GERHARD THÜR (GRAZ – VIENNA)

OWNERSHIP AND SECURITY IN MACEDONIAN SALE DOCUMENTS

I. In 1988 Edward M. Harris published an important contribution to Athenian law of real security. His point was, and certainly still is, that *hypothēkē* (roughly "encumbrance") and *prasis epi lysei* ("sale on condition of release") do not differ in substance, only in terminology. With this conclusion, Harris demolished most of the sophisticated discussions that had taken place among generations of legal historians. Harris' results are based on the so-called 'principle of cash sale' developed by Fritz Pringsheim in *Greek Law of Sale* (1950). According to Pringsheim, in Greek legal thought and practice, mutual consent to sell and buy goods did not create any obligation either to deliver these goods or to pay the set price.[1] Sale was just a means of transferring ownership, or more precisely, ownership was transferred by payment of the price. Legal protection was therefore given in two cases: 1) to the *purchaser*, who had paid the price but did not receive the goods, so that he could seize what he had purchased; 2) to the *vendor*, who had delivered the goods without receiving the price, so that he could recover the goods, since he had not in fact lost ownership.[2] This principle worked tacitly and extended beyond any legislation. For our purposes, it is of no consequence that Pringsheim wrongfully viewed the *diadikasia* as the means of protecting ownership.[3] Harris does not deal with procedure, nor will I repeat my arguments in this paper.

In order to explain Athenian real security, Harris adapted the principle of cash sale most successfully. Since there was no formal act of hypothecation like the Roman *fiducia*,[4] an Athenian creditor became a mortgagee by handing over money in accordance with the particular deed of loan that contained all further specifications on repayment, interest, risk and security. While the debtor usually remained in possession of the pledged property, the creditor had the same position as a purchaser who had paid the price in advance (Pringsheim's case 1); when the debtor defaulted, the creditor, as owner, was entitled to seize the property. Following Finley (and others) Harris correctly points out that, in Athens, real security was

[1] Pringsheim 1950, 90f. and 179-219, criticized by Cohen 2006; but see the response by Jakab in the same volume, based on Wolff 1957, 28f.

[2] Pringsheim 1950, 13.

[3] See Thür 1982 and 2003; [not consulted by Harris in his response; so the discussion is on completely different levels].

[4] Harris 1988, 359f.

substitutive in nature ("Verfallspfand").[5] Just as with cash sale, here we have another principle operating behind mortgage contracts all over the Greek world, yet nowhere stated explicitly in any statute.[6]

In my opinion, a common corpus of statutes is not required for a unity of Greek law to exist. Rather, we must look for – mostly unwritten – principles, which were implicitly followed by the laymen who skillfully drafted sales, leases, loans, mortgages and other contracts.[7] In the Greek poleis, *general* rules governing contract or property were not topics of legislation. Harris, however, was dealing strictly with Athens, and was therefore not concerned with Greek law in general.

From Athens, we primarily have two kinds of sources on real security: detailed narrations by the orators and short notes inscribed on stone slabs, *horoi*, which originally were simple boundary stones. The function of the mortgage *horoi* was to warn third persons that the property was pledged to someone and thus the possessor was not free to alienate it unencumbered.[8] As Harris correctly maintains,[9] the few lines of text on the *horoi* primarily reflect the view of the creditor; in most cases, the use of the term *epramenou* (sold) on the stones informed everybody about the actual legal status. The term *epi lysei* (on release), which typically follows, seems to comply with the needs of the debtor; his property was not lost forever.[10] This well balanced, concise, juristic formulation never occurs in court speeches. Here, only the context makes it clear when a sale was not in fact a sale, but rather part of a loan agreement. In oratory, debtors generally prefer to use terms that are derived from *hypotithenai*, which is less forceful than "sale."[11] Any correlation between *horos* inscriptions and registers of properties kept within the demes of Attica[12] cannot be proven.

I disagree with Harris only on one point: who was the owner of the encumbered property? Harris carefully quotes some passages, which indicate that the creditor is the owner, and others that assign this capacity to the debtor.[13] From a modern view of ownership as an absolute legal title, this seems to be an irresolvable contradiction. Because Athenians had no formal procedures for conveyance like the Roman *mancipatio*, Harris contends: "each person naturally tended to answer it in the way which was most advantageous for him," and further: "…in the field of real security…in the absence of any regulations there was no way of resolving the

5 Harris 1988, 356; Finley 1951, 115.
6 Thür 2006, 32f. (read "substitutive" on p. 33).
7 Thür 2006, 23f.
8 On this subject in general, see Finley 1951, reviewed by Wolff 1953; see also Finley 1953 (1968) on the *poletai* inscriptions, a valuable third type of evidence.
9 Harris 1988, 377.
10 Harris 1988, 378.
11 Harris 1988, 377.
12 Faraguna 1997.
13 Harris 1988, 367-70.

question of who owned hypothecated property."[14] For Harris it is only a matter of rhetoric.[15] Admittedly, rhetoric plays a role in questions about encumbered property, in particular, to whose material possessions did it belong in an economic sense? The legal aspect, however, is absolutely clear: according to the terms of the loan deed, the person who had handed over the money had the right to file a claim of ownership against any third person and, after the trial, to seize the property. Thus, with the same type of action, the creditor on the one hand was entitled to enforce the law against the (defaulting) debtor, and on the other, the debtor was still entitled to defend his right to the property against any third person, including even the creditor (until the time of maturity). With the consent of the creditor,[16] the debtor could still alienate or pledge the encumbered property. At the end of this study I will address how multiple charges on the same real property worked.

To sum up my critique, the Athenians were not uncertain about their idea of ownership; rather, our modern concept of 'absolute' and 'exclusive' title does not conform to Athenian legal thought. In their eyes, ownership was a position that was elastic and separated by function,[17] one that could be modified by mutual agreements between different parties. So, quite correctly, both creditor and debtor might call themselves 'owners.' For this reason, it seems to me rather absurd that the *poletai* in their records[18] called the confiscated property the "house of Theosebes" (owned by Theosebes) just for rhetorical reasons. I would more willingly trust in the wording of the official document.

