

DIVORCE IN THE POPYRI

1.1. Introduction: the reality of divorces.

Our imagination of the matrimonial reality of the Roman World has been haunted by the women counting their age by their husbands instead of consuls (Seneca, *de ben.* 3.16.2) and the notorious Cato – Marcia – Hortensius Triangle (Plutarch, *Cato* 25–27). This stereotypical idea of the poor durability of marriages in Antiquity has been recently challenged by the diligent study of Susan Treggiari (cf. Treggiari 1991 a + b), who having counted the divorces present in the classical literary sources (sixty-odd until the times of Domitian, some of them involving the same persons), came to a conclusion that this picture is simply a by-product of the *topoi* of the moralistic and satirical literature, which cherished moreover in blaming women for any kind of matrimonial troubles – let me recall the renowned fragment of Apuleius, *Apol.* 92: *In either case it is the woman to be blamed, who either has been so unbearable that she had to be sent away, or so audacious to divorce herself.*¹ And yet, we must observe that the literature hardly ever deals with the lives of simple people, so the reality may only be retrieved from the documents of legal practice.

Prima facie the scarcity of the documentation seems to corroborate the thesis of Treggiari. At present there are known less than fifty deeds dealing directly with divorce, predominantly dated to the Roman and Byzantine eras; some of them are regrettably only very fragmentarily preserved. These documents have been traditionally termed by their editors “contracts of divorce”, “contrats du divorce”, “contratti di divorzio”. This label, however, is rather misleading: the parties never agree to divorce from one another in the documents proper,² simply stating that their separation has already occurred. The actual object of these agreements is the settlement as to the financial duties resulting from the dissolved union, above all confirmation of dowry-return, and renouncement of claims between the ex-spouses. Occasionally, the fate of the common children could be decided upon and the rights of the ex-couple to re-marry secured as well. If we recall that according to Roman law a marriage is created by the mere (even not openly expressed and let alone documented, however unpractical it may seem) will of the parties thereof, and

¹ *Utramvis habens culpam mulier, quae aut tam intolerabilis fuit, ut repudiaretur, aut tam insolens, ut repudiet*

² The only exception is *P. Tebt.* III 809 (156 BC) which speaks actually about the *future* separation of the spouses, unfortunately its poor condition is not very elucidating as to the reasons for such an unusual formula.

dissolved by the simple lack of it, we may understand better the supposed paucity of the documentation (see before all, Volterra 1940, 1975 & 1980). Divorce therefore is totally formless, a simple desertion of one spouse by the other will account to dissolving of the marriage bond (see also commentary to the *Texts* 4, 5 and 6).

We may put forward therefore that in the majority of cases, an – especially peaceful – end of the joint-life has simply not been recorded, just like its beginning in many instances has not been deemed worth being put in writing (no one would doubt that people generally married in the Graeco-Roman Egypt and yet the number of the preserved marriage contracts is not so spectacular either).

The “normality” of divorces is further confirmed by other papyri. First of all, in all the “contracts” of marriage there is always a clause stipulating the duties of the parties in case of a possible separation, either in default of one of the parties or in case a joint-consideration to end the union (even in the later Christian period, like in case of a Coptic marriage contract of a priest or a priest’s son: *P. Bal.* 152, see below section 1.4). This simply means that a dissolution of marriage was always contemplated at its formation and that the parties saw nothing bizarre and extraordinary in mentioning it. We also dispose of a few, but very interesting petitions put forward by one of the spouses against the other (or even the other’s parents, see *Texts* 4 and 5) in case of maltreatment or desertion, they add to the panorama illustrating unilateral divorces.

One particular document may serve for a better approximation of the actual ratio of the separations. It is a copy of a census return republished by Thorolf Christensen a few years ago (*SB* XXIV 15987, Arsinoites, Tebtynis? *ca.* AD 208, the original return from the AD 188–189) which offers a fascinating example of a “multi-atomic” family. Didymos son of Kallinikos registers his house and slaves as well as the slaves belonging to present wife, Sarapias, daughter of Sabeinos. We learn that a forty-three years old Sarapias is the third spouse of the declarant, and that she registered herself in the previous census as a single. A ten-years old son of Didymos and his former wife Hermione, named Didymos as well, lives with the couple. Another son of the declarant, Xenophôn, is mentioned as the co-owner of three slaves belonging to Didymos. The youth himself is declared, however, with his mother, whose name has sadly not been preserved, another former wife of Didymos. The return informs us as well that the mother of Xenophôn has remarried and then divorced another man and she has had children by him. who presently live with and are declared by their father. The picture is completed by various items from the Tebtynis Family Archive. In *P. Fam. Tebt.* 48 (AD 202–203), another census-return, Sarapias, now aged fifty-seven, is

declared as single woman, meanwhile her daughter Tyrannis also known as Isidôra, born in AD 188, is in turn registered in Antinoe with her father Philantinoos-Hêrodês. The latter must have married again around the time of the 202/3 census a woman called Hêrakleia-Arsinoe and fathered a child by her. This time, for a change, the marriage was ended by Philantinoos' death around AD 206 as the post-dated texts *P. Tebt. Fam.* 49–53 deal with the guardianship of his orphan Iulius-Hêrodês.

To make the picture even clearer: Didymos married and divorced thrice, two of his wives had been at least twice married and divorced, their respective spouses contracted new unions, too. The children of the separated couples stayed normally with the fathers but at least in one case joined the new family of the mother. In this extended and a rather wealthy family divorce was but a normality, in this case, it may have depended on the financial as well as personal factors of the involved. But assuming that separation of the spouses were normal among the commons, may not be so far from the truth, divorce was just the complement of marriage.

