateral, called in the German doctrine
Sicherungsübereignung,3 which consists of a (conditional) surrender of the
debtor’s property to the creditor, is not limited to Byzantine Egypt. Any
scholar of Roman law will recall the original form of the Roman real secu-
ritv, fiducia, still practised under classical Roman law – yet erased from the
Codification.4 There are also, quite naturally, Graeco-Egyptian counterparts
of the same. The Ptolemaic and early Roman documents provide us with
information about the so-called ‘purchase on trust’ (ὦνὴ ἐν πίστει).5 In the
deeds documenting these sales, nothing hints at their fiduciary character;
they were, however, accompanied by a corresponding loan document,
sometimes written in the second column of the sheet of the papyrus.6 Had
the latter not been preserved, we probably would not be able to detect the
mock character of the sales. It has been argued that evolution of ‘purchase
on trust’ was due to two distinctive but teleologically similar forms of sale
upon redemption practised in mainland Greece7 and the Demotic ‘mortgage’
yet it is not certain whether the latter actually temporarily preceded the ‘sale
on trust’).8 Another interesting counterpart of Sicherungsübereignung were
the Demotic conditional sales,9 whereby the transfer of property was condi-
tioned by the non-repayment of the loan on time (hence a form quite similar
to the Roman lex commissoria).

The function of the examples that I will discuss here is identical to the
above-mentioned cases. Yet, they differ from the ‘sale on trust’, demotic

3 Throughout the article I shall from time to time refer to German legal terminology, for
obvious reasons closer to the Roman notions. On the other hand – see below – the not-so-
precise parlance of common law actually illustrates better the misty terminological situation
of the Byzantine times (see further fn. 10).
4 See, most recently, Noordraven (1999), passim with literature, specifically pp. 17–41 and
ch. 4.
5 On this security, see most recently Hermann (1989), passim; cf. as well Mitteis (1912),
pp.135–41 and Taubenschlag (1955), pp. 270–4; the term itself does not appear in the actual
sales, but only in the documents that refer to the original ‘purchases on trust’, cf., for
example, MChr. 233 (= P .Heid. Inv. G 1278 Recto, Pathyris 13 September 111 BCE).
6 Cf., for example, PSI VIII 908 (Tebtynis, AD 42–3); PSI VIII 910 (dup. P .Mich. v 332, Tebtynis
48 CE); and see Pringsheim (1950), p. 119 and fn. 1.
7 The so-called πρᾶσις ἐπὶ λύσει (Pringsheim (1950), pp. 117–18, noted the term was never
present in the ancient sources). For an overview, see Pringsheim (1950) and more recently
Thur in Neue Pauly-Wissowa, s.v., with literature.
8 On this form, see most recently Markiewicz (2005), pp. 156–8 and Pestman (1985). For the
pre-Roman genealogy of the ‘Egyptian mortgage’, cf. Pierce (1972), pp. 119–21, contra, very
soundly, Markiewicz (2005), p. 158.
9 Or Kaufpfandverträge in Spiegelberg’s terminogy (Spiegelberg (1909), pp. 91–106); see also
Markiewicz (2005), pp. 154–6. Still, for the transfer to take effect, it was probably neces-
sary to draw a deed of cession in favour of the creditor; see Markiewicz (2005), p. 155 with
the example of P. Hauswald 18B. We would then have a situation quite similar to the late
Antique practice as presented by the Coptic loans and cessions of pledges: cf. Steinwenter
(1954), p. 500 and O. Medinet Habou 69, 72, 73.
conditional sale, or Roman *fiducia*. Unlike them, they never expressively refer to any sum lent, there is nothing that suggests that any separate loan agreements have ever been made. In fact, the only reason to interpret them as guarantees rather than typical deeds of sale is the fact that they all constitute part of what modern papyrologists, following Alain Martin, describe as an archive, that is, they pertain to the same person or persons and were assembled together and selected already in Antiquity. It is therefore the context of each particular archive, which is not necessarily visible in these papyri, that reveals their true nature.

I will analyse three cases of such securities from two different archives. In order to present some conclusion, I will compare these with an instance of an actual pledge/mortgage dated to late Antiquity as well.

2. EULOGIOS’ CELL

The earlier set of documents consists of three deeds from the early sixth century AD: *P. Dubl.* 32, 33, and 34. They all concern sales of a monastic dwelling in Labla, on the outskirts of Arsinoe. According to the excavation

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10 The Byzantine legal practice does not distinguish between a conventional and possessory pledge (*Faustpfand* and *Hypothek*): these terms are used synonymously and only the contexts allow us to reconstruct the actual legal situation. See, for instance, a loan deed with a mortgage: *P. Cairo Masp.* III 67309, ll. 21–2 (Antinoopolis, AD 569): ἐντεῦθεν ἤδη ὑποτίθημι σοι καὶ ὑπεθέμην, εν τάξει ἐγεζόρω καὶ λάγῳ ὑποθήκης δικαίῳ (‘and hence I am hypothecating to you and I have hypothecated as pledge and by the title of right of mortgage . . .’). Such confusion is by no means surprising, if we consider that some of the Justinianic legal sources could induce a careless reader to think of *pignus* and *hypotheca* as synonyms; cf. D.20.1.5.1 (Marcian. 1 ad Form. Hyp.) *inter pignus autem et hypothecam tantum nominis sonus differt* (‘only the sound of the name makes a difference between a pledge and a mortgage’). Clearly, the classical jurist Marcian in his original work only wanted to state that one could avail oneself of *actio hypothecaria* no matter whether the pledge was conventional or possessory. Yet, the compilers putting this phrase in the general context of D.21.1 *De pignoribus et hypothecis et qualiter ea contrahantur et de pactis eorum* seem to have given it a practical, all-purpose meaning. This statement is further corroborated by Stephanos’ reproach of the – apparently common – misidentification of *pignus* and *hypotheca*: *scholion* οὐ μόνον παραδόσει to B.25.1.1 (corresponding to D.13.7.1 (Ulpian. 40 ad Sab.) *pignus contrahitur non sola traditione, sed etiam nuda conventione, etsi non traditum est* (‘pledge is contracted not only by conveyance but also by mere agreement, even if it is not conveyed’): ἐνέχυρον λέγεται καταχρηστικῶς ἡ ὑποθήκη, καὶ διὰ μὲν τοῦ εἰπεῖν, παραδόσει, ἐδήλωσε τὸ κυρίως ἐνέχυρον διὰ δὲ τοῦ, ψιλῶ συμφώνῳ, τὴν ὑποθήκην (‘pledge is wrongly called hypothec. And when it is said (through) conveyance, it properly means “pledge”, instead (if it is contracted through) bare consent, (it signifies) hypothec’).

11 Two of the three documents were originally published by Sayce (1890), pp. 131–44, entered in the *Sammelbuch* under nos 5174 and 5175. A century later, Brian C. McGing identified the third piece of the dossier, and published and comprehensively commented on all three of them (McGing 1990). The texts were later incorporated in an abbreviated form in *P. Dubl.* by the same author. A new interpretation of the texts has been most recently offered by Ewa Wipszycka (2009).

12 See Wipszycka (2009), pp. 240–1 for a tentative localisation of Labla, in the vicinity of the pyramid of Hawara. Unfortunately, Petrie does not describe the exact location of the find.
diary of Flinders Petrie, the find was of a very particular nature. The deeds were found bound together, wrapped in linen and then woollen cloth, placed in a jar and buried with it in the ground. It is hence without doubt that these papyri belong together.