Private agreements from the Greek poleis are scarcely preserved. As far as I know, the deeds follow standard forms well attested all over the Greek world. It was not a specific Athenian law code on real security[19] that paved the way for the rise of trade and credit, but rather, ingeniously handled contract clauses based on simple – one might even call them 'dogmatic' – principles, such as cash sale or substitutive security. Contract clauses [e.g. Dem. 35, 10-13], not [general] statutes met the needs of a growing economy.

II. Let us now turn from these introductory thoughts to the main focus of this study, the epigraphically preserved sale documents from Northern Greece. Here the sources are the same as if we only had *horos* inscriptions at Athens. For this reason alone, our preliminary 'dogmatic' considerations appear to have been necessary.

---

[14] Harris 1988, 367f.

[15] Harris 1988, 367.

[16] As we shall see, not only did "the parties" (the debtor and subsequent creditors) have to agree, Finley 1953, 481, 483 and 489 (1968, 545, 547 and 554), but also the prior creditor. Harris 1988, 369 is not precise: "…the borrower temporarily lost his right to alienate [this piece of property]." As I demonstrate below, a prior creditor had the option to "block up" the transaction or to agree.

[17] Discussed by Kränzlein, 1963, 33-35.

[18] Hesperia 10, 1941, no. 1, 9.

[19] So Harris 1988, 381, contra Finley, 1953, 483 n. 23 and 490 n. 44.

1) Sale documents from Olynthus, Amphipolis and other sites in Northern Greece have been published since 1930.[20] In his useful overview, Faraguna (2000) analyzed all 39 texts published up to the time of his study; new texts are continuously appearing.[21] Faraguna correctly noticed that it was not sale contracts, but excerpts from public registers that were published on stone.[22] In Mieza, a stone inscription of such a register was found.[23] The individual items of an entry are: buyer – ἐπρίατο (has bought) – vendor – real property – neighbors – price – receipt[24] – guarantor – date – witnesses.[25] The sale documents from Amphipolis, which are approximately one hundred years older, are also drafted in this way. Consider for example *SEG* XLI 558, a text that is exceptional for its reference to the (usual) fact that the sale contract (*syngraphē*) was deposited with a guardian (l. 5-6).[26] Neither in the registers nor in the excerpts of individual 'sale documents' are the full texts of the contracts preserved. Thus we do not know whether the documented sales are either real sales with intention to alienate the properties, or securities, which would constitute sales on condition of release (*praseis epi lysei*).

Most of the stones were found in situ, in the houses themselves or on the fields. At first glance they all, like the *horoi*, seem to have served as "markers" to warn third persons that the properties were pledged.[27] But only three of the texts, now over 40, explicitly mention security: two are drafted according to the standard form of a loan,[28] one sale mentions a time limit for *apolysis*,[29] a fourth document with a time limit remains uncertain.[30] In the first two cases the creditors appear simply to have enregistered loan documents containing *hypothēkai*. All inscriptions dealing

[20] Starting with D.M. Robinson, Excavations at Olynthus II, 1930; for details, see Hatzopoulos 1988 and 1991, Faraguna 2000, 99-108.

[21] Not all are important; for *SEG* XLVII 999 see below, n. 37 and the discussion that follows.

[22] Faraguna 2000, 106f.

[23] *ArchEph* 142, 2003 [2005], 163s., 188s., Mieza, 250-25 B.C. (e.g. the 3rd of 10 entries): Ζώπυρος Γοργία ἐπρίατο πα[ρὰ] Ε[ὐ]πολέμου τοῦ Στάρτ[2]ιος ἐν Δροέσται γῆς ψιλῆς, πλέθρα [...] Τὰ ἐχόμενα τῶν l[3] ἀμπέλων τῶν Ἀττίνα καὶ τῆς γῆς ἧς παρὰ Βίωνος ἠγόρα[4]σε Ζώπυρος, τὸ πλέθρον δραχμῶν ⋮ Ο ⋮ Τὴ[ν τιμ]ὴν ἔχει πᾶσαν. l[5] Βεβαιωτὴς Ἀττίνας Ἀνδρονίκου. Ἡ ὠνὴ ἐ[γένε]το μηνὸς (...) l[7] (...) Μάρτυρες δι[καστῶ]ν Λυσανίας l[8] Σικίττου καὶ τῶν ἄλλων (...); *SEG* LIII 613, 19-27.

[24] Further support for the cash sale principle.

[25] The μάρτυρες δικαστῶν are not of interest for our purposes in this article.

[26] *SEG* XLI 558, Amphipolis, 357/56 B.C.: [Ἀ]γαθῆ τύχη. (?) ἐπ[ρία[2]τ]ο τὴν οἰκίαν παρὰ Θεοδώρο[υ, l[3] ἧι] γείτων Κλεόδαμος, δρα[χ[4]μῶ]ν δισχιλίων ὀκτακοσ[ίων l[5] κατ]ὰ τὴν συγγραφὴν τ[ὴν παρὰ l[6] ...]μωνι. Μάρτυρες (...)l[7-9] (date). Cf. also no. 557, 18-19.

[27] Finley 1951, 31; Wolff, 1953, 417; Hennig 1987, 168.

[28] *SEG* XXXVIII 637 and 640, Olynthus, 352/51 and 350/49; first edited by Robinson; see the recent edition by Hatzopoulos 1988, 58-60.

[29] Robinson, *TAPA* 62, 1931, 42f. (no. 2), Olynthus 350/49.

[30] Robinson, *TAPA* 69, 1938, 51f. (no. 5), Olynthus 355/54; see Hatzopoulos 1988, 61f. On all four texts, see Youni 1996.

with sale seem to originate from sale documents that were filed to the register by the purchasers, but usually the excerpts published on stone do not tell us the reasons for the transactions – whether definitively to alienate the property or to hedge a loan by *prasis epi lysei*. From the Greek poleis not a single example of an original private sale contract is preserved, [31] either with or without condition of release. The only example of a loan document with *hypothēkē* is a maritime loan from Athens, Dem. 35, 10-13.