[fig. 1]

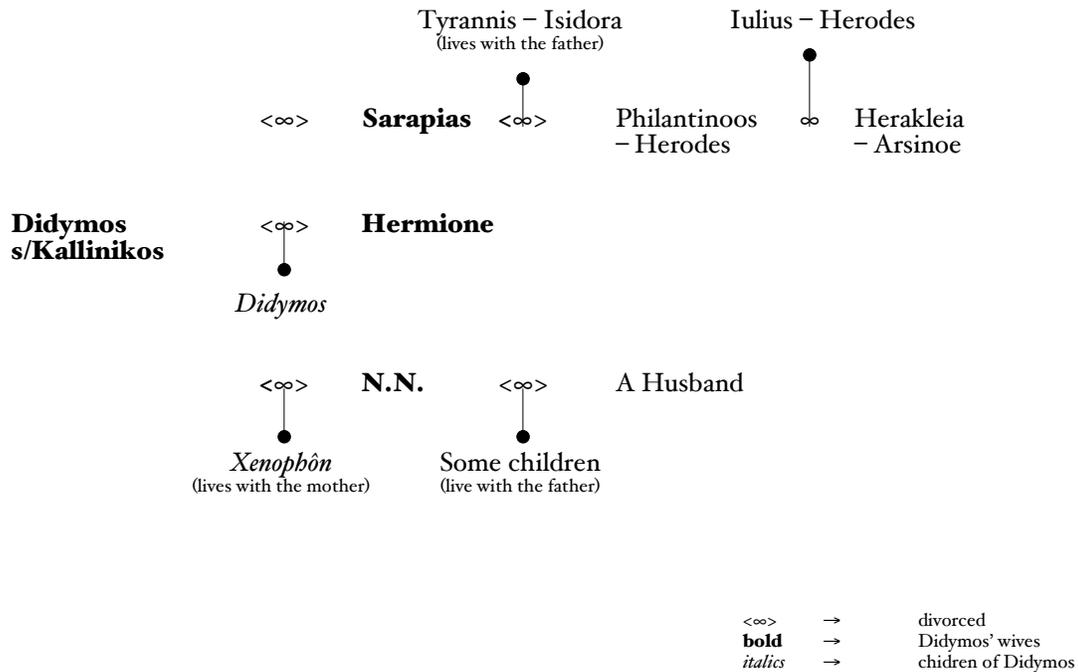


fig. 1: The 'Multi-atomic' Family Tree of Didymos s/Kallinikos and His Three Former Wives (Tebytnis, Second Half of the 2nd Cent. AD-205/6 AD)

1.2. The divorce Settlements: The Format [*this part could be abbreviated, if you wish*]

For the reasons expressed above I shall prefer to term the documents in question ‘divorce-settlements’. This assumption is also justified by the fact that *dialysis* or *perilysis*, names used both in the papyri and in the legal sources for a divorce document (*Basilika* and the Greek *Novellae*) generically denote any kind of settlement. Quite often the papyri use verbal forms meaning “to end”, “to cut off”, “to release”, depending on *homologô* or, in case of the Alexandrine format, *synchôrezô*. We have therefore: *χωρίζω ἀλλήλων τῆς συστάσης αὐτοῖς συνβιώσεως* (*BGU* IV 1102 and 1103, Alexandria, 13 BC), *συναίρω τὴν πρὸς ἀλλήλους συμβίωσιν* (*P. Lips.* I 27, Arsinoites, a. 123),³ *ἀπεξεῦχθαι τῆς πρὸς ἀλλήλους συμβιώσεως* (*P. Oxy.* XLIII 3139, 3rd – 4th cent. AD); *ἀποζεύγνυμι τῆ[ς] π[ρὸ]ς ἀλλήλους συμβιώσεως* (*P. Oxy.* XXXVI 2770, AD 304). In the Byzantine period we frequently find the Latinism *repoudion*, often strengthened with numerous synonyms like *dialysis*, *apozygê* or *diaisis* (e.g. *P. Cairo Masp.* III 67153, *Text* 3).

The most important elements of a divorce settlement are always the same (cf. Préaux 1962 & Rupprecht 1971: 43–50):

- firstly, the dowry receipt clause (wife’s declaration that the dowry had been returned)
- secondly, the quit-claim clause, declared by each of the ex-spouses, occasionally supplemented by securing the right to enter a new union to the ex-spouse.

These clauses (some documents lack the dowry receipt, this may be plausibly explained either by the fact that the wife did not bring any dowry, or by her decision to forfeit it) are set in a pattern that in the most general lines hardly changed throughout all the period. After the date and the individualization of the parties, with the wife possibly assisted by her *kyrios* or in some cases mother, the parties declare (*homologô* or in two Alexandrine documents *synchôrezô*) to have ended their joint life. The use of the past tense infinitive indicates once more that the document is executed only after the divorce proper took place.