In the first document, *P. Dubl. 32*, dated 7 September 512 CE, a certain monk, Eulogios son of Iosephos, who at the time lives in another monastic community, that of Mikrou Psyon, sells his *monasterion* – not just a room, but rather a small house, usually consisting of two or more chambers, storage place, kitchen and sometimes even a workshop – to another monk, Pousis son of A [. . .], who already lives in Labla. The price, paid on the spot in coins, was set to eight solidi and 1,200 myriads of denarii, which for the beginning of the sixth century constitutes quite a remarkable amount.

In the second document, *P. Dubl. 33*, less than a year later than its counterpart (9 July 513 CE), the same monk Eulogios again sells his cell to Paphnoutios, son of Isaac, and Ioulios, son of Aranthios, both living in Labla. This time the price is set to ten *solidi*. I will not address here the very interesting problem of the private assets owned by monks, a fact obviously contrary to the canon and imperial legislation. The reader may be referred to authoritative recent studies on the subject. Suffice to say that, notwithstanding the commandment of poverty, the monks kept command of their mundane affairs, owned property, disposed of it, and borrowed and lent money, a fact well attested by papyrological sources. Another interesting point, which cannot be discussed at length here, is the fact that Eulogios declares himself to be an ex-Melitian monk, now orthodox, whereas his purchasers are Melitian priests in the first case and monks of the same denomination, in the second. Yet again we may observe that the picture of highly troubled relations between various factions of Christianity, which we usually extrapolate from the literary sources, risks being rather exaggerated when compared with real life.

In both of the deeds, the customary clauses securing the rights of the purchasers are inserted, so at the very beginning of both the papyri we read that:

Eulogios acknowledges that he has with free, independent and fixed will, sold and conveyed into complete ownership from the present for all succeeding time . . . the cell in the said monastery Labla which belongs to the vendor Eulogios, and

13 On the terminology referring to monastic dwellings, see most recently Wipszycka (2009b), pp. 281–91.
14 Less than two decades later, Justinian forbade alienation and hypothecation of monasteries to private individuals (Nov. 7.11, 535 CE).
15 There is obviously a vast literature on the subject; most importantly, see Steinwenter (1930) and (1958); Barone Adesi (1988) and (1993); Wipszycka (1972), (2001); (2009a), (2009b), pp. 471–566; and Markiewicz (2009) with further literature.
16 See, most recently, Markiewicz (2009), *passim*.
which came down to him, as he has had confirmed and registered . . . [cf. lines 2–3
in both texts)]

And later, in P. Dubl. 32, we see:

henceforth the purchaser Pousis possesses and owns the same sale he has pur-
chased in its entirety, however many rooms it is, and the courtyard in front of the
rooms, and with all its rights from the ground to the very top, as stated above;
and have the authority to inhabit, manage, dispose of it, improve it, repair it, tear
it down, rebuild it, redesign it, in whatever appearance and condition he wishes;
hand it over to his heirs and successors, present it to the others or give it as a gift,
in the manner he wishes and without hindrance. (lines 9–11)17

In P. Dubl. 33:

henceforth the purchasers Papnouthios and Ioulios possess and own in equal half-
shares the same cell they have purchased in its entirety, however many rooms it is,
and they have authority to inhabit, manage, dispose of it, improve it, repair it, tear
it down, rebuild it, redesign it, in whatever condition appearance and condition
they wish hand it on to their heir and successors, present it to others, give it away
as gift, in the manner they wish and without hindrance. (lines 10–13)18

In the final part of both documents, the vendor stipulates that he or his suc-
cessors will take a stand against any possible claims of third parties versus
the new owner and, should they fail to do so, they will be liable to pay as
penalty double the price and costs incurred. The contracts were addition-
ally secured by hypotheca generalis on Eulogios’ present and future property,
a typical feature of all late Byzantine documents (the commonness of the
clause actually raises doubts as to its effectiveness). Finally, there is Eulogios’
subscription (executed on his behalf as he declares himself to be illiterate)
and the signatures of the witnesses (five and four, respectively), evidence
that both documents are executed lege artis and thus fully effective. Also
the payment of the price on the spot, attested to no less than thrice (in the
documents, Eulogios’ subscriptions and by each statement of the witnesses),
inform us that the main condition for the transfer of property in Byzantine

17 καὶ παντὶ δικαίῳ αὐτοῦ. 110 ἀπ’ ἐδάφους μέχρι παντὸς ὑποστὰς ὕψους, ὡς προγέγραπται, καὶ
ἐξουσίαν ἐχειν διοικεῖν, ὑποκαλεῖν, καθελεῖν, ἀνοικοδομεῖν, κυριεύειν ἐκ τοῦ ὅλου ἐξ οὗ ἐστὶν
μενὴν, ὡς προγέγραπται.

18 πρὸς τὸ (l. τῷ) ἀπὸ τοῦ νῦν τώς πριαμένους Παπνούθιον καὶ Ιούλιον κρατεῖν καὶ | 11
κυριεύειν ἐξ ἰσού μέρους ἰσότητος τοῦ αὐτοῦ καὶ ἐνοχήν μοναστηρίου ἐξ ὅλουκληρου,
ὅσον δ’ ἀπὸ ἄστιν μεμνημένον, καὶ παντὶ δικαίῳ αὐτοῦ ἀπ’ ἐδάφους μέχρι παντὸς ὑποστὰς ὕψους, ὡς
προγέγραπται, καὶ ἐξουσίαν ἐχειν | 12 διοικεῖν, ὑποκαλεῖν, καθελεῖν, ἀνοικοδομεῖν, ἀνεπικωλύτως.
law has been fulfilled.19 All in all, two perfect deeds of sale and at the same
time transfer of property.

And yet there is a surprising feature: in both papyri the very same person
sells exactly the same monasterion within the very same year. To prove it, we
only need to compare the description of the dwelling found in both texts. In
P. Dubl. 32 we have:

the neighbours of the cell are: to the south, the desert and the cell of the late
Andreas the priest; to the north, the cell of the priest Naaraos, to the east, the
desert, to the west, the public road in front of the cell of Petros the deacon (lines
6–7),20

and in P. Dubl. 33, the description runs as follows:

the neighbours of the cell are, as they (the parties) have cordially indicated, to the
south, a deserted cell; to the north, the cell of the priest Naaraos, to the east, the
desert and the entry and exit of the same cell; to the west, the public road in front
of the cell of Peter the deacon (lines 6–7).21

The only difference in these two reports is the fact the cell previously belong-
ing to the late priest Andreas is now designated as deserted.22 How was it
possible that Eulogios sold the same estate twice to two different buyers
within a year?