The prevailing opinion is that the documents from Northern Greece represent real sales unless security is explicitly mentioned.[32] If this is correct, what sense did it make to set up a slab of stone on the property? Possibly the buyers wanted to announce that ownership had changed when the purchased estate was vacant or leased, or when the house was rented to a third person. Less likely is that the sum paid for the house was a matter of pride to its new owner.[33] I think the question has yet to be solved. Apart from explicit wording, we can only determine whether it was a real sale or security that was documented on stone from the circumstances of the transactions, which are seldom transmitted. In the remainder of this section, I shall discuss four – feasible – examples, three with two corresponding documents each (2-4) and one with peculiar terminology (5-7).

2) *SEG* XLI 564, which comes from Amphipolis, 350-200 B.C.,[34] could conceivably be a *prasis epi lysei*, although the phrase itself is not explicitly stated in the text. The slab, inscribed on both sides, was built into a wall; side B was the last that was visible. The older text, side A, tells us that (most likely)[35] Derdas had bought the house for 170 stateres. The name of the seller is lost. It appears that a plain sale has been documented here. But from side B we might infer that Derdas was only the creditor; he might have bought the house *epi lysei*. The debtor (if identical with the seller from side A) later rebought the house for the same price, for 85 "heavy" (double) stateres; his name too has been lost from side B.

The identification of the seller's name (A, line 2) as that of the buyer (B, l. 1) is probable because of the *kata ton nomon* clause (B, l. 5-6), which is unique in the sale documents from Northern Greece. *Nomos* in commercial transactions does not refer to any statute, but rather to standard business practices, e.g. the *nomoi*

---

[31] The Mylasa documents (*IK* 34/35) use a παραχώρησις form, see below, n. 60. For the alternate form ὠνὴ ἐν πίστει in the papyri, see Pestman 1985.

[32] Faraguna 2000, 103.

[33] Nevett 2000, 334.

[34] *SEG* XLI 564: (Side A) Ἀγαθῆι τύχηι. Ἐπ[ρίατο Δέρδας(?) Ἀρπά|²λου τὴν οἰκίαν [παρὰ *τοῦ δεῖνος*] |³ ἧι γείτονες Νικ[όλαος, *ὁ δεῖνα*, Κοι|⁴ρανίδης, Πολυ|[... χρυσῶν] |⁵ Φιλιππείων ΗΡΔΔ. [Βεβαιωταὶ .....]|⁶ρης Ἀστία Πρωτ|[.....] |⁷ Μάρτυρες (...) (Side B) [*Ὁ δεῖνα* ἐπρίατο τὴν οἰκί]αν παρὰ Δ(έ)ρδα, ἧι |² [γείτονες *ὁ δεῖνα*, Ν]ικόλαος, στατήρωγ |³ [χρυσῶν Φιλιππεί]ων μεγάλων ΡΔΔΔΠ |⁴ [..... ἐ]πὶ Ἡρακλεοδώρου ἰε|⁵[ρέως .....]δης κατὰ τὸν νό|⁶[μον (...).

[35] See the note in *SEG*.

parathēkōn or *arrabōnōn*.[36] In our case we seem to have a *nomos*, a clause in security contracts, about releasing pledged property after reimbursement. Finally, we must address the question of why the debtor had the repurchase of his house documented on stone (side B) instead of simply removing the slab containing the mortgage inscription (side A) from the wall. Maybe the house was rented to someone and therefore the landlord's free ownership was not manifest to the public, or perhaps the switch from 170 simple to 85 double stateres was the reason for the second inscription. In B (l. 1), however, a buyer different from the seller in A (l. 2) should not be ruled out; Derdas might have bought the house from X (side A) and resold it to Y (side B) for the same price.

3) In *SEG* XLVII 999 from Tyrissa, which dates to after 200 B.C., we have excerpts of two sale documents, l. 1-13 and 13-25, integrated into one text.[37] The basic formula very closely follows that of the register from Mieza,[38] only the receipt of the price is missing; the problem of the *basilikoi dikastai* is not relevant here. As usual the inscription starts with the later transaction (l. 1-13) and is followed by the earlier one (l. 13-25). The deal begins with Philagros buying a vineyard from Philippos for 45 stateres (l. 13-25). The later document (l. 1-13) reveals that Philagros had died in the meantime; it was not he, but rather his widow, who sold the estate jointly with a certain Boukartas. While still alive, Philagros had granted co-ownership to this Boukartas (l. 3-4), probably his son. This fact makes it clear that the first transaction was a real sale. But Polyainos, the buyer in the second transaction, may have only been the creditor, who bought the property *epi lysei*. Indeed the price of 40 stateres (l. 8) instead of 45 (l. 16-17) need not have been the full value of the estate.

Retention of the original guarantor, Nikanor (l. 18-19), might have been the reason for integrating the first sale document into the second. The witnesses differ here except for one. Normally no guarantors appear in inheritance cases,[39] but Boukartas became co-owner already in his father's lifetime. The stone, however,

---

[36] There is a parallel in a sale document from Camarina(?), *SEG* XLVII 1435, 6, which is most striking because it too was a repurchase of encumbered property. Similar wording is also used in a register entry for a sale subject to redemption (PDura 15 a 6, 195 B.C.: ἀποδώσω λύσιμα κατὰ τὸν ν[όμον ...), quoted by Pringsheim 1950, 107 n. 12. For the use of *nomos* in *parathēkē* contracts and sale deeds with *arrabōn*, see Jakab 2005, 202-08; on *nomoi tōn hypothēkōn* in the papyri in particular, see p. 205.

