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COMMENTS ON ANDREA JÖRDENS "NOCHMALS ZUR BIBLIOTHEKE ENKTESEON"

In memoriam
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The *bibliothêkê enktêseôn*, an archive recording the acquisition of property rights on landed property, was one of the outstanding accomplishments of the Roman administration in Egypt in the sphere of private law.[1] Anyone who buys a house, a piece of land, or gives a loan secured by a lien on land faces the same dilemma: what if the vendor/borrower does not tell the truth? What if the land is not his? What if he already sold it, or gave it as a security to a third person who will later turn up and contest our right?[2] Our worries would naturally be eased if we could retrieve, cheaply and expeditiously, information on the existence of such conflicting rights. In Roman Egypt, this purpose was served by the *bibliothêkê enktêseôn*.

If you wished to sell real property, you would frequently (regularly until around 150 CE)[3] turn to a public scribe (i.e. a one located at a *grapheion* or *agoranomeion*) for the composition of the document. But the scribe would document the sale in writing only if he knew that no conflicting rights stood in the way. This type of

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1 F. Burkhalter, "Archives locales et archives centrales en Égypte romaine", *Chiron* 20 (1990) 191-216 at 199-202, 209-211; W.E.H. Cockle, "State Archives in Greco-Roman Egypt from 30 BC to the Reign of Septimius Severus", *JEA* 69 (1983) 113-115; F. Lerouxel, "Les Femmes sur le Marché du Crédit en Égypte Romaine (30 Avant J.-C.-284 Après J.-C.)", *CCRH* 37 (2006) 47-63; id., "Le rôle de la bibliothèque des acquêts (*bibliothêkê enktêseôn*) dans la diminution des coûts de transaction sur le marché du crédit en Égypte romaine", *Transaction Costs in the Ancient World* (Center for Hellenic Studies, Washington DC, 27.-29.7.2009, forthcoming); K. Maresch, "Die Bibliotheke Enkteseon im römischen Ägypten. Überlegungen zur Funktion zentraler Besitzarchive", *ArchPF* 48 (2002) 233-246; H.J. Wolff, *Das Recht der griechischen Papyri Ägyptens in der Zeit der Ptolemäer und des Prinzipats. 2. Band. Organisation und Kontrolle des privaten Rechtsverkehrs* (Munich 1978) 222-255; F. v. Woeß, *Untersuchungen über das Urkundenwesen und den Publizitätsschutz im römischen Ägypten* (Munich 1924) esp. 98-124, 175-224.

2 The same challenge is less successfully encountered in Rome itself: cf. M. Kaser, *Das römische Privatrecht: Erster Abschnitt: Das altrömische, das vorklassische und klassische Recht* (HAW 3.3.1) (Munich 1971) 458, and *Zweiter Abschnitt: Die nachklassischen Entwicklungen* (HAW 3.3.2) (Munich 1975) 313.

3 Cf. p. 297.

information was stored in the *bibliothêkê enktêseôn* and the *bibliophylakes* had to confirm in writing, by means of an *epistalma*, that no conflicting rights were recorded in the vendor's *diastrôma*, a list of landed property in the vendor's possession and its proprietary status.[4] Only after the *bibliophylakes* confirmed that no conflicting rights were present, could the scribe draw up the sale contract. Naturally, the *bibliophylakes* could provide a reliable picture only if their files were kept up-to-date. This goal could only be attained if every purchaser, every new owner, reported (*apographestai*) to the *bibliophylakes* his newly acquired title after the purchase.[5] In terms of the paperwork, only then, after the *apographê*, was the sale really complete.