Before we attempt a plausible answer to this question, we still need to
consider the third document from the dossier, P. Dubl. 34. It is a settlement of
claims, dialysis, executed in poor Greek, rather difficult to understand, most
probably on 24 August 511 CE,23 so it predates both of the sales. Two monks
living in the same hermitage at Labla settle their rights and claims to it. The
owner of the monasterion (which unfortunately is not described further),
Aioulios, son of Arantheios, writes to his brother, another Melitian monk,
Eulogios, son of Pousi. Having declared as invalid any deed regarding the cell
that he may have made with Isak, son of Sabinos, Aioulios stipulates that
after his death the property of the cell, together with his other earthly goods
as well as debts and assets, will pass to Eulogios. The same should happen,

20 οὗ καὶ εἰσιν γίτονες, νότου τὸ ὅρος καὶ μοναστήριον τοῦ μακαρίου Ἀνδρέα πρεσβυτέρου,
βορρᾶ μοναστήριον Νααραοῦ | 7 πρεσβυτέρου, ἀπηλιώτου τὸ ὅρος, λιβὸς ὀδὸς δημοσία, μεθ’ ἦν
μοναστηρίου Πέτρου διακόνου.
21 οὗ καὶ εἰσιν γίτονες, καθὼς ἐκ συμφώνου ὑπηγόρευσαν’, νότου | 7 ἐρήμων μοναστήρων, βορρᾶ
μοναστήριον Νααραοῦ πρεσβυτέρου, ἀπηλιώτου ὄρος καὶ ἦ τοῦ αὐτοῦ μοναστηρίου εἴσοδος
καὶ ἐξόδος, λιβὸς ὀδὸς δημοσία μεθ’ ἦν μοναστηρίου Πέτρου διακόνου.
22 See also a schematic chart in Montevecchi (1941), p. 118. Contra, yet entirely solitary, is
Barison (1938), pp. 69–72 but, as Montevecchi already showed, definitely wrongly. Barison
also claimed, but with no actual textual proof, that Eulogios, having inherited ‘both’ estates,
would sell them in 513 and 516.
23 For dating see the very convincing argument of McGing (1995), p. 87.
should Aioulios decide to leave Eulogios and the cell or if he brings into the hermitage another monk or any man ‘of the world’ without Eulogios’ consent. Eulogios, in turn, promises not to expel Aioulios from the property. Both statements are followed by testimonies of the witnesses, two Melitian priests, one deacon and three orthodox priests.

It is quite likely that we deal in all the documents with the same people. Aioulios, son of Aranthieos, from P. Dubl. 34 could be quite securely identified with the Ioulios, son of Arantheios, who buys the monasterion in P. Dubl. 33. Aranthios is a very rare name, Aioulios is just a variant of Ioulios. It is a bit more difficult to ascertain that Eulogios, son of Ioseph, the vendor in P. Dubl. 32 and 33, is the very same person as Eulogios, son of Pousi of P. Dubl. 34. The fact that the documents were found together, as well as the position of Eulogios, son of Ioseph, as the vendor and the rightful owner of the cell in the two latter documents may indicate that we have the same person in front of us, notwithstanding the difference in the father’s name and the popularity of the name Eulogios. The scribe of P. Dubl. 34 might have made a mistake, or, more likely, Eulogios’ father may have had a double name.

Assuming that the above is true, the situation would be as follows: in 511 Aioulios practically cedes to Eulogios his rights to a monasterion in Labla. In 512 Eulogios sells the monasterion to Pousi, and one year later sells it again to Aioulios and Paphnoutios. Brian McGing, following the reasoning of Orsolina Montevecchi, sees the first document as a fictitious sale, aimed at securing a loan of eight solidi and 1,200 myriads of silver denarii. Ewa Wipszycka adopts this argument, assuming that the second sale was a real one. She reconstructs the story of Eulogios as follows: in 511 he gets a settlement with Ioulios, then acquires the ownership of the cell (the deed would be missing), afterwards he leaves Labla (perhaps after having converted to orthodoxy) for Mikrou Psyos, sells his cell to Pousi, presumably only as a guarantee for a loan of eight solidi and 1,200 myriads of silver denari; finally, in 513 he sells (back?) the cell to Ioulios and Paphnoutios, this time for real.

I suggest that the situation could have been more complex. As we well know from later land sales, the owner usually handed over to the buyer all the deeds that proved his right to the property sold. It is very surprising therefore not to find the missing link in the chain of the owners, that is the deed of sale between Aioulios/Ioulios and Eulogios. Who was, therefore, the original owner of the monasterion in Labla? I think the mysterious clauses in the settlement found in P. Dubl. 34 might give a clue to that matter.

24 For this, doubtless correct, understanding of δίχα Εὐλογίω, see McGing (1990), commentary on line 7.
25 See McGing (1990), p. 87.
26 I have adopted here Ewa Wipszycka’s argument (Wipszycka (2009), p. 241); differently McGing (1990), p. 87.
Let me recapitulate: Aioulios occupies the cell but practically deprives himself of his rights as the owner, being only guaranteed his title to live in his own place; Eulogios’ consent is a sine qua non for the introduction of any new inhabitants into the hermitage. Yet there is nothing in the document that may imply that Eulogios would actually share the dwelling with Aioulios; less than a year later, he certainly lives elsewhere. I think therefore that the first loan is granted by Eulogios to Aioulios. Being brethren of the same denomination, they do not feel the need to secure it any further except by creating a specific right of the creditor to the property of the debtor, under a type of cession or gift mortis causa. Eulogios stipulates that the debtor will remain in his home. Eulogios then ‘sub-mortgages’ the cell by means of a fictitious sale to Pousi, getting eight solidi and 1200 myriad denarii as a loan. This liberty should not surprise us in light of the late Antique documents of real securities: the pledgee/hypothecary obtained virtually the full rights over the thing pledged. Subsequently, Eulogios pays off the debt and is given back the deed, and a year later disposes of the cell again. The lack of a re-sale agreement between Pousi and Eulogios should not surprise us: the very fact of handing back the deed has the same effect, the debt becoming equally un-actionable in court. When in 513, Aioulios, the former owner of the cell, gets it back by paying ten solidi to Eulogios, what he actually does may be nothing less than repayment of the original loan taken in 511. This time the deed is made, as (A)ioulios regains all his rights to the cell and will share them with Papnoutios son of Isak.

If this – potentially dangerous – reconstruction is correct, I think I might provide an answer to Wipszycka and McGing’s question: who lived in the monasterion in all that time? It was the original – ‘true’ if you like – owner, Aioulios son of Aranthios. And it was indeed he, who having rolled the three papyri, bound them with red string, wrapped them with linen and wool, and packed them into a jar to be discovered 1,400 years later by Flinders Petrie.

This tiny archive of only three papyri seems to provide information of no less than three loans secured with collaterals that are anything but the standard pledge or mortgage: the possible first loan granted by Eulogios in 511, the second loan that Eulogios took in 512, and most probably another transaction of the same kind between Aioulios and Isak (declared void by the former in P. Dubl. 34).

3. TAPIA’S BANQUET HALL AND OTHER ‘FICTITIOUS’ SALES IN THE ARCHIVE OF KAKO AND PATERMOUTHIS

My second set of cases comes from the famous Archive of Patermouthis and Kako.\textsuperscript{28} They concern affairs of the main figures of the set of the papyri,

\textsuperscript{28} The archive has been extensively studied since its publication in P. Lond. V and P. Mon. I. For the latest update of the bibliography, see the Leuven Trismegistas database of the papyrus
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Patermouthis and his quarrelsome mother-in-law Aurelia Tapia. The two transactions I shall present here reflect the troublesome financial situation of the Patermouthis’ family members, their common entanglement in loans, disputes, settlements and inheritance divisions.29

A deed of sale executed in Syene on 30 May 585 CE (P. Münch. I 9 + P. Lond. V 1734 – protocol = Pap. Eleph. Eng. D40) informs us that Aurelia Tapia has sold five pieces of her property in Syene for ten gold solidi. The purchasers are her daughter Kako and her son-in-law Patermouthis:

I, the aforesaid Tapia acknowledge by this my written security of purchase, willingly and convinced apart from any guile or fear or force or compulsion or deceit or flattery or contrivance or malice or maliciousness or any defect or any mean intention or any circumvention of the law, but of free will and self-chosen volition and sound understanding and pure purpose and fixed calculation and unchangeable design and clear conscience and at the same time swearing the dreadful and awesome oath by Almighty God and by the victory and permanence of our most pious masters, Flavi Tiberius Mauricius and Aelia Constantina, the eternal Augusti and Emperors and the greatest benefactors, that I have sold to you today, the aforesaid Patermouthis and Kako, his spouse, by the law of purchase and for eternal possession and total authority and every most complete right of ownership, and that I have transferred to you from now for all on-going time to come belonging to me [the list of pieces of property follows]. (lines 12–30)30
We know that Tapia had left Syene within the previous two years, in order to settle down in Antinoopolis, where her brother also resided,31 possibly wishing for some fresh air after long hereditary disputes with her son Ioannes and daughter Aurelia Tsone, a nun, fathered by Tapia’s (possibly divorced) first husband Menas. She seems therefore to be willing to close down her business in her native town. What should leave us a little suspicious about the nature of our sale is the fact that Tapia had not only already received the price for the immovables but had also used it partly for her living expenses in the capital, and partly for paying off a fine (ζημία) that had befallen her somehow in connection to her brother Ioannes:

the price mutually agreed upon and approved being gold, ten solidi in the weight of Syenians, namely (gold) 10 so(lidi) in the w(eight) of the Syenians, which full price I have here received in full from you, the purchasers – part of it I have spent for my essential needs or upkeep in the city of the Antinoëans and part I have given towards the remaining incurred by me by reason of my brother Ioannes: the price mutually agreed upon and approved being gold, ten solidi in the weight of Syenians, namely (gold) 10 so(lidi) in the w(eight) of the Syenians, which full price I have here received in full from you, the purchasers – part of it I have spent for my essential needs or upkeep in the city of the Antinoëans and part I have given towards the remaining incurred by me by reason of my brother Ioannes:

It seems therefore reasonable to believe that P. Münch. I 9 is not a regular deed of sale, but rather constitutes a datio in solutum: a sale of the buildings in lieu of the debt-repayment. This supposition seems to be corroborated by the wording of the ‘price-clause’. Tapia declares she has received the money for her ἀνακαία χρεῖα – necessary needs, an expression typical for loans.33

The complications do not end here: as the first ones of the sold proper-ties, there appear two shares in a house in Syene located in the southern part of the fortress: a part of the terrace and half of a banquet hall, or dining-room (symposion). Aurelia Tapia inherited a half-share of these spaces from her mother and the other half-share she bought from her brother Georgios:

31 Cf. P. Münch. I 9, II. 66–8. The assumption of Farber (1990), p. 117 that she had already lived there for two years may be true but does not find a solid textual evidence in the cited papyri: contrary to what he says, Tapia does not appear in P. Münch. I 7.

32 τιμῆς τῆς πρὸς ἄλληλους συμπεφωνημένης καὶ συναρεσάσης ἐκα ζυγῷ τῆς Συηνιτῶν ἐκ νόμισμάτων δέκα ζυγῷ τῆς Συηνιτῶν 64 γίνονται χρυσοῦ νομισμάτων τῆς Συηνιτῶν(ς), ἣνπερ τὴν τελείαν τιμὴν μὴν αὐτόθι ἐπέσχον παρ’ υἱόν τῶν ὄνοματων μέρος μὲν ἀνήλωσα 66 εἰς τὴν ἀναγκαίαν χρεῖαν μου ἢ διατροφὴν ἐν τῇ Ἀντινοέων, 67 μέρος δὲ δέδωκα εἰς τὴν ὑπερβαίνουσάν μοι ζημίαν ἐν τῇ ἐνεστώσῃ 69 ἡμέρᾳ διὰ χειρὸς μου εἰς οἶκον ὑμῶν ἀριθμὸ καὶ σταθμῷ 70 πλήρη.

33 Cf., for example, some contemporary examples: P. Laur. III 75, l. 17 (Oxyrhynchos, 574 CE); BGU XII 2206, l. 11 (Hermopolis, 591–602 CE); P. Köln. III 158, ll. 18–19 (Herakleopolis, 18 October 599 CE); likewise in some loan-deeds made in Syene: P. Lond. V 1723, l. 8 (Syene, 7 September 577 CE); P. Lond. V 1736, ll. 10–11 (Syene, 25 February 611 CE); P. Lond. V 1737, l. 8 (Syene, 9 February 613 CE).
towards the stair, on the second floor and also my share of the terrace on the fourth floor above the bedroom of Talephantis with my share of all the appurtenances. The house of which I have sold you half the living room is in Syene in the southern part of the fortress in the Quarter of the Oratory of the Holy and Triumphant Victor, having come around to me in this way: one quarter-share from a legacy from my mother, another quarter by purchase from Georgios, my brother. (lines 30–9).34

This very same half of the symposion and a quarter share of the terrace is again sold by Aurelia Tapia some nine years later, on 6 March 594 CE (P. Lond. V 1733 = Pap. Eleph. Eng. D49), to Flavius Apadios, son of Sourous, a soldier of the regiment of Syene:

the half share belonging to me and falling to me of the symposion on the second floor and the quarter share of the roof-terrace above the bedroom is above the symposion which belongs jointly to me and my siblings Menas and Tselet, and my share of appurtenances, (consisting) of the vestibule and gateway and stair and gallery and little oven, with entrance and exit and passage up and passage down, the same house lying in the same Syene in the southern part of the fortress and in the Quarter of Saint Apa Victor, triumphant martyr.35 The same half-share of the symposion and the quarter-share of the terrace came to me in this way: one-quarter share of the symposion and the eighth-share (of the terrace) from the inheritance of my mother Mariam, and the other quarter-share and the eighth-share of the above-named places just as has been said above from a rightful purchase through a written document of purchase from Georgios my brother those that came to me and to my siblings Menas and Tselet, in common and undivided. And they came to the aforesaid Mariam herself though legitimate inheritance from her parents, Papnouthios and Thekla in force of their shares.36

34 τὸ ὑπάρχον μοι ἢμισυ μέρος τοῦ συμποσίου ἐν τῇ οἰκίᾳ τῆς μητρὸς, οὐ̣ καὶ τὸ ἅλλο ἢμισυ τοῦ ἐν τῇ δευτέρᾳ στέγῃ, καὶ τὸ μέρος μου ἀπὸ δώματος εἰς τῇ τετάρτῃ στέγῃ τοῦ ᾠκουσμοῦ τοῦ Ταλιφάντις, σύν τῷ μέρει μου τῶν ἀλλῶν χρηστηριῶν τῆς οἰκίας, ἀφ’ ἡς πέρακε μιᾶς τό ἢμισυ τοῦ συμποσίου, ὑστῆς ἐν τῇ Συήνῃ ἐν τῷ νότιῳ μέρῳ τοῦ Φρουρίου ἐπὶ λαύραν τοῦ εὐκτητοῦ τοῦ ἐγκαίου καὶ αθλοφόρου Βίκτορος περιελθὸν εἰς ἐμὲ ὑστᾶς τέταρτον μὲν μέρος ἀπὸ κληρονομίας τῆς μητρὸς μου, ἐπὶ ἐμὲ ἑτὸν δὲ τέταρτον ἀπὸ ἀγορασίας παρὰ Γεωργίου τοῦ ἀδελφοῦ μου.