[37] *SEG* XLVII 999: [--- ἐπρίατο Πολ]ύαινος τὰς ἀ[μ|[2]π]έλους τὰς Βουκάρτα κ|[3]αὶ Φιλάγρου παρὰ τῆς Φιλά|[4]γρου γυναικὸς καὶ Βουκάρ|[5]τα, δίκης γενομένης |[6] [προς] τοῖς βασιλικοῖς δικα[σ|[7]τ]αῖς, στατήρων χρυσῶ[ν |[8] τ]εσσαράκοντα· μάρτ[υ|[9]ρες τούτων· (... |[13] ...) ἐπρίατο Φίλ[αγ|[14]ρος] τὰς ἀμπέλους π[αρὰ |[15] Φι]λίππου τοῦ Χιωνίδα σται|[16]τήρων χρυσῶν τεσσαρ|[17]άκοντα πέντε, αἷς γείτ|[18]ων Ἀτ[τ]ίνας· βεβαιωτ[ὴς |[19] Ν]ικάν[ωρ]· (... |[20-25] date, witnesses).

[38] See above, n. 23.

[39] Hatzopoulos 1988, 26; 1991, 58. Since heritage was officially controlled, an heir who was selling inherited goods was not obliged to offer surety.

could simply have indicated the change in ownership of a vineyard that was not farmed by the sellers, Boukartas and his mother, or the buyer, Polyainos, but instead leased to a third person.

4) *SEG* XXXVIII 673 and 672[40] both come from central Chalcidice (Stolos?) and date to 351/50 B.C. They are not connected by an identical estate, but by one of the persons involved. The form is Olynthian, which differs from that of Amphipolis. Instead of *epriato* the excerpts have a heading *ounē* (= *ōnē*, buying; the term *eutheia* will be explained below in section 6). In August 351 Nikon sold a house to Menippos for 232 drachmae (no. 673), in April 350 the same Nikon bought four houses from Dinnys for 1,000 drachmae (no. 672). From this last transaction we have more specific details: Dionysios, Nikon's brother, formerly had "hypothecated" the four houses to Dinnys. Youni has already conjectured that the word ὑπέθετο (672, 9) could indicate a *prasis epi lysei*.[41] As Harris determined, in Athens the terminology differs depending on whether it is representing the perspective of the creditors or the debtors;[42] here too, Nikon, belonging to the debtors, is using the less forceful term.

Nikon seems to have inherited the four houses when his brother died. It is probable, to my mind, that he wanted to clear the family property of debt. Since he was not the original debtor, he did not settle for simply removing the stone, which was most likely set up by the creditor Dinnys. Rather, he set up another stone to document publicly that he had "redeemed" his houses – a case, to my mind, similar to *SEG* XLI 564 (above, section 2). Most strikingly, Nikon demanded three guarantors for the purpose of ceding the full rights on his houses to him (672, 12-13). With consent of Nikon's late brother, the creditor Dinnys could have repledged the properties to further persons; Nikon, then, wanted to be sure to free his houses from any mortgage. The whole transaction demonstrates an elastic view of ownership as a position that shifted according to function. In Roman law it was impossible to buy one's own property. The Greeks, however, used the form of a sale not only to create security, but also to terminate it. Incidentally, if Dinnys had been in possession of a deed of loan with a *hypothēkē* clause instead of a sale on release, the case would have been the same.

There is one further observation to be made regarding the earlier transaction, no. 673, where Nikon acted as vendor. As in *SEG* XLVII 999, 1-13[43] there is no

---

[40] *SEG* XXXVIII 673: Θεός. l[2] Οὐνὴ εὐθέα. (date)l[4] Μένιππος Θάμωνος παρὰ Νίκων[ος] l[5] τοῦ Κτήσωνος οἰκίην ἐξῆς Διl[6]ονυσίο τοῦ ᾽Αννίκαντος καὶ τὸ l[7] ὑπερῷον 88XXXΔΔ. Μάρτυl[8]ρες (...) and 672: Θεός. Τύχη. l[2] Οὐνὴ εὐθεῖα. (date)l[3] Νίκων Κτήσωνος παρὰ Δίννους τοῦ Ποττl[4]εος τὰς οἰκίας ἐμ πόλει (... l[5-9] neighbours) ἃ ὑπέθε⟨θε⟩*vac*το Διονύσιος ὁ Κτl[10]ήσωνος Διννῦδι Ποττεος ἐπὶ Νίl[11]κωνος τοῦ ᾽Οπώριος ἐπιστάτεος l[12] *v* Ψ: Βεβαιωταὶ (...) l[14] Μάρτυρες (...).

[41] Youni 1996, 143f.

[42] See above, n. 11.

[43] See above, n. 39; cf. also below, n. 45.

guarantor. Nikon seems to have inherited that house too. It is possible that Nikon did not really intend to sell the house, rather to mortgage it; he might have taken up a loan on that house to repay later the debts to Dinnys that were backed by the four houses, which he inherited from his brother Dionysios (672, 9-10). The use of four houses as security on a loan of 1,000 drachmae fits squarely with 232 drachmae secured by one house. The purchase prices could have been higher. On the other hand, we do not know the individual values of the houses.

5) The last text, *SEG* XXXVIII 671[44] from Stolos(?), 350/49 B.C. also follows an Olynthian form. It is interesting because of the peculiar term *ounē katochos* (l. 2) (roughly, "a 'bound' purchase"), which will be explained shortly. The slab was found in a vineyard. It was reused for the present inscription after the earlier one had been carefully erased. One year after Nikon's transaction (above, section 4) Glaukias sold farmland, vineyards and townhouses for 300 drachmae to Apollodoros, again without a guarantor. This last detail is in no way peculiar because the text mentions that Glaukias had inherited the entire fortune from his father Straton (l. 7-8).[45] Nevertheless, three peculiarities remain: 1) the price of 300 drachmae seems very low for the considerable amount of real estate. In the documents discussed in the previous section, just four houses were used as security on a loan of 1,000 drachmae, and one house presumably for 232 drachmae. The value of Glaukon's properties seems to have far exceeded the 300 drachmae established as a purchase price.[46] 2) In contrast to all other entries and documents, the specific location of the properties in relation to the neighboring estates is not given. 3) Finally, only this inscription bears the heading *ounē katochos*. This term may tell us something about the background of the sale document and the kind of transaction with which we are dealing.