The mechanism described above could only function effectively if everyone did his job, i.e. if the scribes did not draw up the document before an *epistalma* was issued, if land owners always reported to the *bibliophylakes* by means of an *apographê* their newly acquired titles, and finally if the *bibliophylakes* kept a careful record of these rights. And indeed, the Roman state seems to have made a sincere and continuous effort (at least in the first 100 years of the existence of the *bibliothêkê*, ca. 50-150 CE) to keep the system in good working order. Public scribes who issued a land sale document without an *epistalma* were subject to a heavy fine of 50 drachms.[6] The state also did not do with just regular *apographai*. Every once in a while it initiated a general survey, ordering everyone to file reports of all rights, liens and encumbrances held on landed property. One such a survey was set in motion by the edict of M. Mettius Rufus, but it was not the only one.[7]

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[4] On the *epistalma*, cf. infra n. 6. The *epistalma* is issued by the *bibliophylakes* upon an appeal (frequently labeled by scholars *prosangeleia*) served them by the prospective vendor. Cf. v. Woeß (supra n. 1) 178-179; Wolff (supra n. 1) 248-249. Cf., e.g., *Stud.Pal.* XXII 85.8-23 (128 CE—Alabanthis): ὃ ἀπ[εγρά]ψα[μη]ν [δι' ὑμῶν τῇ] ἐ[νε]στώση ἡ[μ]έρᾳ | τρίτον μέρος κοινὸν καὶ | ἀδι[αίρε]τον καὶ περιτετει[χ]ισ|μέν[ον] ἐμβαδοῦ βείκω[ν] | τεσσ[άρων] ἐν τῇ προκιμ|ένῃ [κώμῃ Ἀλ]αβαν[θ]ίδι | βούλομ[αι ἐξό]ικονομῆσαι | Διδύμῳ Ὡ[ρί]ωνος τοῦ Χαιρήμονο[ς Σ]ωστρατείῳ τῷ | καὶ Ἀλθαιεῖ [ἀπο]γεγραμμένο(ν) | δι' ὑμῶν καθ[αρὸ]ν ἀπὸ ὀφειλῆς | ὑποθήκης [παν]τὸς δ[ιεγγ]υήματος τιμῆ[ς ἀργυρίου δραχ]μῶ[ν] | διακωσίον. δι[ὸ ἐπιδ]ίδωμι ὅπως [ἐ]πισταλῇ ὡς [καθή]κει. The *epistalmata* themselves are rarely preserved: cf. Wolff (supra n. 1) 248 n. 118. On the *diastrôma* cf., in particular, *P.Oxy.* II 237.8.28-31,38-43, and Wolff's discussion of *P.Oxy.* II 274 = *FIRA* III 104 = *Jur.Pap.* 60 = *MChr* 193 (97 CE—Oxyrhynchos) (supra. n. 291, p. 234-245). Other well preserved documents are: *P.Gen.* II 100 (II CE—Soknopaiou Nêsos); *P.Heid.* VII 397 (158 CE—Hermopolis); *PSI* V 450.48-68 (II CE—Oxyrhynchos). Of special interest is *P.Wash.Univ.* I 2 (II CE—Oxyrhynchos) reporting the substitution of an old *diastrôma* by a new one.

[5] Wolff (supra n. 1) 227 n. 23.

[6] *BGU* V 1210.227-228 (II CE—Alexandria) art. 101: [ἐάν τινες] χρηματι[μ]οῦ ὑποθηκῶν ἢ ὠνῶ[ν] συνάλλ[αγμα|γράψων|τ]αι χωρ[ὶς ἐ]πιστάλματος, κατακρίνονται (δραχμὰς) ν. Cf. also *P.Oxy.* II 237.8.36-38 and Wolff (supra n. 1) 247.

[7] Wolff (supra n. 1) 230-232 and n. 36.

No one could deny, I reckon, that the existence of the *bibliothêkê enktêseôn* made land-related transactions safer and more transparent than before.[8] The question is, however, if this was the cause for the creation of the archive in the mid first century CE. Andrea Jördens' paper was called forth by another paper, authored by Klaus Maresch in 2003, in which a different explanation was proposed. In the first century, the Roman administration introduced into Egypt the liturgical system: official duties (e.g., the collection of taxes) were assigned to private persons, who became accountable with their own personal assets for the successful execution of their assigned tasks. The new system could only function if the assignee had enough assets to make up for any possible deficit in the revenues he managed to collect. The *bibliothêkê enktêseôn*, created around the same period, was meant to provide the state with updated information on those whose property was large enough for the assumption of the different liturgies. The *bibliothêkê enktêseôn* was created, in other words, in order to serve the state in spheres of activity in which it was particularly interested: taxation and self preservation.[9]