35 For the location of the shrine, see Dijkstra (2007), pp. 194–5 and 208.

36 τὸ ὑπάρχον μοι ἢμισυ μέρος ἀπὸ τοῦ συμποσίου τοῦ ἐν τῇ δευτέρᾳ στέγῃ καὶ τὸ τέταρτον μέρος ἀπὸ τοῦ ἀδελφοῦ τοῦ Απα Βίκτορος. (A. Άκκουσμοῦ τοῦ ἄντονι) ἐπὶ δύο τοῦ συμποσίου τοῦ καὶ ἀδελφοῦ τοῦ καὶ τῶν ἀδελφῶν μου Μηνᾶ καὶ Τσελέτ καὶ τὸ μέρος μου ἀπὸ πάντων τῶν χρηστηριῶν τοῦ τοῦ προθύρου καὶ τοῦ πυλῶνος τοῦ πυλῶνος καὶ τοῦ συμποσίου παραδομοῦ καὶ τῆς αὐτῆς οἰκίας διακειμένης ἐπὶ τῆς καθοδοῦν τῆς Συίνης περὶ τῶν νότιων μέρους τοῦ Φρουρίου καὶ τοῦ καθοδοῦν τῶν ἀδελφῶν Άκτα Βίκτορος μέρος ἐπὶ ἐμὲ τοῦ ἢμισυ μέρος συμποσίου καὶ τὸ τέταρτον μέρος ἀπὸ τὸ δύομενος ὑστᾶς τέταρτον μὲν μέρος ἀπὸ τοῦ συμποσίου καὶ τὸ όγδοον μέρος ἀπὸ όγδοον μέρος ἀπὸ τῶν προδεδήλημενων}
The price of the property was set at three solidi. How was it possible that Aurelia Tapia could sell the same piece of property twice within less than a decade? Porten and Farber suggest Tapia’s daughter and her husband have at some point transferred the property back to their mother (-in-law). There is no indication, however, that such a thing happened. I would rather follow Montevecchi’s original idea that the first sale served only as a security for a loan. In my opinion, also the second sale of the property to Apadios may have served the same purpose: otherwise we would not understand why both deeds found their place in Patermouthis and Kako’s Archive. It is a clear indication, that it was they who eventually gained dominion over the quarter of the terrace and half of the banquet hall.

It seems likely – though it cannot be ascertained with complete certainty – that another piece of the five properties ‘sold’ (or transferred in lieu of repayment of the debt) by Tapia to her daughter and son-in-law is sold again by her only a year later. The asset in question is described in lines 49–57 of P. Münch. 9 (= D40) as

the half share of a house that belongs to me, the one having come around to me by rightful purchase from Ioannes son of Paterchnoumios and its other half-share belonged to my late husband as a result of a purchase from the same Ioannes, the same house lying in Syene in the southern part of the fortress and in the Quarter of the Camp. The boundaries of the same house are: on the south the house of the heirs of Apadios; [...] of Abraam [blank line].

The original acquisition-deed of the house by Tapia and her husband has not been preserved. Yet it is certain that this purchase is mentioned in P. Lond. V 1729 (= FIRA III 68, 12 March 584 CE), a curious deed by which Ioannes, son of Patechnoumios, ‘the most humble monk’, declares to have donated to Patermouthis a half share of another house as a token of gratitude for the
care and provisions that the latter had undertaken for him. Interestingly, the deed was originally most probably addressed to Tapia, and only later re-addressed to her son-in-law.\footnote{See Bell’s introduction to \textit{P. Lond. V 1729} and commentary \textit{ad h. l.}} And so in lines 9–13, the monk originally acknowledges himself to have sold (erased: to you and) to your late (erasure: husband) Iakobos by a written deed of sale the parts of houses remaining to me and to have got their price from you in accordance with the power of the deed of sale done by me and to have spent (the price) for my essential needs) . . . \footnote{ἐπράθην [ποι καὶ] τῷ μακαριωτάτῳ {σοῦ} [ό̣[φ̣[ν]̣[Ἀ̣ν̣δ̣ρ̣ί̣]̣[ρ̣]̣]̣ Ἰακώβῳ τὰ ὑπάρχοντα μείζονι οἰκισμάτων ἐξ ἐγγράφου πράσεως καὶ τῆς \textsuperscript{11} τούτων τιμῆς ἐσχάτη παρ’ ἵμαν πρὸς τὴν δύναμιν τῆς \textsuperscript{15} γεγομένης (wac.?) παρ’ ἑμο [πράσεως τὴν τούτων τιμὴν καὶ \textsuperscript{16} ἀνήλωσα εἰς τὰς ἀναγκαίας μου χρείας, κτλ.}}

I daresay it would not be too hazardous to assume that this sale of the monk’s house was also originally intended to be a security one (we have again a mention –similar to Tapia’s declaration in \textit{P. Münch. I 9}; cf. above fn. 29 – that the price was used for the ‘seller’s’ necessities), but as Ioannes did not recover financially before his death, it eventually turned out to be a definitive transfer.

On 7 October 586 CE, \textit{P. Münch. I 11 (Pap. Eleph. Eng. D45)}, Tapia transfers to Flavius Kyriakos, son of Menas, soldier, \textit{caballarius} of the regiment of Syene, the \textit{dominium} over the half-share of a house which ‘has come around to me through rightful purchase from Ioannes also called Paptsios and to him from the paternal inheritance’.\footnote{περιελθὸν εἰς ἐμὲ ἀπὸ δικαίας — \textsuperscript{17} ἀγορασίας παρὰ Ἰωάννου τοῦ καὶ Παπτσίου κάκεινον (λ. καὶ ἐκείνου) ἀπὸ γονικῆς διαδοχῆς \textsuperscript{18} πρὸς τὴν δύναμιν τῆς παλαιᾶς πράσεως,} The seller mentions that the other half belongs\footnote{Still in present tense: ἀνήκει — [John Shelton] supposes that the house ‘is still officially registered in his name’, cf. \textit{Pap. Eleph. Eng.} p. 523 fn. 5. This may be true as we do not find any mention of the house in the succession settlement made between Aurelia Tapia and her son Ioannes (\textit{P. Münch. I 6 + P. Lond. V 1849} = \textit{Pap. Eleph. Eng. D53}, 7 June [?] 583 CE), in which Iakobos’ estate was divided between them.} to her late husband Iakobos. The seller may very well be identified with the monk Ioannes, son of Patechnoumios.\footnote{Cf. \textit{Pap. Eleph. Eng.} p. 555, s.v. Ioannes, son of Paternoumios, as well as Bell’s introduction to \textit{P. Lond. 1724}, p. 174 and Heisenberger and Wenger’s commentary in \textit{P. Münch} (p. 11), who think it is the great-uncle of Tsone and Tsera, the vendors in \textit{P. Lond. V 1724}.} It seems unlikely that Tapia and her husband could have bought an entire house from two different Ioannes. There is a problem, however, with the certain identification of the properties in \textit{P. Münch. I 9 and 11}: their exact descriptions, \textit{prima facie}, do not correspond. The property in \textit{P. Münch. I 11} is...
lying in Syene in the southern part of the fortress and in the Quarter of the Public Camel Yard of the transfer from Philae and of the house of Abraamios son of Pachymios (lines 21–4)\textsuperscript{45} and its boundaries are

on the south the blind and narrow road and the house of Abraamios son of Pachymios; on the north the public road, on the east the house of Abraamios son of Pachymios; on the west the house of Allamon son of Paternchnoumios (lines 31–3).\textsuperscript{46}

Yet, I think the issue of the inexactitude in the topographical account may be overcome. Let us notice that the general location of the house, the southern part of the fortress, links to the one in \textit{P. Münch.} I 9. The Quarter of Public Camel Yard and Quarter of the Camp are definitely not the same, and the boundaries do not match, but let us notice that in the former document the scribe was by no means certain about them: he actually deleted the description he had made and left a blank space to fill the exact location later.\textsuperscript{47} It seems as if the parties were not sure where the property really lay.\textsuperscript{48} Finally, it seems unlikely that the monk Ioannes sold two of his estates to the couple Tapia-Iakobos, just days before the latter’s death. Given all the above, I assume that we are dealing here with the same half-share of the same house.