6) Until now, Hatzopoulos' explanation of the term *katochos* in his *editio princeps* has gone uncontested.[47] In contrast to *ounē eutheia* (achat direct), which was in his opinion a purchase that immediately resulted in acquisition of ownership, *ounē katochos* (achat ferme) was a definitive purchase without the possibility of repurchase. Either term, in his opinion, indicates a real sale, not involving security. From a legal point of view this distinction is unsustainable. If we follow Hatzopoulos' (unproven) presumptions, the immediate and the definitive purchase are one and the same thing.

We must therefore look more closely at these two antithetical terms. The adjective εὐθύς, poetically ἰθύς, does not appear elsewhere in sale transactions. In

---

[44] *SEG* XXXVIII 671: Θεός. Τύχη ἀγαθή. Οὐνὴ l[2] κάτοχος. (date) l[4] Ἀπολλόδωρος Πόριος παρὰ l[5] Γλαυκία τοῦ Στράτωνος γέηι, l[6] ἀμπέλους, οἰκίας τὰ ἐν l[7] πόλει, πάντα ἃ ἔλαβε παρὰ Σ[τρά]τωl[8]νος τοῦ Ἱππίω 888. Μάρτυρες l[9-11] (...). On this inscription, see also Thür 2008.

[45] See above, n. 39 and 43.

[46] Hatzopoulos (1988, 26) is likewise suspicious of the low price, but in my opinion, uncertainty about the size of the properties is not a sufficient explanation.

[47] Hatzopoulos 1988, 64.

Athens a *euthydikia* is a 'straight' lawsuit, one without objection by *diamartyria* or *paragraphē*.[48] In Homer, I would argue, to utter a 'straight' or the 'straightest' *dike* means proposing a judgment, which nobody in the circle would contradict.[49] A 'straight' buy, once we have sufficiently accounted for the antithesis, could be considered a "smooth" transaction, i.e. one that does not face objection from any third party.

We have better evidence for the *ounē katochos*, a purchase that is 'bound' by something (to translate the term *katochos* in a neutral way). Hatzopoulos' use of magic binding in sacral texts and curse tablets for explanation is unhelpful.[50] In connection with transfer of real estate, I found the term *katochimos*, related to *katochos*, in three significant sources: a court speech from Athens (a), an inscription of Mylasa (b), and in some Graeco-Egyptian papyri (c) – a potential problem for scholars, who deny the 'unity' of Greek law, especially when explaining the enigmatic *ounē katochos* in an inscription from central Chalcidice.

a) In Isai. 2, 28[51] we find the term in the Attic form κατοκώχιμος.[52] In his lifetime Menekles, whose succession was in dispute, was guardian of a ward. When the boy came of age, Menekles had to return the fortune to him, but was out of ready money. Menekles therefore had to sell off land. His brother, who (most likely) had a security on the property,[53] objected (ἠμφισβήτει) and barred the transaction. As a result, Menekles had to exclude (ὑπολείπεσθαι) the share claimed by his brother from being sold, thus suffering a great financial loss.

Menekles' brother had tried to establish the property as *katochimon* so that the former ward could seize it. But Menekles managed to sell his share and – in vain – charged his brother for the loss. Since the property had been mortgaged before, perhaps to the brother and also to the ward,[54] κατοκώχιμον γένηται cannot mean, "in

---

[48] See Corbetto Ghiggia 2003, 426.

[49] Here I need not reopen the discussion about Hom. Il. 18, 508 and 23, 580 (see Thür 2007, 186).

[50] Hatzopoulos 1988, 64 n. 3; [for a similar *katochos* in Dionys. Hal. *Isocr.* 9 see Thür 2008, 467 n. 13].

[51] Isai. 2, 28f.: ... διεκώλυε τὸ χωρίον πραθῆναι, ἵνα κατοκώχιμον γένηται καὶ ἀναγκασθῇ τῷ ὀρφανῷ ἀποστῆναι. ἠμφισβήτει οὖν αὐτῷ μέρους τινὸς τοῦ χωρίου ... καὶ ἀπηγόρευε τοῖς ὠνουμένοις μὴ ὠνεῖσθαι. (29) κἀκεῖνος ... ἠναγκάζετο ὑπολείπεσθαι οὗ ἠμφισβήτησεν οὗτος.

[52] The best manuscripts have the Hellenistic form *katochimon*. Following Hesychius (κατοκώχιμον· κατόχιμον, ἐνέχυρον), editors emend to the Attic form, see Wyse 1904, 259. For the etymology, see H. Frisk, Etym. Wörterbuch 1973, s.v. ἔχω (I 603) and ὀκωχή (II 375).

[53] Alternatively, the brother could have been co-owner; see Wyse 1904, 259; Avromović 1997, 70 n. 32

[54] The speaker is not clear on this point, see Wyse 1904, 258f.; Avramović 1997, 69-71. On *apotimēma* (which we would expect here, although it is not mentioned at all), see Wolff 1954. The crucial argument rests on ἀποστῆναι. In my opinion, Menekles would have to "shrink" from the land, because it was pledged to the ward. The land substituted the debt

order that it might be held as a pledge."[55] The brother, as pledgee, was able to prevent the owner Menekles from selling the land for a good price and easily paying down his debt to either creditor, i.e. to the ward or to the brother. After the brother's protest (ἀμφισβητεῖν) the buyer got ownership of the property no longer encumbered to the ward, but still encumbered to the brother. Therefore *kato(kō)chimos* must mean a property that is partially "bound, blocked up by protest, under litigation."