Jördens does not rule out that the above consideration did play some part in the creation of the archive. She discusses in her paper cases in which information stored in the archive assisted the Roman administration in keeping the liturgical system well-functioning.[10] But she credits the assertion made by Mettius Rufus (*P.Oxy.* II 237.8.27-43 = *MChr* 192 = *Sel.Pap.* II 219 = *FIRA* I 60 [1 or 31.10.89 CE]), the governor whose edict is by far the most important source on the motivations for the creation and maintenance of the archive: property rights and liens (he refers in particular to encumbrances laid by women and children on the property of the husbands and fathers) have to be recorded in the archive, he asserts: ἵνα οἱ συναλλάσοντες μὴ κατ᾽ἄγνοιαν ἐνεδρεύονται (read ἐνεδρεύωνται), *in order that persons entering into agreements may not be defrauded through ignorance.*[11] Some scholars tend to view with suspicion the attribution of altruistic motivations to the Roman administration of Egypt, or, for that matter, to any antique state,[12] but Jördens seems, and I fully concur, to oppose such skepticism. To limit 'state-interest' to taxation and self-preservation would be to oversimplify what is,

[8] Cf. Wolff (supra n. 1) 254. F. Lerouxel has shown (supra n. 1) how the creation of the new archive provided prospective creditors with reliable information on the solvency of their intended debtors and the clean title of the objects they were to admit as security. Lerouxel's discussion focuses on the positive impact that the new archive had on the position of women, who would in general face difficulties in receiving loans without mortgage (supra n. 1, 'femmes') 58-59, and on that of prospective debtors who have already mortgaged some of their assets to the state for a public services (e.g. liturgies) undertaken by them. Cf. *ibid.* 'diminution des coûts'.

[9] K. Maresch (supra n. 1) 242, 245.

[10] Jördens, p. 283.

[11] *P.Oxy.* II 237.8.36. Cf., Lerouxel, (supra n. 1, 'femmes') 58; Wolff (supra n. 1) 248-249.

[12] Cf. Maresch (supra n. 1) 245, following Rostowzew, *Studien zur Geschichte des römischen Kolonates* (Leipzig-Berlin 1910) 118 n. 3 discussed by Jördens in p. 283.

essentially, a much more complex picture: Jördens recalls, for example, that Roman officials were preoccupied throughout their term in office with the administration of justice. Increasing the certainty of the law—an object aimed at if not achieved by means of the new institution—would reduce the number of disputes, the cases they had to judge and their workload in general.[13]

But I seek no justification for the *bibliothêkê enktêseôn* solely in the direct interests of the state. To my mind, the rulers of Egypt, Ptolemaic and Roman alike, were keenly interested in furthering economic stability, if not growth, and legal certainty; and created from the very beginning a variety of institutions whose purpose was to allow the state to pursue these goals. The establishment and regulation of different apparatus of professional scribes, the courts of laws, procedures governing how, and what types of documents could be brought before these courts, as well as the contents of these documents, archives recording legal documents and foreclosure procedures—these are just some of the spheres of state activity that come to mind.[14] I argue that the same interest played a key role in the creation of the *bibliothêkê enktêseôn*. As I believe that Jördens shares this view, I wish to add a few arguments that may reinforce it, offering first an alternative (yet admittedly not necessarily conflicting) explanation to what seems a fundamental

[13] Jördens, here, 288-289, 291.