The price in \textit{P. Münch.} I 11 was set to five solidi. The fact that the amount is as much as 50\% of the joint price of five estates sold by Tapia to Patermouthis and Kako in \textit{P. Münch.} I 9 contributes once again to the assumption that the sale of 584 CE was indeed a fictitious one.

The half of the house originally belonging to Ioannes \textit{alias} Paptios is the object of sale again in \textit{P. Münch.} I 12 (= \textit{Pap. Eleph. Eng.} D46, 13 August 590 CE). Now it is Kyriakos who sells it back to Patermouthis and Kako (spelled in this document as ‘Koko’), for the same price. The seller declares to have bought the property from Tapia and that the other part belongs to the late father of Kako.\textsuperscript{49} It may be a true sale, this time, but it is also possible that

\textsuperscript{45} διακειμένην \textsuperscript{12} τὴν αὐτὴν οἰκίαν ἐπὶ τὴν Συήνην περὶ τὸ νότινον μέρος τοῦ φρουρίου καὶ \textsuperscript{13} περὶ λαύραν τοῦ δημοσίου καμηλῶνος τῆς βασταγῆς Φιλῶν καὶ τῆς οἰκίας \textsuperscript{14} Ἀβρααμίου Παχυμίου.

\textsuperscript{46} νότου ἡ τυφλὴ καὶ στενὴ ῥύμη καὶ ἡ οἰκία Ἀβρααμίου Παχυμίου, \textsuperscript{15} βοῤρᾶ ἡ ῥύμη δημοσία, ἀπηλιώτου ἡ οἰκία Ἀβρααμίου Παχυμίου, λιβὸς \textsuperscript{16} ἡ οἰκία Ἀλλάμονος Πατεχνουμίου.

\textsuperscript{47} Cf. \textit{P. Münch.}, Tafel XVIII and Heisenberg/Wenger’s commentary on lines 56–7 of \textit{P. Münch.} I 9.

\textsuperscript{48} Porten and Farber (1996), p. 511 fn. 21 suppose that Tapia simply did not remember the exact boundaries of her properties, and indeed all five estates sold in \textit{P. Münch.} 9 are described with fewer details than was customary.

\textsuperscript{49} Cf. ll. 13–15: τὸ ὑπάρχον μοι ἢμισον μέρος ἀπὸ πάσης ὀλοκλήρου οἰκίας, οὐς ἔστιν \textsuperscript{14} διαθέτεσθαι ἀπὸ ἐδώρος ἐως ἄξονα, οὐ (l. 15c) καὶ τὸ ἄλλο ἢμισον ἄνηκε Ἰακώβου ὀποιχεμένου \textsuperscript{16} πατρός σου Κοκο τῆς ὀμοιομενῆς, ‘the half-share belonging to me of a whole, entire house, in the condition it is in, from foundation to air, the other half of which belongs to Iakobos, the departed father of you, Koko, the purchaser’ and ll. 29–30: περιελθὸν εἰς ἐμὲ ἀπὸ δικαίας ἀγορασίας \textsuperscript{16} παρὰ Ταπίας θυγατρὸς Τσίου κ(αί) εἰς αὐτὴν παρὰ Ἰωάννου τοῦ καὶ Παπτίου.
the son-in-law and daughter of Tapia simply paid back her original debt of 5 solidi and regained the ownership of the half-share of the house given originally by Tapia as security.

If my reconstruction is true, then we would have the same property used three times as a security for credit (Ioannes → Tapia and Iakobos, Tapia → Patermouthis and Kako, Tapia → Fl. Kyriakos).

Another example from the very same archive shows even better the mechanism of the mock-sales, and I think provides very convincing proof of how they actually functioned.

Some time between 578 and 582, two sisters, Aureliai Tsone and Tsere, daughters of Apadios and Rachel, sold for ten solidi to Patermouthis and Kako, their relatives, their share consisting of three rooms in a house located between

on the south: the house of Dios son of Kelol, on the north: the public street into which the main door opens; on the west: the house of Dios son of Takares on the east of the house of Pateröous. (Syene, P. Lond. V 1724 = Pap. Eleph. Eng. D32, ll. 35–7)

The same property along with a share in a boat seems to be the subject of a controversy arising from division of the remaining parts of the estate of the late Iakobos, the father of Kako and Ioannes, and Tapia’s husband. The dispute found its solution in an arbitration, P. Münch. I 7 + P. Lond. V 1860 (23 June 583, Antinoopolis = Pap. Eleph. Eng. D36). Ioannes, Kako’s brother, contended the ownership of the house, which ‘came around to him (Patermouthis) by right of purchase from Isakos and Tsone’. Ioannes apparently had found a deed transferring its ownership to his late father. If Patermouthis and Kako had indeed sold the house to Iakobos, the property should have been part of the inheritance, and thus part of it should have been divided between the siblings after their father’s death. Yet the parties finally decide, thanks to the help of some mediators (cf. l. 34), 52

50 On this sale and the history of the property, as well as its identification with the house–object of sale in the earliest document in the Patermouthis Archive, P. Lond. V 1722, see Porten and Farber (1985), pp. 87–90.

51 νότου ἡ οἰκία ∆ίου Κελώλ, βορρᾶ ἡ δημοσία | λαύρα ἐς ἣν ἠνέῳκται ἡ αὐθεντικὴ κύρα, λιβὸς ἡ οἰκία ∆ίου | Τακαρῆς, ἀπηλιώτου ἡ οἰκία Πατεροοῦτος

52 The rest was divided earlier between all of the parties, the widow and her two children in P. Münch. I 6 + P. Lond. V 1849 = Pap. Eleph. Eng. D53, 7 June [?] 583 CE).

53 περιελθόντος εἰς αὐτὸν ἀπὸ ἀγοραστικοῦ δικαίου παρὰ Ἰσακίου καὶ Τσώνη.
Patermouthis and Kako, who, as their archive clearly shows, were in constant need of ready money, fictitiously sold the recently acquired house of Tsore and Tsere to secure the loan that their father/father-in-law, a very wealthy man, had granted them. Later, the loan was repaid, but the deed never returned.\textsuperscript{54} However, there must have been something not recorded in our documentation, that convinced the mediators that the sale was a fictitious one, and allowed them to award the contented house to the married couple and not to their brother(-in-law), Ioannes.