Normally there follow the dowry-receipt and the quit-claim clauses. The first one usually employs the present infinitive of the verb *ἀπέχω*. Subsequently, the ex-spouses declare not to have any claims in regards to the joint life or any other thing until the present day of separation/execution of document. The settlement of claims

³ Similarly, *CPR* I 23 (II sec.), *P. Kron.* 52, *P. Mil. Vogl.* III 185, *P. Brook.* 8 (A. 178)

may be further supplemented by a mutual consent for the new marriage of the ex-partner. A typical formulation could be found in one of the earliest examples, *BGU* IV 1103: ll. 16-22: “μη̄ ἐπελλεύσασθαι δὲ τὴν Ζωίδα μηδ’ ἄλλον ὑπὲρ αὐτῆς ἐπὶ τὸν Ἀντίπατρον ἢ περὶ ἀπαιτήσεως τοῦ φερναρίου, ἀμφότερους δὲ ἐπ’ ἀλλήλους μήτε περὶ ἢ συνβιώσεως μηδὲ περὶ ἄλλου μηδεῖνός ἀπλῶς τῶν ἕως τῆς ἐνεστώσης ἡμέρας. [(they agree) that Zôis or anyone on her behalf shall not sue Antipatros as to the return of the dowry, and both of them (shall not sue) each other neither as to the joint-life nor as to any other argument up to the current day]. In the later documents the formula becomes more elaborated, addressing any possible matters between the ex-spouses, a good example thereof would be *P. Fam. Tebt.* 13, ll. 21-26 (AD 113-114): δὲ τοὺς π[ρογεγ]ραμμένους [μηδὲ ἐ]πελλ[ε]ύσασθαι ἑκάτερον ἢ ἐπ’ ἀλλή[λους π]ερὶ μηδενός [τῶν ἐ]ς τὴν συνβίωσιν ἀνη[[κ]ώτων [μηδὲ] περὶ οἰκίας ἀπ[λῶς πρά]γμα[α]τος ἐ<γ>γράπτου μηδὲ ἀγρά[φου μ]ηδὲ ὀφιλῆμ[ατος] μηδὲ παντὸς τῶ καθόλλου συνα[λλάγ]ματος ἀπὸ τῶ[ν] ἐμ[προσθεν] χρόνων μέχρι ἢ τῆς ἐνε[στώσης] ἡμέρας τρ[όπω] μηδενί. [and none of the aforementioned persons shall proceed against one another in any way, neither on account of the possessions regarding the marriage nor on account of any other matter written or unwritten, a debt or any kind of contract whatsoever, from the former times up to the present day.]. Lastly, the convention is declared valid, and the penalty clause preventing the breach is included.

From the later Byzantine period we dispose of nine Antinoopolitan papyri (there are only 7 deeds: two papyri have got mirror copies) and two possibly coming from Hermoupolis. Only a glimpse at the multiloquious phrases with lots of repetitions and excessive, tautological and totally redundant (a lawyer educated on Roman law would say) synonyms, allows their immediate identification. Theoretically, a written form of divorce became compulsory since *Nov. Theod.* 12.1 of Theodosius II with form AD 439, but the documentary material does not really prove its efficacy. It is true that the clauses describing the actual separation of the spouses are present in all the documents and that they have become much longer and elaborated: the parties seem to be trying to justify their divorce, recall their decision to be joined by a wedlock, under best auspices and in hope for procreation of children in these best and highest spirits. Each document differs from the others by its unique wording of the separation clause. Two patterns are most often used as the base: the 1st one describes the activity of preparation of a letter of repudial: [τ]όδε τὸ

ῥεπούδιον τῆς ἀποζυγῆς τίθ[εμα]ί σοι καὶ διαπέμπομ[αι] ἐπὶ τοῖς ἐφεξῆς λόγοις: [P. Cairo Masp. 67153,6-7: “I am preparing and sending you this *repudium* of divorce in the following words] cfr. BGU XII 2203, P. Flor. I 93 and its copy P. Lond. V 1713); the second applies verb ἔρχομαι (as in P. Lond. V 1712: κατὰ τοῦτο εἰς ταύτην ἐληλύθαμεν [π]ρὸς ἑαυτοὺς τὴν ἔγγραφον διάλυσιν.). For the separation itself, which is interesting, each time an evil daemon is blamed.

The quit-claims clause is also, as expected, very long and detailed. A typical one lists all possible grounds for the future claims: dowry, written, unwritten things, earnings during marriage, *bedna*, anything that comes and comes not to mind at the moment of the execution of the document (cf. for example: P. Lond. V 1712.11-17: ὁμολογοῦμεν καὶ {ὁμολογεῖ} ἕκαστον ἥ ἑκάστον ἢ πρόσωπον ἀπ[ε]ληφέναι τὰ ἴδια ἐκ πλήρους, μηδένα λόγον ἔχειν μήδε ἔξειν πρὸς ἀλλήλους ἢ μὴ περὶ σκευῶν ἢ εἰδῶν, μὴ περὶ ἔδνων μὴ περὶ συνβιώσεως, μὴ περὶ ἄλλου οἰουδήποτε ἢ πράγματος τὸ σύνολον μικροῦ ἢ μεγάλου, ἐγγράφου ἢ ἀγράφου, νοηθέντος ἢ μὴ νοηθέντος, ἢ εἰς νοῦν ἐλθόντος ἢ μὴ ἐλθόντος, ἐνταγέντος ἢ μὴ ἐνταγέντος καὶ μὴ ἐγκαλεῖν ἀλλήλους ἢ μ[ή]τε ἐγκαλέσειν πώποτε μὴ ἐν δικαστηρίῳ οἰωδήποτε ἢ ἐκτὸς δικαστηρίου διὰ τὸ ἀπαξᾶπ[λῶς] ἡμᾶς ἀπηλλάχθαι καὶ πεπληρῶσθαι καὶ διαλελύσθαι πρὸς ἀλλήλους...[we declare that each of us has fully received his/her own, and that we have no claim, nor shall have any claim against each other, neither in regards to the equipment, nor any goods, nor in regards to the bridal gifts, nor the joint-life, nor in regards to any matter whatsoever, be it small or big, written or unwritten, which is now considered and which is not considered, which comes to mind, and which does not, which is registered and which is unregistered, that we do not sue one another and neither shall ever sue be it in court or out of it, and that through it (the settlement of divorce) we have set each other free and fulfilled (all duties to one another) and we have got settled among ourselves...].