In a similar case, in Dem. 53, 10, the creditor Arethousios had successfully prevented the debtor, who was his brother, from further encumbering a property that the brother had pledged to him.[56] Nevertheless the land did not become *katochimos* because the brother, without security, got the money he needed through a loan by a third person.

b) Numerous inscriptions documenting the sale and lease of land are known to us from Mylasa (*IK* 34/35).[57] In an honorary decree for Iatrokles (no. 109; 76 B.C.) we find the words (restored with a high degree of plausibility) that we have just seen in Isai. 2, 28 "properties, which became *katochima*."[58] The same Iatrokles appears as the vendor of some properties in a dossier of sale and lease inscriptions (no. 202-204).[59] It is very probable that there is a connection between the properties mentioned in the honorary decree and the circumstances of Iatrokles' land transaction. Iatrokles was honored (in addition to other benefactions) for having imparted properties, which became *katochima*, to the phyle of the Otōkondeis. He had sold several properties to the phyle, which leased them outright to a third person. What happened in the course of the transactions is recorded in the *embateusis* document (204, 9-10), transferring possession in accordance with a sale

(see below, section III). When his land would have become κατοκώχιμον (blocked up by his brother's protest), Menekles had to sell it as it was (encumbered to his brother), in order to satisfy the former ward. For this reason, he was in danger of fetching a price that did not cover the former ward's debt. After foreclosure Menekles would have lost all his rights on the land, and his opponent, the former ward instigated by Menekles' brother, would have made the full profit. In course of the sale transaction, if the brother would have accepted the money that Menekles owed to him, Menekles could have sold the property free of any encumbrance, to his full profit.

55 Thus translated in Loeb (Forster); it seems to be influenced by Hesychius (see above, n. 52). More precise is Aelius Moeris, quoted by Wyse 1904, 259, in his *Lexicon Atticum* (2nd-3rd cent. B.C.; ed. Hajdu 1998): κατοκώχιμα· τὰ κατεσχημένα ἐνέχυρα, Ἀττικοί – κατόχιμα Ἕλληνες. The meaning here is that the properties are already encumbered and only become *katochima* (blocked up, bound) through subsequent activity.

56 On this case, see Harris 1988, 353.

57 Blümel 1987.

58 *IK* 34, 109, 8: ... ἀναδιδούς τε τὰ γεινόμενα κατόχ[ιμα] ... The last word has been restored by W. Froehner, *Inscr. Louvre* 1865, followed by L. Robert, *Op. Min.* III 1969, 1491; Blümel 1987, 35.

59 On the form of the so-called 'lease inscriptions,' see Behrend 1973, 157f.; Blümel 1987, 74-76.

contract (*parachōrēsis*) that was enacted, but not preserved.[60] Then an obstruction occurred: Melanthias came forth to claim (διαμφισβητεῖν) that a portion of the land to be sold to the phyle belonged to him, or was pledged to him (technically it makes no difference). He filed a lawsuit against Iatrokles that had yet to be decided (κριθῇ, l. 11).

Iatrokles did not desist from selling the land, but he inserted a clause into the contract excluding (*hypoleipesthai*) the share under dispute. From a juristic perspective, Iatrokles implemented a maneuver that was technically perfect for overcoming the obstacle of a third person claiming a right on the land, an act that could have prevented the sale. After he had won the case Iatrokles generously passed the recovered share to the buying phyle, most likely without additional charge, and was honored. In the honorary decree, the properties "blocked up by protest" were concisely labeled *katochima*.

This case has obvious connections with the Isaeus text: real estate about to be sold falls under dispute (*di-amphisbētein*); a share of it is blocked up (*katochimon*) because of a protest; that share is then excluded (*hypoleipesthai*) from being sold.

c) Further parallels to *katochima* can be found in contemporary Greek papyri from Egypt. Preisigke has already listed numerous texts to be translated as "blocked up" ("was in Verfangenschaft ist, gesperrt").[61] A private lawsuit[62] or public debts constituted reasons for "blocking up" land;[63] in Roman times a *katochē* entry in the *bibliothēkē enktēseōn* secured the rights of third persons.[64]

7) Let us now return to the *katochos* inscription from the Chalcidice (*SEG* XXXVII 671) for a brief description of events. Glaukias had inherited several properties from his father. He "sold" them *en bloc* at a cheap price to Apollodoros without specifying their locations, a circumstance that already hints more at a temporary measure than at real sale.

The purchase was registered as *katochos*. It appears that some of the lots became *katochima*, which means that a secured creditor had protested and might have filed a lawsuit. But the creditor could not prevent the sale outright, only block up the share of his claim. If the creditor had won, the price would have gone down; otherwise, it would have risen. The buyer, Apollodoros, had agreed to the price in spite of the protest and had taken the risk of receiving a smaller portion of the land, which means that the transaction was for security and was not a real sale. In a real

[60] *IK* 34, 204, 9-12: ... εἰς ἃ καὶ παρακεχώρηκεν αὐτοῖς l[10] [ο]ὐθὲν ὑπολειπόμενος ἑαυτῷ ἐν τοῖς τόποις τούτοις πλὴν τῶν διαμφισβητουμένων l[11] [π]ρὸς Μελάνθιον Πόλλιος· ἐὰν δὲ κριθῇ καὶ τὰ διαμφισβητούμενα κατὰ Ἰατροκλῆν, ἔσονται l[12] [κ]αὶ εἰς ταῦτα ἐμβεβατευμένοι κυρίως κατὰ τήνδε τὴν ἔμβασιν·

[61] F. Preisigke, Fachwörter 1915 and Wörterbuch 1925ff. s.v.

[62] PFrankf. 7, verso l. 8-9 (Faijum, after 218/17 B.C.); see the editor, H. Lewald, p. 46; cf. recto, col. I 15-18.

[63] PTebt. I 60, 102-03 (118 B.C.) is a typical example; cf. nos. 61b 253; 64b 6; 71, 65; 72, 226 of the volume and p. 555f.

[64] Wolff 1978, 226 and 236; see e.g. MChr. 314 (Oxyrhynchos, 97 B.C.).

sale, the price would have been fixed after the trial was over. However, as creditor, Apollodoros could have easily calculated whether the share of the properties not under dispute would cover the loan given under security. Thus Glaukias got his loan forthwith and Apollodoros was secured in spite of a pending lawsuit.