4. CONCLUSIONS: PURPLE-MERCHANT’S WIFE AND SISTER-IN-LAW

Why would Eulogios and his brethren, Tapia and other members of Patermouthis’ clan choose for their financial affairs the form of a fictitious sale, rather than an ordinary loan secured by an ordinary pledge, a transaction still very well attested in the later Byzantine papyri (even in the same archive, we find examples of a typical mortgage)?\textsuperscript{55}

We may of course only speculate as to their intentions. Obviously the creditor in our case is much better secured. My first guess was that when Constantine banned \textit{lex commissoria}, obviously the lenders still wanted to have a strong security versus insolvent debtors, and thus they coined fictitious sales that dissimulated pledges. This may well have been so, but one has to observe that, notwithstanding the emperor’s prohibition, later repeated in the Theodosian and then Justinian’s Code (respectively, CTh.3.2.1 and C.8.34.3, 320 CE), the legal practice continued to include forfeiture clauses in the documents constituting pledges.\textsuperscript{56} This usage is even more evident in some Coptic deeds, temporarily closer to our documents.\textsuperscript{57} In some other

\textsuperscript{54} Cf. as well, the personal communication of John Shelton recorded in \textit{Pap. Eleph. Eng.} pp. 496–7, fn. 9, and in Farber (1990) p. 112, fn. 32. Shelton thinks that the deed mentioned in \textit{P. Munch.} I 7, ll. 52–4 was a fictitious deed of sale which was to secure a loan Patermouthis got from his father-in-law, Iakobos.

\textsuperscript{55} \textit{P. Lond.} V 1737 (= \textit{Pap. Eleph. Eng.} D52, 9 February 613 CE): loan of three and one third solidi by Patermouthis secured with a pledge of articles of copper. For other examples, see above, footnote 33.

\textsuperscript{56} Even if these are quite rare, cf., for example, \textit{P. Lond.} III 870 (p. 235, fourth century AD), \textit{P. Flor.} III 313 (AD 449), with Taubenschlag (1959), pp. 250–1 and (1955), pp. 279–80, cf. as well Kaser (1975), § 252, 2b.

\textsuperscript{57} A good example of such practice is, for instance, \textit{P. KRU} 30 (Thebes, mid-eighth century AD), in which most probably Demetrios mortgages to his ex-wife a house as a security of her still unreturned bridal gift. The woman, who receives the deed for her and her children’s security, will have the right to live in the house and, if the gift should not be returned within a year, will become the full owner of the house. See also \textit{O. Medinet Habou} 67, ll. 5–8: ‘If it should happen that the appointed time passed without my having paid them to you it is you who are the owner of my pledges (eneceron = \textit{ἐνέχυρον}) so that I cannot seek them from you ever’ (trans. M. Lichtheim); cf. as well Steinwenter (1954), p. 500 and (1955), pp. 29–30.
Coptic ostraka, the ownership of the pledged thing is openly transferred to the creditor and rests with him or her until the repayment. So this may not have been a good enough reason to make the parties choose a fictitious sale over the conventional pledge.

Before an attempt at conclusion, let me have a look at just two instances, very late Greek and Coptic, of these ‘conventional’ pledges.

One of the first editions of papyri, P. Paris, offers under nos 20, 21, 21bis and 22ter and on the following pages seven documents related to the same person, a purple-merchant Aurelios Pachymios, son of Psates.59 P. Paris 21ter is a deed of sale concluded in Panopolis on 13 July 599 between the protagonist of the archive, Pachymes and his wife Aurelia Maria, on one side, and his brother-in-law Arsenios, on the other.60 The couple acquire from their brother (-in-law) a third share in the house, formerly belonging to Kallinikos and Eugenia, the late parents of Arsenios and Maria, for 2 solidi. Aurelia Maria already owns one third of the estate, and the remaining share rests with Aurelia Ioanna, the third sibling born to Kallinikos and Eugenia. Ioanna mortgages this share on 31 October 607 to her sister Maria, having received from her as a loan two thirds of a solidus, i.e. 15½ keratia (SB I 5285.22–7). The house is perfectly described, its boundaries are set by the great holy church, Panopolitan road and the estate of the heirs of the late Timotheos. Ioanna undertakes on her own and her future successors’ behalf not to alienate, change anything within the house or further mortgage it.61 Moreover, in lieu of interest, she allows her sister to use the house and to live in it.62 So far, nothing strange: we have a typical antichretic loan in front of us.63

58 See, for instance, P. KSB 937 (= P. KRU, p. 13, originally published in Crum 1922, p. 280; no 9; Thebes sixth/seventh century CE): ‘Now I (Joseph, the debtor – JU) cede to you the above-named house, which is in the midmeadow. You are the lord of the above-named house, in return for your 2 tremisia. No man shall be able to dispute with you respecting it. You are its lord, until you shall be paid your 2 tremisia’ (lines 10–15, Crum’s translation); cf. Steinwenter (1954), p. 500 and (1955), pp. 29–30.

59 The only study particularly devoted to this small archive consisting of twelve documents, two of which are Coptic, is a brief description at the Trismegistos site, authored by Karolien Geens (2003); it contains as well a family tree. The compound of the papyri is a title-deed archive relating to Pachymes, a purple-dealer, his worker, who later became engaged to his master’s daughter, and Pachymes’ wife and her siblings, and possibly also their father.

60 Geens (2003), pp. 1–2, fn. 5 argues rightly that P. Jomard published by W. Brunet de Presle in P. Paris, pp. 257–60 certainly belongs to this papyrus and they should be read together. Cf. as well the minor corrections to the original editions as listed in Berichtigungsliste X 159; XI 176.


63 See Kaser (1975), § 111. 1; Kupiszewski (1974) and (1985); and Rupprecht (1992).
On the very next day Aurelia Maria rents the whole house to Theodoros, a purple-dyer, like her husband, for four gold keratia per year (SB I 5286). The object of rent is described as belonging to her: ‘the whole house belonging to you with the upper and lower part and with its rightly befalling to it’.

Aurelia Maria behaves as if she were the real owner of the house; furthermore, the antichresis terms allow her to live and to use the house but do not specify the right to let it. Karolien Geens suggests that Ioanna’s loan is a hidden sale.

I do not find this convincing. First of all, the price is way too low. It is only the two thirds of a solidus as opposed to two solidi paid to their common brother seven years earlier for exactly same share of the house. Secondly, why would the parties want to hide a sale? In fact, in order to be able to sell the place further, Maria would have had to present the purchaser the deed confirming her property rights, and this she had not done. These two documents, I presume, prove something else: it seems that in these very late deeds the constitution of a pledge vested in the pledgee quasi owner-like rights, among them the right to dispose.

Let us turn now to the practice of pledges in Coptic documents. A typical deed constituting a pledge would transfer detention of the thing pledged, and include sale and forfeiture clauses as well as a penalty clause, often set at three holokottinoi, to be paid should the pledgor take the things away. Such is also the case of a document that is of particular interest in this instance. P. KO 28 (Koptische Ostraka der Papyrussammlung) prima facie seems to be a possessory pledge by which the debtor hands over some arable land (Besitzpfand). Yet, he also undertakes to do the field work and – which

64 Lines 17–21: τὴν διαφέρουσαν ὅλοκληρον σοι οἰκίαν σὺν ἀνωγείοις καὶ κατωγείῳ καὶ σὺν παντὶ σώτης τῶν δικαίων κτλ.

66 Cf. the list of prices assembled by Montevecchi (1941), pp. 122–6 and Husson (1999), pp. 132–5, they vary from one solidus up to eighteen (for a very big house), most frequently they are set between one and a third and five nomismata.