1.3 Divorce in the Documentary Practice vs. the Imperial Law

The material I have chosen to exhibit in the present chapter may well serve to illustrate the perennial questions of the juristic papyrology, i.e. the possible compliance of the regional practices with the *Reichsrecht*.

The first problem would be the effectiveness of the imperial limitations of unilateral divorces dating back to the (in)famous Constantine legislation of AD 331, *CTh.* 3.16.1. The traditional liberty of marriages, in-built into the Roman *ordre publique*, (cf. C. 8.38.2 – 2.02 Ad 223, Alexander Severus and *PSent.* 2.19.2 cited in the ft. 4) got pricked by the proverbial hair-pin, evoked in the picturesque sanction for a woman who would dare illegal divorce. Any possible traces of the legislation would obviously have to be searched for among the petitions, as neither Constantine nor his successors until Justinian did try to ban consensual divorces. Sadly, the papyri neither confirm a success of the normative, nor its supposed subsequent revocation by Julian the Apostate. The extant six texts are either too imprecisely dated, or too ambiguous in their interpretation (see *Text 4* and its commentary).

Neither are we able to trace the imprints of various barriers imposed on divorce throughout the 5th century (actually there is no papyrological material for that very interesting period), unless – as I have argued above – we would consider the development of the formulary of the 6th century divorce settlements, the result of the Theodosius II's introduction of the compulsory letters of divorce. Justinian's prohibition on any kind of divorce passed with *Novella 22* cannot be likewise tracked back in the papyri. Divorce settlements coming from his reign are too poorly dated to provide any evidence for or against the real application of such a harsh norm.

Another question worth considering with the use of papyri is the role of fathers in the creation and dissolution of the unions of their children (see Volterra 1948 & Urbanik 2002). This seemingly unimportant fragment of the Roman family law allows us to follow the dissemination of the Roman concepts in Egypt. One of the possible explanations of the formation by the end of the Republic of the very unpractical juristic concept of Roman marriage could have been the increasing emancipation of women and adult children from the traditional power of the head of the household (*patria potestas*). The idea that the marriage is created and dissolved, with other prerequisites like age, citizenship, right to marry (*conubium*) fulfilled, by the mere will of the nupturients implies that no external interference is wished for and approved.⁴ Obviously such a legal rule could hardly be observed in a society with

⁴ Cf. the celebrated – even if possibly postclassical – passages from *Works of Ulpian*, 5.2: *A valid (legitimate) marriage is made, when there is conubium between the contracting parties, and if the man is adult and the woman is able to procreate, and if both of them agree, if they are autonomous or also their fathers, if they are still in their power* supplemented by *Pauli Sententiae*, 2.19.2: *The marriages of these who are under their father's power are not legally contracted without their will, but once contracted, they cannot be dissolved* (by the father's will): *consideration of the public interest prevails upon commodity of the private.*

strong family ties, reinforced by a very solid legal concept of the father's authority. Therefore we find tracks of dissolution of the children's marriages against their will not only in the papyrological sources, but also in the purely juridical texts, among which one reminds that *Divine Pius has forbidden the father to separate a well-harmonised marriage, likewise the patron in case of a freedman, likewise the parents in case of a son or a daughter, unless a research is made as to where their* (i.e. spouses in their father's power) *permanence would be more appropriate.* (PSent. 5.6.15).⁵ Let us notice that not only the fathers are barred from too harsh employment of their *patria potestas*, the imperial rescript speaks generally of "parents", which implies that in some cases it was also the mothers who mingled with their children marriages.⁶ Practical examples of such practice are also detectable among the papyri (see *Text 5*), they led Rafal Taubenschlag (1929) to develop the concept of *materna potestas* which would be almost as strong as the *paterna potestas* in the law of papyri. The thorough examination of the sources, however, makes us believe that these phenomena are rather of social than legal nature. Even if (which is neither certain, nor unquestionable) the laws of the Greek *poleis* imported with their ancient citizens to Egypt originally allowed the fathers to perform *apospasis*, i.e. to snap away the bride from her nuptial house, this custom was barred by the Roman judges. The *Petition of Dionysia, P. Oxy. II 237* (AD 186, the four precedents cited by the woman date back to AD 86–137) shows how the Roman justice confronted by the fathers wishing to recover their daughters from their husbands, and *ipso facto* to dissolve their marriages, left the decision to the daughters themselves. Epistrategus Paconius Felix dismissing the absoluteness of the father's claims over his daughter's autonomy in the third case cited by Dionysia (*P. Oxy. II 237 col. VII 29-38*), characterised the custom from which they arose as inhuman (VII 35).