[14] The most important regulatory Greek texts of the Ptolemaic period are *BGU* XIV 2367 (late III BCE—Alexandria (?)); *P.Gur.* 2 = *P.Petr.* III 21 g = *Sel.Pap.* II 256 (226 BCE—Crocodilopolis, Arsinoitês) 40-45; *P.Hamb.* II 168 (mid III BCE (?)—Unknown Provenance); *P.Ryl.* IV 572 (II BCE—Arsinoitês); *P.Par.* 65 = *UPZ* I p. 596 = *Sel.Pap.* II 415 (145 BCE—Memphis); *P.Tebt.* I 5.207-220 = *MChr* 1 (after 28.4.118 BCE—Kerkeosiris (?)). For a recent discussion of some of these measures cf. D. Kaltsas, *P.Heid.* VIII, pp. 34-35, 54-57, 91-92, 170-171, 185, 204-208 and U. Yiftach-Firanko, "Law in Greco-Roman Egypt: Hellenization, Fusion, Romanization", in R.S. Bagnall (ed.), *Oxford Handbook of Papyrology* (Oxford 2009) 541-560 at 543-550. In some cases we do not possess the regulation but drastic changes in patterns within the documents themselves may allow us to assume its existence. I aimed at showing this in the case of the double document: U. Yiftach-Firanko, "Who Killed the Double Document", *ArchPF* 54/2 (2008) 203-218. In the Roman period we refer, in particular, to lines 18-24 of the edict of Ti. Julius Alexander [*I.Hibis* 4 = *I.Prose* 57 = *OGIS* II 669 = *IGRR* I 1263 = *SB* V 8444 = *FIRA* III 58, 18 ff., 6.7.68 CE], the edict of M. Mettius Rufus and its follow-up by Ser. Sulpicius Similis relating to the *bibliothêkê enktêseôn* (*P.Oxy.* II 237.8.21-27 and *P.Mert.* III 101, 89 CE), some paragraphs of the *gnomôn* of the *idios logos* (in particular art. 7, 100, 101), as well as *P.Oxy.* I 34 = *MChr* 188 (127 CE—Alexandria). Cf. an overview by Th. Kruse, "Archives and Registration in Roman Egypt", in J.G. Keenan, J.G. Manning, U. Yiftach-Firanko (eds.), *Law and society in Egypt from Alexander to the Arab Conquest (330 BC-640 AD)* (forthcoming). In this period too we frequently infer reforms from abrupt changes in documentary practices: this is the case with the appearance of the *hypographeus* in *grapheion* documents from the Arsinoitês around 14 CE, the closure of the village *grapheia* in the same nome in the late second century CE, and the contemporaneous removal of land sale contracts from the *agoranomeia* to private scribes in the Oxyrhynchitês. Cf. Yiftach-Firanko (infra n. 29) 335-339.

element in Maresch's thesis, namely the date of introduction of the archive. The *bibliothêkê enktêseôn*, we recall, came into being in the mid first century CE, approximately the period in which the liturgical system started to take root in Egypt. Yet I think that this chronological coincidence is accidental. It was rather developments within the contractual, scribal system that called forth the creation of the *bibliothêkê* in the mid first century CE.

In early Ptolemaic Alexandria, sales of real estate were acknowledged as valid only after they were reported (*katagrapsasthai*) to the board of the *tamiai*. Any other form of acquisition is declared by the law that introduced the procedure to be invalid.[15] A similar procedure is attested in the *chora* as well: parties to acts of sale attended the office of the *agoranomos* where they received a *katagraphê*, a special certificate recording the act.[16] Differently from the case of Alexandria, the law that introduced *katagraphê* into the *chora* did not come down to us. Still, among the more than 60 extant Ptolemaic land sales there is not a single document that was *not* issued by and before an *agoranomos*,[17] an overwhelming data set that elicits the conclusion that in the *chora* too immovable sales that were not recorded and registered by a state official (in the case of the *chora* the *agoranomos*) were held invalid. Through the *agoranomeia* the state was able to control land conveyances. For private persons its records could, perhaps, make extant conflicting rights evident.[18]

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[15] *P.Hal.* 1 242-259 (III BCE—Alexandria) at 255-256: τοῖς δὲ [παρὰ τοὺς νόμους ὠνου]ιμένοις μὴ κυρία ἔστω ἡ ὠνὴ μηδὲ ἡ προθεσμ[ία. Cf., primarily, M. Faraguna, "A proposito degli archivi nel mondo greco: terra e registrazioni fondiarie", *Chiron* 30 (2000) 65-115 at 75-82; F. Pringsheim, *The Greek Law of Sale* (Weimar 1950) 142-157; E. Schönbauer, *Beiträge zur Geschichte des Liegenschaftsrechtes im Altertum* (Leipzig 1924) 7-23; H.J. Wolff, "Registration of Conveyances in Ptolemaic Egypt", *Aegyptus* 28 (1948) 17-96 at 19-20; U. Yiftach-Firanko, "Katagraphê", in J.G. Keenan, J.G. Manning, U. Yiftach-Firanko (eds.) (forthcoming, supra n. 14).