All of these subtleties are concisely articulated through the terms *ounē katochos*, "a buy blocked up," that means a buy of a *chōrion katochimon*, of "a property 'blocked up' by protest." Conversely, in Olynthus and her surroundings, a sale transaction that was not protested by a third person was registered as *eutheia*, i.e. as a "smooth" purchase.[65] Finally, the antithetical terms themselves have nothing to do with 'real' sale versus *prasis epi lysei*. Every case depended on the specific circumstances: the transaction between Glaukias and Apollodoros seems to have been for security, whereas those of Menekles (Isai. 2, 28) and Iatrokles (*IK* 34, 109) were real sales.

III. This study began with the simple question of whether the numerous sale inscriptions from Northern Greece originate from sale or mortgage contracts. For texts dealing with plain sale, an answer can be given only by conjecture. One inscription, the Glaukias case, *SEG* XXXVII 671, attracted special attention because of the peculiar heading *ounē katochos*. This term led us to texts dealing with alienation or multiple charges of encumbered real properties. In Greece, procedural remedies for protecting or enforcing ownership are the same as they are for securities.[66] Thus, our observations on attempts to "block up" portions of properties from being sold or encumbered may explain how, in practice, multiple charges worked in a system based on substitutive real security. Of course, substitutive security often brings about inequities: usually the simple exchange of property for debt places one of the parties (primarily the debtor) at a disadvantage. All over the Greek world, the developing economy aimed to avoid this phenomenon by taking individual measures from case to case. First, in the maritime loan mentioned above in section I (Dem. 35, 10-13) the creditors formulated express provisions so that they might – without pressure by any statute – sell the encumbered goods with the possibility of further action for the *elleima* (i.e. if the sale price did not cover the amount of money owed).[67] As Finley has correctly noted, and there is some evidence

[65] In 349 B.C. Philipp II conquered the eastern Chalcidice. An increase in sale or credit transactions before that date probably reflects these events (see Faraguna 2000, 197s.); frequent unsettled protests might have brought about the differentiation between "smooth" buys and "blocked up" ones in the headings of the register entries too.

[66] Correctly observed by Finley 1953, 484 (1968, 548) for Athens; indirectly admitted also by Harris 1988, 376; see above, section I. [My argument is protection, not 'definition' of ownership.]

[67] Finley 1953, 486f. (1968, 552) and n. 34. I am doubtful of Finley's opinion on *apotimēma*, but cannot go into details here. Outside Athens, *on special occasions*, there is also *hyperochē* regulated (Finley 1953, 489 n. 9, [a few additions in Harris' response]) or stipulated (Thür 1987, 237f. n. 32: *pleonasma* in a security deed for a maritime loan,

to generalize his observation, the Athenians stayed with their basic principle of substitutive security,[68] which was only occasionally mitigated by agreements of the parties.[69]

I disagree with Finley's contention, however, that parties aimed for collateral security. Finley incorrectly believed that support could be found for his argument in the *poletai* record on the confiscated house.[70] The text does in fact document multiple charges on one and the same property, but the collateral effect was achieved by confiscation and public sale by auction, as Finley himself cautiously admitted.[71] Yet nowhere in the realm of Greek private security management do we find an attestation for compulsory sale, which would be necessary for substantiating the idea of collateral security.[72] Therefore, in my opinion, consent of the parties must be understood in a different way than Finley has posited: not only did the debtor (i.e. the owner remaining in possession) and the subsequent creditor have to agree, but so did the prior creditor (or creditors). Otherwise they could protest (ἀμφισβητεῖν) and "block up" the deal,[73] so that the debtor had to exclude (ὑπολείπεσθαι) from encumbrance the amount owed to the prior creditor. As a result, a rank among multiple creditors automatically came into existence.[74] Prior rights to property might have been created amicably with the clause "by however much more it is worth" (ὅσῳ πλείονος ἄξιον).[75]

The character of substitutive security becomes apparent when a debtor, who had charged his property to several creditors, went into default. Law ruled no compulsory sale by auction. According to the cash sale principle, every creditor had a [separate!] claim of ownership to recover his goods. He could "eject" the present possessor, but by the same turn it could happen to him.[76] In reality, bargaining would

---

PVindob. G. 40.822, Alexandria, 2nd cent. A.D). Prior to this maritime loan, *elleima* and *hyperochē* / *pleonasma* (the sale of the encumbered goods taken for granted) are nowhere mentioned in the same document. Only in Roman times did *hypothēkē* really become collateral.

68 Finley 1953, 490 (1968, 557).

69 Finley 1953, 484 (1968, 548f.).

70 See above, n. 18.

71 Finley 1953, 480f. (1968, 544).

72 Finley 1953, 487 (1968, 552).

73 For preventing encumbrance, see Dem. 53, 10 (above, n. 56); for partially preventing alienation, see Isai. 2, 28; *IK* 34, 204, 9-10 (see above, sections II a and b).

74 Finley 1953, 482 (1968, 546) observed that in the *poletai* record there is no hint of a rank among the last three creditors. The official character of the auction and the policy to fix the lowest bid could explain this phenomenon. I do not see any parallel with the private enforcement of securities. Also Dem. 37 is not a case of legal enforcement, but rather of bargaining, *pace* Harris 1988, 376.

75 Finley 1953, 482f. (1988, 547) is warning to generalize this kind of agreement. It is pure conjecture to combine it with an agreement to sell encumbered goods after foreclosure.

76 For the risks of the procedure of *dikē exoulēs*, see Thür 2003, [disregarded in Harris' response].

have commenced: who was ready and able to pay the claims of the other creditors taking into account the value of the property that he would recover? A creditor, who achieved a higher rank through protest, had first choice. He could demand to be paid in full by the subsequent creditors or he could pay off their claims and recover the land. A creditor of inferior rank would abandon his rights to the property when its worth was less than the claims of all the colleagues whom he had to satisfy. So the effects of collateral security were achieved by means of the age-old principle of substitution. Admittedly, there is no direct evidence for my conclusion. But when ownership and security as parallel institutions are viewed alongside the concept of "blocking up" that has just been brought to light, a degree of probability is at least achieved.