1.4 Divorce and Christianity

The last point which I would like to briefly address here is the popular belief, still present in the older literature, about the supposed tremendous change in the family customs after the rise of the new religion. Many more modern studies have

⁵ *Bene concordans matrimonium separari a patre divus Pius prohibuit, itemque a patrono libertum, a parentibus filium filiamque: nisi forte quaeratur, ubi utilius morari debeat.*

⁶ In reaction to one more case of such mother's intervention Diocletian reminded that *daughter's divorce is not in the power of mother* (30th of December AD 294, C. 5.17.4).

convincingly shown that the changes in the Ancient society were happening gradually, in case of marriage and divorce practices we can clearly observe the continuity of the heathen traditions. Above all, notwithstanding with the pastoral teaching and the early collections of the ecclesiastical laws divorce remained a normal aspect of the marriage life. The frequently repeated condemnation of divorces proves that the Christian flock was not really ready to follow the evangelical principle of dissolubility of marriage but for the case of adultery. A Coptic ostrakon, *O. Crum* 72, a pastoral letter very likely authored by famous Abraham, bishop of Hermonthis (7th cent A.D.) bears witness to such a practice further. The writer, being informed about some people among his congregation that practised divorces unjustified by previous fornication of the divorced spouse, decreed their excommunication. A slightly more persuasive and a bit more successful influence of the Church seems to have been applied in the family story of a maltreated Christian wife⁷ (*P. Oxy.* VI 903, 4th cent. AD, Rowlandson, no. ???). In the petition by which she finally ends her marriage, the woman tells the story of marital abuse and the failed trials of reconciliation put forward by the bishop. One may only guess, why the woman did not divorce the abusive husband earlier: apart from the financial reasons (the couple seems to be quite wealthy and of a higher social rank), there may have been the conviction that she should silently bear her cross just like topical Christian wife should do (cf. the slightly later example of *Saint Thomais of Lesbos*, who sanctified herself by bearing silently her husband's cruelty).⁸

Meanwhile, the normality of divorce for the common people is showed by the constant inclusion of the divorce clause into marriage deeds even in case in a Coptic marriage contract of a priest or a son of priest, *P. Bal.* 152 dated to the 8th cent. AD, where this clause is further by secured by an oath on the Holy Trinity. Same may be deducted from a totally "sinless" attitude of the parties to the divorce settlements. In *P. Cairo Masp.* I 67121, Aurelios Isakos and Aurelia Tetrompia not only secure each other's rights to remarry, but also agree not to protest the other party's possible joining of a monastic life; the only one to blame is an evil daemon that had brought malice to the couple's life and caused the dissolution (interestingly this evil daemon is actually a pagan element first appearing in AD 305 in *P. Gren.* II 76, see commentary to the Text 2):

⁷ Cf. D. MONSERATT, *Sex and Society in Graeco-Roman Egypt*, London 1996, pp. 99–100.

⁸ Alice-Mary TALBOT (ed.), *Holy Women of Byzantium: Ten Saints' Lives in English Translation*, Dumbarton Oaks 1996, chapter 9: "The Life of St. Thomais of Lesbos", on-line: <http://www.doaks.org/HolyWomen/talbch9.pdf>.

The most interesting piece of evidence in question is a very late papyrus coming not from Egypt but from the Arab Palestine (see further, Urbanik 2004). *P. Ness.* III 57 (AD 689) documents a consensual divorce of a priest, Ioannês and his wife Nonna. Moreover, three high ranking clerics assist and witness this act among other seven testimonies, obviously they do not represent the Church but they simply appear in the deed as respectful, important members of their community. Not only a divorcing priest is something unimaginable in the Church discipline, the mere intercession of clerics at a divorce results in their excommunication according to the oriental canons attributed to St. Basil and St. Athanasius of Alexandria,⁹ which should reflect the Church order of the seventh century Palestine.¹⁰ We may also recall that in the in the second part of the epistle cited above, *O. Crum* 76, the bishop excommunicated anyone – be it a lay person, be it a cleric, who would dare prepare ἀποστ(ακια), that is deed of divorce. Explanation of the Nessana story may dwell in the pastoral practice, perhaps the clergymen of the town approving of Nonna and Ioannês' separation chose the lesser evil, just like Justin II who lifting his predecessor's ban on consensual divorces (*Novella* 140, AD 566) praised it as aiming at securing of stability of marriage by at the same time found unacceptable to uphold it in face of the fate of the unhappily married couples.

2. The Texts

2.1 Text 1: *P. Lond* 178 a and b (p. 209),

Provenance unknown, 5th of April 145 AD

⁹ According to W. E. CRUM, Canons attributed to St. Basil took their final shape in the 6th century, Athanasian Canons (which actually might be authored by the bishop himself: personal communication of Ewa WIPSYCKA, of 18th of February 2006) are dated to the late 4th century.

¹⁰ *Can. Bas.* 63 *Wer von seiner Frau geschieden werden wünscht. b. Daß ein Presbyter oder Diakon seine Frau nicht ohne Grund fortschicken oder entlassen darf. Can. Bas.* 71: *Wenn jemand eine Frau entläßt und ein Kleriker den Scheidenbrief für sie schreibt. Wenn jemand eine Frau entlassen will und ein Kleriker den Scheidenbrief für sie schreibt, so soll er ausgeschlossen werden, bis die Ehe zwischen beiden wieder zusammengekommen ist.* (Ed. W. RIEDEL, *Die Kirchenrechtsquellen des Patriarchats Alexandrien*, Leipzig 1900); *Can. Ath.* 45: *No priest shall put away his wife without reason of adultery. And if any shall put away his wife and dwell with another, above all if he hath gotten children by her, he shall be excluded.* 46 *No priest shall be go-between in the putting assunder of a marriage. If any be found that he hath done this, he shall be excluded until the marriage be brought together.* (ed. W. RIEDL & W. E. CRUM, *The Canons of Athanasius of Alexandria — the Arabic and Coptic Versions*, Oxford 1904).