[16] Cf., e.g., *P.Adler* 13 (100 BCE—Crocodilopolis, Pathyritês). Still pivotal to any discussion of the *katagraphê* is Wolff (supra n. 1) 192-193 and (supra n. 15) at 51-54. Cf. also P.W. Pestman, "Ventes provisoires de biens pour sûreté de dettes: "onai en pistei" à Pathyris et à Krokodilopolis", in P.W. Pestman (ed.), *Textes et études de papyrologie grecque, démotique et copte = Papyrologica Lugduno-Batava. XXIII* (Leiden 1985) 45-59 esp. at 56-59; Yiftach-Firanko (supra n. 15).

[17] The only exceptions among Greek contracts recording land sales are *BGU* XIV 2398 (213/2 BCE); 2399 (212/1 BCE); *SB* XIV 11375 (212/1 BCE); 11376 (239 BCE— all from Thôlthis), and *CPR* XVIII 25, 28 (both of 232 or 206 BCE Theogonis). However, these documents are not real sale contracts: they do not document the act of sale *per se*, but a consideration paid in anticipation of the future composition of a deed of sale at an *agoranomeion*. Cf. Wolff (supra n. 1) 195; Yiftach-Firanko (supra n. 15).

[18] The question of the accessibility of the *agoranomos*' files requires a further study. Cf. Pestman (supra n. 16) 57-58.

The most significant change in the *Greek* sphere[19] came after the Roman occupation. The newly reformed *grapheia* started to draw up their own land sale contracts.[20] But in order not to contravene the Ptolemaic rule confining the composition of deeds of land sale to the *agoranomoi*, the *grapheion* scribes, did so in a roundabout way. The document of sale itself (consisting of a deed of land sale and a deed of cession) was recorded in Demotic, followed by a detailed Greek *hypographê*.[21] Unlike their Ptolemaic predecessors, the Romans did not forbid the new practice. Instead, in order to maintain control of land sales they enforced the registration of these Demotic documents in Alexandria.[22] Yet this arrangement, which was presumably highly costly to the parties, could not be maintained for long.

The foundation of the *bibliothêkê enktêseôn* in the *metropoleis* later in the same century should be viewed, I suggest, in this context. It was meant to efficiently cope with the need to render the composition of sale contracts affordable, but also controllable. It allowed the *grapheia* to keep drawing up land sale contracts, but through the abovementioned subjection of the *grapheia* to the *bibliothêkê enktêseôn* (that is the fact that *grapheion* scribes needed an *epistalma* before they could draw up the sale contract) put at the parties' disposal a cheaper and more practicable means of discovering conflicting rights. A beta version of the new institution was introduced in the early 50s, a final version in 72 CE.[23] Only after the new institution

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[19] The use of the Demotic for the documentation of the sale of landed property is attested throughout the Ptolemaic period, in the case of the *Geldbezahlungsurkunde* always with the signature of a notary. Cf. S. Lippert, *Einführung in die altägyptische Rechtsgeschichte* (Berlin 2008) 149.

[20] The earliest sale document issued at an Arsinoite *grapheion* is *P.Harrauer* 32 (8 BCE—Soknopaiou Nêsos).