What happened when a debtor had secretly encumbered his property to several creditors? This very scenario seems to have happened in the Pantainetos case (Dem. 37), where the debtor was in fact allowed to do so at no disadvantage. In the Greek world (and here we can generalize), there were one or more guarantors involved in nearly every sale – this may have been one reason to formulate also encumbrances as sales. The guarantor, a propertied person who knew the circumstances of the land to be bound, acted as an additional security when unforeseen creditors surfaced.[77] In the system of substitutive security, multiple charges on property could only have worked with this aspect of personal security in the background.[78]

BIBLIOGRAPHY

Avramović, S. 1997, *Iseo e il diritto attico*, Napoli.

Behrend, D. 1973, 'Rechtshistorische Betrachtungen zu den Pachtdokumenten aus Mylasa und Olymos,' *Akten des VI. Internationalen Kongresses für Griechische und Lateinische Epigraphik München 1972* (Vestigia 17), München, 145-68.

Blümel, W. 1987, *Die Inschriften von Mylasa* I (*IK* 34), Bonn.

Cohen, E.E. 2006, 'Consensual Contracts at Athens,' H.-A. Rupprecht (ed.), *Symposion 2003*, Wien, 73-84.

Cobetto Ghiggia, P. 2003, 'Fonti tarde sull'*eythydikia*,' G. Thür / F.J. Fernández Nieto (eds.), *Symposion 1999*, Köln, 413-30.

Faraguna, M. 1997, 'Registrazioni catastali nel mondo greco: il caso di Atene,' *Athenaeum* 85, 7-33.

Faraguna, M. 2000, 'A proposito degli archivi nel mondo greco: terra e registrazioni fondiarie,' *Chiron* 30, 65-115.

Finley, M.I. 1951 (²1985), *Studies in Land and Credit in Ancient Athens, 500-200 B.C. The Horos-Inscriptions*, New Brunswick.

[77] For the role of Mnesikles in the Pantainetos case, see Harris 1988, 373f.

[78] I thank Jessica L. Miner for checking my English.

Finley, M.I. 1953 (1968), 'Multiple Charges on Real Property in Athenian Law,' *Studi in onore di Vicenzo Arangio-Ruiz* III, Napoli, 473-91 (German translation: E. Berneker, ed., *Zur griechischen Rechtsgeschichte*, Darmstadt, 534-58).

Harris, E.M. 1988, 'When is a Sale not a Sale? Athenian Terminology for Real Security Revisited,' *CQ* 38, 351-81.

Hatzopoulos, M.B. 1988, *Actes de vente de la Chalcidique centrale*, Athènes.

Hatzopoulos, M.B. 1991, *Actes de vente d'Amphipolis*, Athènes.

Hennig, D. 1987, 'Kaufverträge über Häuser und Ländereien aus der Chalkidike und Amphipolis,' *Chiron* 17, 143-69.

Jakab, E. 2005, 'Sale with Earnest Money in the Papyri,' R.W. Wallace / M. Gagarin (eds.), *Symposion 2001*, Wien, 199-218.

Kränzlein, A. 1963, *Eigentum und Besitz im griechischen Recht*, Berlin.

Nevett, L. 2000, 'A Real Estate 'Market' in Classical Greece? The Example of Town Housing,' *Ann. Brit. School. Ath.* 95, 329-43.

Pestman, P.W. 1985, 'Ventes provisoires de biens pour sûreté de dettes: "onai en pistei" à Pathyris et à Krokodilopolis,' P.W. Pestman (ed.), *Textes et études de papyrologie grecque, démotique et copte* (Pap. Lugd. Bat. XXIII) Leiden, 45-49.

Pringsheim, F. 1950, *The Greek Law of Sale*, Weimar.

Robinson, D.M. 1930, *Excavations at Olynthus* II, Baltimore.

Thür, G. 1982, 'Kannte das altgriechische Recht die Eigentumsdiadikasie?' J. Modrzejewski / D. Liebs (eds.), *Symposion 1977*, Köln, 55-69.

Thür, G. 1987, 'Hypotheken-Urkunde eines Seedarlehens für eine Reise nach Muziris und Apographe für die Tetarte in Alexandreia (zu P. Vindob. G. 40.822),' *Tyche* 2, 229-45.

Thür, G. 2003, 'Sachverfolgung und Diebstahl in den griechischen Poleis,' G. Thür / F.J. Fernández Nieto (eds.), *Symposion 1999*, Köln, 57-96.

Thür, G. 2006 [2008], 'Die Einheit des „Griechischen Rechts". Gedanken zum Prozessrecht in den griechischen Poleis,' *Dike* 9, 23-62.

Thür, G. 2008, '*Ounē katochos* und (*ta*) *katochima* (SEG 38, 671, 2, Stolos?; IK 34, 109, 8, Mylasa),' P. Mauritsch, W. Petermandl, R. Rollinger, Ch. Ulf (eds.), *Antike Lebenswelten: Konstanz – Wandel – Wirkungsmacht. Festschrift für Ingomar Weiler zum 70. Geburtstag*, Wiesbaden, 465-74.

Wolff, H.J. 1953, Review Fine 1951 and Finley 1951, *ZSStRom* 70, 411-25.

Wolff, H.J. 1954, 'Das attische Apotimema,' W. Kunkel / H.J. Wolff (eds.), *Festschrift für Ernst Rabel* II, Tübingen, 293-333.

Wolff, H.J. 1957, 'Die Grundlagen des griechischen Vertragsrechts,' *ZSStRom* 74, 26-72.

Wolff, H.J. 1978, Das Recht der griechischen Papyri Ägyptens in der Zeit der Ptolemäer und des Prinzipats II, München.

Wyse, W. 1904, *The Speeches of Isaeus*, Cambridge.

Youni, M.S. 1996, 'A propos de quatre inscriptions olynthiennes. Quelques remarques sur la 'sûreté réelle' au 4ème s. av. J.-C.,' *Tekmeria* 2, 135-51.