In this short deed Petronia Sarapias confirms having received back a smaller part of her dowry from her ex-husband [Gaius?] Ioulios Apolinarios, a soldier in the first Apameian cohort of centuria of Iulianus. She also declares to keep the right to proceed for the remaining 600 drachms. The dowry was presented to the husband a mere year earlier under a pretence of a deposit (yet another proof of short-longevity of marriages and normality of divorces). Claudia Kreuzsaler in her part of this book comments the luckily preserved *parathêkê* agreement, *BGU* III 729, (Alexandria, AD 144), which dissimulated a marriage contract between the couple. Petronia and Iulios Apolinarios obviously circumvented the law forbidding soldiers to marry. Petronia was quite lucky to be able to retrieve her dowry, her illegal husband proved to be a sincere man. We may be almost certain that she would have not won the case, had it found its end in the court. A ruling of prefect M. Rutilius Lupus leaves no doubt as to the possible fate of the proceeding: *P. Catt. recto* col. I 5-13 (Alexandria, 5th of January, 117 A.D.): *In the year 20th of the divine Trajan, the twentieth day of the month Tybi. As Lucia Macrina through barrister Phaneios said that she sued for a deposit from the belongings of Antônios Germanus, the late soldier, Lupus said 'We know that such deposits are dowries. From such causes I do not grant a judge, as a soldier is not allowed to marry. And if you sue for dowry I, granting a judge, shall have to be persuaded that the marriage is valid.'* A simulated legal transaction is valid as long as it does not breach the law. In that case therefore an action on deposit would not have been granted. Neither would the woman have been able to proceed with an action for return of the amount: *condictio* was not given when the payment was executed to obtain an illegal goal – as was the case here.

The document itself lacks the separation clause (perhaps because the couple did not want to put into evidence even more clearly their transgression). The dowry receipt clause uses the verb ἀπέχω in perfect infinitive ἀπεσχηκέναι. Such a verbal construction is known from two earlier Alexandrine *synchoreseos*, *BGU* IV 1102 and 1103, and one much later Oxyrhynchite text, *P. Oxy.* 3139 (all the others preserved dowry receipt clauses are formulated with the present infinitive). Seeing that the couple's "marriage contract", was executed in Alexandria, we may suggest the provenance of the present text be the Capital or a place influenced by its notary practice as well.

The parties are Roman citizens, the woman is assisted by a tutor, her brother G. Petrônios Marcellus. The Roman women became quite independent juridically towards the end of the Republic, still the tutor's authorisation was needed – at least purely formally – to conduct more important transactions (like in this case where not

a little sum is in question). The document is done in a double copy, the other was kept by the woman as a proof of her right to proceed for the remaining 600 drachms. The parties assure publicity of the act as well.

[Π]ετρ[ων]ία Σαραπιὰς μ[ε]τὰ κυρίου τοῦ
ἀδελφοῦ Γαίου Πετρωνίου Μαρκέλλου
[Π]ουλίῳ Ἀπολιναρίῳ στρατιώτῃ χώρ[της]
4 πρώτης Ἀπαμηνῶ(ν) ἑκατονταρχίας
Ἰουλιανοῦ χαίριν ὁμολογῶ
ἀπεσχηκέναι παρὰ [σοῦ] ἀφ' ὧν προσ[ή]-
νεγκά σοι ἐν προικί δραχμῶν χειλί[ων]
8 διὰ δημοσίου χρηματισμοῦ ἀργυρίου
δραχμὰς τετρακοσίας διὰ χειρὸς μὴ
ἐλαττουμένης μου περὶ τῶν λοιπ[ῶν]
ἀργυρίου δραχμῶν ἑξακοσίων τὸ δὲ
12 χειρόγραφον τοῦτο δισσὸν γραφέν
καθαρὸν ἀπὸ ἐπιγραφῆς καὶ ἀλι-
φάδος κύριον ἔστω ὡς ἐν δημο-
σίῳ κατακεχωρισμένον ἔτους
16 ὀγδόου Αὐτοκράτορος Καίσαρος Τίτου
Αἰλίου Ἀδριανοῦ Ἀντωνίνου
Σεβαστοῦ Εὐσεβοῦς Φαρμούθι κ
Πετρωνία Σεραπιὰς μετὰ κυρίου τοῦ ἀδ[ελ]-
20 φοῦ Γαίου Πετρωνίου Μ[α]ρκ[έ]λλου ἀπέ[χω]
τὰς τοῦ ἀργυρίου δραχμὰς τετρα[κο]-
σίας εἰς τὸν λόγον τῆς προικὸ μου
μὴ ἐλαττουμένη περὶ τῶν
24 δραχμῶν ἑξακοσίων ὡς πρόκειται
Γάιος Πετρῶνις Μάρκελλος ἐπικέγρα[μ]-
μαι κύριος τῆς ἀδελφῆς μου καὶ ἔγρ[α]-
ψα ὑπὲρ αὐτῆς ἀγράμματω οὔσης.