[21] Cf. M. Depauw, "Autograph Confirmation in Demotic Private Contracts", *CdÉ* 78 (2003) 66-111 at 89-105; Lippert (supra n. 19) 149-151, and, e.g., *P.Mich.* V 249 (18 CE—Arsinoitês); 308 (I CE—provenance within the Arsinoitês uncertain); *P.Ryl.* II 160 (28/9 CE—Tebtynis); *P.Vind.Tand.* 24 = *CPR* I 217 (45 CE—Soknopaiou Nêsos). Cf. also Greek translations of the Demotic documents, as in the case of *CPR* XV 2 (21/11/11), with further copies of the same document in *CPR* XV 3, 4; *P.Lond.* II 262; *SB* I 5231, 5275. Comp. also *CPR* XV 1 = *SB* I 5246 (3 BCE); *SB* I 5247 (47 CE, both cf. Soknopaiou-Nêsos). Cf. H.-A. Rupprecht, "Die Streitigkeit zwischen Satabous und Nestnephis", in G. Thür, F.J. Fernández Nieto (eds.), *Symposion 1999. Vorträge zur griechischen und hellenistischen Rechtsgeschichte (Pazo de Mariñán, La Coruña, 6.-9. September 1999)* (Cologne-Weimar-Vienna 2003) 481-492 at 482, 491. Another type of *hypographê*, well attested in early first century Arsinoitês, is that of a *parachôrêsis*: cf., e.g., *P.Mich.* V 252 (dupl. *PSI* VIII 905) (25/26—provenance within the Arsinoitês uncertain). The only cases of a real Greek sale contract (i.e. a contract opened by a date clause, formulated objectively and followed by the *hypographai* of the parties) dating to the Roman period before 49 CE are *P.Kron.* 48 = *P.Mich.* V 260 (35 CE) and *P.Mich.* V 263 (35/6 CE), both from Tebtynis, both recording the sale of sacred land.

[22] Cf., in particular, *SB* I 5323 (15 CE—Soknopaiou Nêsos) and Wolff (supra n. 1) 51-52; Rupprecht (supra n. 21) 485, 488.

[23] Wolff (supra n. 1) 48-51.

is created does the Greek land sale contract become a routine type of instrument. The change takes place in or around 68, the date of composition of *P.Lond.* II 154 p. 178 = *MChr* 255 (68 CE—Karanis).[24] Accordingly, instead of connecting the creation of the *bibliothêkê enktêseôn* in the mid first century with the rise of the liturgical system, I claim that it is yet another manifestation of state interest in monitoring land-related economic activity. It simply took the Romans three generations of trial and error to reach the optimal solution.

We now address the legal import of the registration of titles in the *bibliothêkê*. It is undeniable that title to landed property could be lawfully conveyed without being registered in the archive. This is the case, in particular, when the title is conveyed by means of a *cheirographon*. As no less than fifty out of a total of four-hundred land sale contracts of the first three centuries CE assume this format, some scholars questioned the effectiveness of the *bibliothêkê* as an effective means of rendering a reliable account of landed property rights, and even doubted that rendering such an account was ever perceived as a *raison d'être* of the archive.[25] Yet a diachronic survey of our sources can partially dispel these doubts.

Among the 199 sale contracts whose object is land recorded in the databank *Greek Law in Roman Times* (http://hudd.huji.ac.il/glrt_guest.aspx), 170 were drawn up by a public scribe, i.e. at a *grapheion* or an *agoranomeion*. The number of *cheirographa* is just six, and even among these six, two or three—*P.Mich.* V 276 (47 CE—Tebtynis), *P.Ryl.* II 163 (140 CE—Hermopolis) and perhaps also *P.Yale* I 66 (late I CE—Oxyrhynchos)—show the parties as treating the current *cheirographon* as a preliminary contract to be replaced later by a 'public' instrument.[26] With just three to four documents left, it seems that even if recording land conveyances in *cheirographa* was always legal and certainly practiced, it was not a widespread phenomenon before 150 CE.[27]

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[24] With the possible exception of *CPR* I 4 = *MChr* 159 (51/3 CE—Soknopaiou Nêsos), sale contracts of the 50s still assume the format of a *hypographê* to a Demotic document (regardless of the fact that the Demotic document itself is now rarely drafted). This is the case in *P.Vind.Tand.* 25 (51 CE—Soknopaiou Nêsos); *PSI* VIII 911 col. I (dupl. *P.Mich.* V 335) (ca. 56 CE—Tebtynis); *SB* I 5117 (55/6 CE—Soknopaiou Nêsos). After 68, contracts recording land sales take the routine structure of a Greek *grapheion* document.