67 In many documented cases, the pledgor eventually ceded his or her rights to the pledgee in lieu of payment: cf., for example, Coptic O. Medinet Habou 70; 72–3 and Greek P. Lond. V 1720 + ST 439 = Pap. Eleph. English. D24 (3 February 549 CE). In this document Aurelia Nonna acknowledges to have received from her creditor, Aurelia Maria, eight solidi for a pair (and not just one; cf. Porten and Farber (1996), p. 459 fn. 4, following Shelton’s suggestion) of earrings which the latter had received in mortgage; the debtor renounces her claims to her former property.


was particularly important – to take care of the canal system of the plot.\textsuperscript{70} Who actually had the land plot then? And to whom did the revenue of the crops go?\textsuperscript{71} We clearly see that the borders between ownership and pledge had become very murky.

What does it all lead to? Firstly, we may have observed that the form of the pledge in the late Antique times did not really follow the pure pattern of the classical Roman law forms of \textit{pignus} and \textit{hypotheca}. The boundaries between property rights and the rights vested with the pledgee became less and less visible, and they became more and more alike. Secondly, in our examples, the family relations of Aurelia Tapia, the special character of the monastic communities, made for an important factor of trust between the parties that possibly induced the debtors to agree to what would otherwise be considered harsh conditions of their loan securities. This trust foundation, moreover, seems to have worked fine, notwithstanding the tempestuous litigations between Tapia and her son. In these contexts, such securities must have safeguarded not just the repayment of the money but possibly the personal relationship between the parties involved. And thirdly, also given the above, the economic reality of money buying and lending led people to search for more forms of securing debts. In each particular case, the interest of the creditor and debtor was weighted, in order to tailor the form of real security that suited them best. Ordinary people do not follow the well established theoretical dogmatic legal patterns, they want to protect their transactions in the seemingly most secure way, and they sometimes tend to invent

\textsuperscript{70} Such an undertaking may have been quite risky: obviously it relieved the creditor from the burden of taking care of the pledge, but what if debtor could not pay the debt and decided to forsake his property? Elżbieta Krakowiak, manager of the legal department working for a large Polish bank, has told me about quite a few cases in which the bank has mistakenly, having obtained the ownership of the security, let the debtor take care of it. One of these cases ended up in a substantial financial and reputational loss as the debtor was not eager to look after a herd of cows he thought he was going to lose anyway: (http://gdynia.naszemiasto.pl/archiwum/499666,bankowy-los-krowy,id,t.html?akcja=przejdz_nastepny).

\textsuperscript{71} Cf. also the analogous situation in \textit{P. KRU 57} by which Mena, son of Psaja of Pmiles in the District of Koptos, hands over to Ioseph, son of Petros from Romou in Ermont, one aroura of land for one and one third nomisma of gold that the latter had lent him to pay taxes (demosion). The debtor promises and guarantees to also take care of the field work at his own risk, with \textit{force majeure} excluded. There are two guarantors, Philotheos, son of Daniel, and Christophoros, son of Demetrios, who additionally provide security for Mena.
things that are not dreamt of in legal philosophy just to feel more protected.\textsuperscript{72} Even today – in the time and realm of codified law of real securities – the parties would choose the Sicherungsübereignung as simply more secure than the traditional form of the pledge.\textsuperscript{73} The security of credit comes before the dogmatic disgust towards this legal form (in the famous M. Salinger’s dictum referring to Sicherungsübereignung as the bastard child of the legal practice),\textsuperscript{74} until eventually the elegant legal dogmatic surrenders to the practicality of the institute. It is doubtful therefore if Paul Oertmann’s prophecy, that ‘Fiducia geht und nimmer kehrt sie wieder’, will ever come true. Transfer of ownership as a security for credit seems to be and to have always been simply intrinsic to legal anthropology.\textsuperscript{75}

**POSTILLA**

Only upon completion of this article did I receive a copy of the newly published volume of the Petra papyri, extremely rich in legal problems. One of the longest papyri written transversa charta preserved to this day, \textit{P. Petra IV 39}, dated 8 August CE 574, records a settlement of claims after an arbitration between Theodoros and Stephanos. One of the issues between the litigants was the question of the ownership of a courtyard and a refuse-pit located

\textsuperscript{72} Cf., for instance, two ingenious creations found in the milieu of Dioskoros. The pair of documents, \textit{P. Michael.} 42 a + b (30 December 566 CE, Aphrodites Kome, Antaiopolites), a mortgage and lease form together a very skilful marriage financial settlement securing at best the interest of the bride. In the first deed, the groom and his parents secure the bride’s dowry by conveying to her ten \textit{anurae} (even if the document nominally calls the act ‘a mortgage’, the clauses employed show that it produces effective transfer of ownership of the land), whereas in the second, the bride leases the land back to her in-laws for a rent equalling the tax due on the field. The second case, \textit{P. Cairo Masp. II 67158} (= \textit{FIRA II 158}, Antinoopolis, 28 April [?] 568 CE) is a contract of partnership of fine-carpenters whose real purpose seems to be a marital financial settlement between one party thereof (parents-in-law) and the other (their son-in-law); on this document, see further Urbanik (2012).

\textsuperscript{73} In Poland, transfer of ownership (either under suspensive or resolutive condition, whereas the latter is preferred) made its way into legal practice chiefly thanks to bank loans and hence is only regulated in the \textit{Bank Law Act} (\textit{Journal of Laws} 2002, no. 72, item 665). Art. 101 allows the transfer of ownership of chattels and bills of exchange as security. The case of estates, on the other hand, is not regulated and has resulted in contradictory case law. German legal dogma, even if with some reservation, decided not to legislate the issue and to follow customary practice. Still, because of the existence in practice of the transfer of ownership as a form of security, German law does not admit the institution of a register bank pledge. See further, for example, Baur and Stuerner (2009), pp. 784–5.


\textsuperscript{75} For a general historical panorama, see Thiesen (2001).
between their houses. Unfortunately, the state of conservation of the deed does not allow a safe reconstruction of the facts, and both parties claimed that their fathers had bought the property a long time before the argument. Surprisingly, Theodoros also claimed to have acquired the courtyard from Kassisaious and Gregoria, who, in turn seem to have mortgaged the property to Gregoria’s brother, Stephanos. The editor suggests that Stephanos’ family have secured the ownership of the contended yard through *longi temporis praescriptio*, but there seems to be no ground for such an interpretation. I suggest the argument may have arisen because of the original fiduciary sale of the courtyard by Gregoria and Kassisaious first to her brother and then to the neighbour Theodoros. This would only prove that the problem I have described in this article may have been much more common than the examples I have collected might suggest. We have only not been lucky enough to know the exact context of all the late Antique deeds of sale.

APPENDIX

A. The abridged family tree of Patermouthis and Kako (after Geens (2005))

Mariam ∞ Tsios

2. 1.

5 children, among them Ioannes Iakobos/Iakybis ∞ Tapia ∞ Menas

Tsome, a nun

Patermouthis ∞ Kako Ioannes

B. The abridged family tree of Aurelios Pachymios (after Geens (2003))

Kallinikos ∞ Eugenia

Pachymios ∞ Maria Arsenios Ioanna

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76 P. Petra IV, pp. 52–3.
77 A thorough legal analysis of the papyrus is currently being prepared by Marzena Wojtczak (Warsaw) as part of her doctoral dissertation. Maria Nowak kindly informed me by email on 30 April 2012 that she has detected the same pattern of a ‘mock’ sale in *P. Lond.Copt.* 447 and 448 of unknown provenance published by Crum and in a Nubian deed from Qasr Ibrim she is presently studying (*Old Nubian Texts from Qas·r Ibrı¯m* III 34).
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