5. l. χαίρειν 7. l. προικί ; χιλίων 13/14. l. ἀλειφάδος 22. l. προικός. 23 l. ἐλαττουμένης 25/26. l. ἐπιγέγρα[μ]μαι 27 l. ἀγράμματος οὔσης.

Petronia Sarapias assisted by a kyrios, her brother Caius Petronius Marcellus to Caius Iulius Apolinarios soldier of the first cohort 'Apamaeian' of the century of Iulianus, greeting.

I declare (*homologō*) to have received from you four hundred drachms of silver

according to the public standard which I brought you as a dowry, from your own hands retaining the right to the remaining six hundred drachms. The document was written in a double copy without additions and cancellations and be it lawful as if it were deposited in a public registry. In the eighth year of Emperor Caesar Titus Aelius Hadrianus Antoninus Augustus Pius, Pharmouthi 10.

I, Petronia Sarapias assisted by a kyrios, the brother Caius Petronius Marcellus am getting back four hundred silver drachms in the name of my dowry, retaining the right to six hundred drachms, as above.

I Gaius Petronius Marcellus have been appointed kyrios of the sister, and have signed for her as she is illiterate.

2.2. Text 2: *P. Strasb.* III 142 = SB V 8024,
Arsinoitês, 16th of October AD 391

(= E. Grubbs, *Women and the Law*, London – New York 2002, p. 215)

This document may be characterised as a classical example of a divorce settlement. It bears some interesting features. The series of laconic elliptical sentences present in the earlier acts is substituted here by much more elaborated proclamations (especially in case of the quit-claim clause and the separation clause), much closer in style to the 6th century Byzantine documents from Aphrodite than to its Fayumite 2nd and 3rd century counterparts.

Two points are of particular interest here. Firstly – in a true spirit of amicable divorce – neither of the parties is blamed for the separation, instead an “evil daemon” bears all guilt. *Prima facie* the flavour of this reference seems very Christian. It is found repeatedly in all the later divorce settlements. However, the first occurrence of the supernatural force as the cause of divorce dates back to AD 305, it was used in *P. Grenf.* II 76: a divorce settlement between Soulis and Senpsais, two grave-diggers. The occupation of the ex-spouses clearly indicates their pagan convictions.

The other curious characteristics is the fact that Allous was assisted by her mother. It is not the only act in which the ex-wife is aided by her mother. To quote just one more we may recall *P. Ness.* III 57 mentioned in the *Introduction*. Also the *Text 4* along with the Diocletian’s admonition quoted in ft. 6 show that a mother may have played an important role at her daughters divorce. Obviously, as argued

above, deciding upon her daughter divorce or marriage was not a legal prerogative of the mother, it should only be understood in the terms of social influence, as it happens till this very day in some communities. Our instance is different, however. Nothing hints as to the active undertaking of Apina, it is Allous herself who has divorced her husband. Her presence might be explained by the settlement nature of the deed. In the fourth century AD mothers had already obtained the right of guardianship (curatorship to be more precise) of their children, specifically when there was no other close relative who could undertake such duties. Any act of disposition (and such is, par excellence, a renouncement of claims) of a person younger than twenty-five had to be approved by a curator, otherwise in virtue of the mid-republican *Lex Laetoria*, it might have been declared void as potentially harmful to the *minor's* estate. It is true that Apina is not termed as a curatress. But her presence is described by the word “*synestos*” normally denoting legal assistance to an act. It may have happened therefore, that Apina had to approve of the final renouncement of claims, and hence she was present when the transaction was executed.

- [ύπατεί]ας Τατιανού του λαμπροτάτο[υ ἐ]πάρχου
 [του ἱε]ροῦ πραιτωρίου καὶ Φλ(αοῦ) Συμμάχου του
 [λαμ]προτά[τ]ο[υ] Φαῶφι ιη ε ἰνδικτίονος.
 4 Α[ὕ]ρηλία [Ἀ]λλοῦς Ὀννωφ[ρ]ίου μετὰ συνεσ-
 τώσος αὐ[τῆ]ς μητρ[ρ]ὸς Αὐρ[η]λία Ἀπίνας
 ἀπὸ κώμη[ς] Νέστευ του Ἀρσινοίτου νομοῦ
 [Αὐρ]ηλίω [Ἡ]λία Ἀρι[σ]τωνος ἀπὸ κώμης
 8 Ὀννιτώ(ν) τοῦ [α]ὕτρο[ῦ] νομοῦ. ἐπιδὴ ἐγὼ Ἀλ-
 λοῦς συν[ε]βιωσάμην σε Ἡλία ἐπ[ί] τινα
 χρόνον, [ἔδ]οξεν δὲ ἔκ τιν[ο]ς προφάσεως
 π[ο]νηροῦ [δαί]μονος ἐπῆλθεν τῆς πρὸς
 12 ἀ[λ]λήρου[ς] συμβιώσεως ἀπαλλαχθέντα
 ἀναχωρ[εῖ]ν, κατὰ τοῦτο ὁμολογῶ ἐγὼ
 Ἀλλοῦς μηδένα λ[ό]γον ἔχειν π[ρὸ]ς σ[ε]
 [Ἡ]λίαν περὶ τῆς σ[υμ]βιώσεως ἢ ἑτέρου τινὸς
 16 [ἐ]γγράφ[ου] ἢ ἀγρ[ά]φου ὀφιλῆ[ματος]
 ἢ ἀπαιτήματος [ἐ]νκλή[ματος] ζητήματος
 εἰσάπαξ ἀπλῶς τ[ὸ] σύνολον, καὶ ἐξουσίαν
 σε Ἡλίαν ἔχιν [ἐ]τέρω γάμω συνελθῖν
 20 ἀνε[κλή]τος σου ὄντος περὶ τούτου,
 καὶ ἔσται [...] περ[ί] λυσις καὶ ἐπερωτηθεῖσα) ὡμολόγησα.
 [Αὐρηλία Ἀλλοῦς] ἢ [προ]κιμένη μετὰ συν-
 [εστώσης] [αὐτῆς μητρ]ὸς Ἀπίνα ἐξεδό-