[25] Wolff (supra n. 1) 253-254, following v. Woeß.

[26] *P.Mich.* V 276 (47 CE—Arsinoitês) 8-11: ἔτι δὲ παρεξόμεθα ἑαυτοὺς ἀναφέρονἰτάς ⟨σ⟩οι τῇ Ταμάρωνι πρᾶσιν τοῦ προκειμένου ἑβδόμου μέρους τῆς προκειμένης οἰκείας καὶ αὐλῆς τοῦ προγεγραμμένου Λυσιμάχου διὰ τοῦ | ἐν τῇ μητροπόλει μνημονείου ἐξαμαρτύρου ὁπότε ἐὰν ἡμεῖν συντάσσῃ, ἁπλῶς μηδὲν | λαμβάνοντος διὰ τὸ προαπεσχηκέναι ἡμᾶς παρὰ σοῦ καθῶς πρόκειται τὴν τειμήν. *P.Ryl.* II 163.13-16: καὶ ὁπηνίκα ἐὰν αἱρῇ ἀνοίσω δημοσίῳ | [χρηματσιμῷ διὰ] τῶν ἐν Ἑρμοῦ πόλει ἀρχείων καὶ ἐποίσω τὸ τῆς ἐνκτήσεως ἐπίσταλμα [προσλαμβάνοντός] μου ὑπὲρ τελῶν τῆς ἀπὸ τοῦ Ἑρμοφίλου εἰς ἐμὲ καταγραφῆς δραχμὰς τεσ[σαράκοντα. Cf. also *P.Yale* I 66.5 (second half of I CE—Oxyrhynchos)(?).

[27] I.e., *BGU* II 455 (before 133 CE—unknown provenance); *CPR* I 198 (138 CE—Arsinoitês); *P.Hamb.* I 97 (104/5 CE—Philadelphia).

If in the remaining 170 cases the public scribe drew up the document only after he was authorized by an *epistalma* of the *bibliophylakes* to do so,[28] we could establish an almost complete adherence to the control system revolving around the *bibliothêkê enktêseôn* in the first three generations after the archive came into being. After 150 CE, things change in some nomes, in particular in the Hermopolitês and the Oxyrhynchitês, but the pattern of change does not indicate a decay of the old system. In Oxyrhynchos we note a sudden change after 160 CE from the agoranomic instrument to the *cheirographon* and in the Hermopolitês we observe a shift to the *diagraphê*. It seems that in these nomes a new system was introduced and was as obediently followed as the old one.[29]

How can we explain this adherence? Every legal system prescribes special rules, special prerequisites for the acquisition of landed property. Most people would abide by these rules, but some will not, especially if they are not capable of doing so for some reason. How should the state react? The Alexandrian law-giver of *P.Hal.* 1.242-259 would grant no concession: 'For those who purchase land in contravention of the law let neither the act of purchase nor even an acquisition of title by prescription have validity'.[30] But what if a person bought land *bona fide*, paid the full price and held it, say, for 20 years? Would he still be cast off the land just because he did not turn to the *tamiai*?

The conceivers of the *bibliothêkê enktêseôn* knew better. Their system was much more flexible: the vendor needed to be ἀπογεγραμμένος, i.e. registered in the *bibliothêkê* as owner, for the purchaser to acquire the same position. Yet even if the vendor was not, the buyer was still able to register his new title.[31] If the buyer registered his title under these terms, he would later give way only to a third party with a preceding conflicting right, provided, however, (at least according to the Arsinoite formulation) that the older right was "registered through the same *bibliothêkê* (διὰ τοῦ αὐτοῦ βιβλιοφυλακίου) as well."[32] In other words, if someone

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[28] Cf. Wolff (supra n. 1) 248.

[29] I discussed this phenomenon with regard to Oxyrhynchos in "The Cheirographon and the Privatization of Scribal Activity in Early Roman Oxyrhynchos", in E. Harris, G. Thür (eds.), *Symposion 2007, Vorträge zur griechischen und hellenistischen Rechtsgeschichte (Durham, September 2-6 2007)* (Vienna 2008) 325-340. Wolff (supra n. 1, 104-105) noted the unique position of the bank *diagraphê* in late second and third-century CE Hermopolis.

[30] Supra n. 15 and Pringsheim, *ibid*., 137, 156.

[31] Cf., e.g., *P.Hamb.* I 16 = *Jur.Pap.* 65 = *Sel.Pap.* II 325 (209 CE—Ptolemais Euergetis), and Wolff (supra n. 1) 238-245.

[32] Cf., e.g., *P.Graux* II 18.13-14 (307 CE—Philadelphia): εἰ δὲ φανείη ἑτέρῳ π]ροσῆκον [ἢ προκατεσχημένον τὸ οἰκίδιον] | διὰ τοῦ βι[βλιοφυλακίου μὴ ἔσεσθαι ἐμπόδιον ἐκ τῆσδε τῆς παραθέσεως]. Cf. also *MChr* 217.7-11 (early II CE—Aphroditopolis, Arsinoitês); *P.Gen.* I 44.22-24 = *MChr* 215 (260 CE—Arsinoitês); *P.Hamb.* I 16.21-23 = *Jur.Pap.* 65 = *Sel.Pap.* II 325 (209 CE—Ptolemais Euergetis); *P.Mich.* XII 627.15-17 = *P.Graux* II 17 = *P.Wisc.* II 58 (298 CE—Philadelphia); *PSI* X 1126.22-24 (III CE—Arsinoitês); *SB* VI 9625.21-24 (177-192 CE—Tebtynis). Wolff (supra n. 1) was naturally

bought a piece of land but failed to register his title in the *bibliothêkê* he would not possess a remedy against a claim by a third party even if the latter acquired his title after he did. As only a public instrument would make an immediate[33] registration possible, it becomes fully understandable why it was so overwhelmingly popular down to the mid second century CE.

My final note relates to the *apographê*. Once a piece of landed property was purchased, the new owner was given a set interval (προθεσμία) to report his title to the *bibliophylakes*. Yet, as Jördens and others perceive, there is not a single piece of evidence that a purchaser was ever penalized for not reporting his title on time. This lack of sanction was viewed with some bewilderment, especially since this was not the case with other types of declarations, mainly those submitted in connection with the general census.[34] But the aforesaid discussion yields a rather plain answer. In the eyes of the *bibliophylakes,* only after a purchaser registered his title his right would stand up to the contest of a conflicting claim. Consequently, if the purchaser failed to register his title, he was the one to bear the consequences. The state could rely on this carrot, rather than on a penalizing stick, in promoting the use of the *bibliothêkê enktêseôn* and the public notary offices revolving around it. The last consideration only makes sense, of course, if we maintain that the main incentive for the creation of the *bibliothêkê enktêseôn* was not the state's own direct interest (i.e. that relating to taxation and the maintenance of the liturgical system), but that the *bibliothêkê enktêseôn* was really meant to serve the interests of purchasers and creditors in procuring accurate information on the legal position of the land they were about to acquire, and in safeguarding their own right once it has been acquired. As the foregoing discussion has shown, I share this view.

familiar with the διὰ τοῦ αὐτοῦ βυβλιοφυλακίου addition, but although it is omitted in only one document [i.e., *BGU* XI 2031.24-26 (180-192 CE—Karanis)], he does not discuss its implications.

[33] Registration in the *bibliothêkê enktêseôn* of rights acquired through a *cheirographon* was possible after the document underwent *demosiôsis* at the *katalogeion* in Alexandria, and much later, towards the end of the third century CE, through the act of *ekmartyrêsis* in the nomes' *metropoleis*. Cf. O. Primavesi, "P. Cair. Inv. 10554 r: Mahnverfahren mit Demosiosis", *ZPE* 64 (1986) 99-114 at 101-102; Wolff (supra n. 1) 129-135; Yiftach-Firanko (supra n. 29) 337 n. 58.

[34] Wolff (supra n. 1) 228, 232; Jördens, here, pp. 282, 285.