24	[μην. ? [? [? [?].as Ἀμφίωνι γ]εγραμμένη] πρὸς ταῦτα] ἀγραμμάτων
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verso:

[περ]ίλυσις Ἀλλ[ο]ῦτος Ὀννωφρίου [.].....

4. l. *συνεστῶσης*; 5. L. *Αὐρηλίας Ἀπίνας* 6. L. *Νέστου*; 8. L. *ἐπειδὴ* 9. L. *σοι* 14, 19 l. *ἔχειν*; 16 l. *ὀφειλήματος* l. 18 l. *ἀπλῶς* 19 l. *συνελθεῖν*; 20 l. *ἀνεγκλήτου* 23 l. *Ἀπίνας*

During the consulship of Tatianus the most illustrious praefect of the holy praetorium, and of Flavius Symmachus, the most illustrious, on the 18th of Phaophi of the 5th indiction.

Aurêlia Allous daughter of Onnôphrios assisted by her mother, Aurêlia Apina from the village Nestos of the Arsinoite nome to Aurêlios Êlias, son of Arstôn, from the village Onnitôn of the same nome. As I, Allous, have lived with you, Êlias, for some time, but it has happened through some deed of the evil daemon that it came suddenly upon (us?) that (we) being freed from our joint-life, go away;

and because of that I, Allous, declare that I do not have any claim against you, Êlias, in regards to our joint-life, and any other written or unwritten debt or demand that may result in a claim or that has been claimed once for ever totally and for all;

and that you Êlias have power to contract another marriage without being reproached for that;

and let the divorce be [valid?] and being asked formally (of the above) I have given my consent. Aurêlia Allous, the above-said assisted by her mother Apina has given [????] to Amphion [????]

25. [??????] written

26. [] for everything

27 [as they are?] illiterate.

Verso: divorce of Allous daughter of Onnôphrios

2.3 Text 3: *P. Cairo Masp.* II 67153 = *P. Cairo Masp.* II 67253
(Antinoopolis, 7th of May 568)

The papyrus in question is a divorce settlement of Aurêlios Mênas of Hôrouônchios, of mother Tsia, probably a cabbage-seller by trade,¹¹ and Aurêlia Maria, daughter of Victor, of mother Hêrais. We luckily possess its mirror copy (*P. Cairo Masp.* II 67253) executed by the woman for the ex-husband. The text bears far-reaching lexical and formulary similarities to the other seven divorce documents coming from the Archives of Dioskoros, the notary-poet from Aphroditê.¹² Its style is highly elaborate, full of synonyms and tautologies, but its object is exactly the same of its earlier counterparts. The deed therefore contains a separation clause and a quit-claims clause. The formulation of the latter corresponds perfectly to the renouncement clauses in the settlements of claims (see for example a particularly rich formulation used in *P. Münch.* I 1 ll. 32–42, Syenê, 11th of March, AD 574). One element of this clause calls for particular attention. Mênas assures “it will not be allowed to me to seek justice with you either in a court or out of it”. The meaning of this phrase seems quite simple: the parties not only exclude possibility of any judicial proceeding in regards of the dissolved union, but also renounce the private arbitration in the case matter. Part of the scholarship, however, persuaded by a high number of private arbitrations and literary no record of judicial proceedings in civil law cases in the Byzantine Egypt, deemed this formulation be purely ornamental.¹³ By a penalty clause the parties subdue themselves to the fine of no less than 6 solidi of gold, should they transgress the terms of the agreement. The question of reality of such hash penalty remains open, the research on the settlements of claims allows

¹¹ Cfr. H.-J. DREXHAGE, ‘Zu den Berufsbezeichnungen mit den Suffix *-ās* in der litterarischen, papyrologischen und epigraphischen Überlieferung’, *Münstersche Beiträge zur Antiken Handelsgeschichte* 23.1 (2004), p. 18–40, at p. 26 (with the present papyrus cited) and p. 35 (epigraphic evidence from the Main Greece: IKorithKent 563 and Soteriou no 6 (Thebes/Thessaly), both from the Christian times).

¹² *P. Cairo Masp.* II 67154 *recto*, *P. Cairo Masp.* II 67155, *P. Lond.* V 1712, *P. Lond.* V 1713 (the other copy of *P. Flor.* I 93 = *MCbr.* 297), *P. Cairo Maspero* III 67311 (all from Antinoopolis), *P. Cairo Maspero* I 67121 (Aphroditê).

¹³ See A. A. SCHILLER, “The Courts are no More”, [in:] *Studi Volterra*, vol. I, Milano 1971, pp. 469–502; *contra* D. SIMON, “Zur Zivilgerichtsbarkeit im spätbyzantinischen Ägypten”, *RIDA* 18 (1971), pp. 629–657 and Urbanik 2007.

however some indications that these could have been actually exerted (cf. *P. Münch.* I 14 and the comment to it in Urbanik 2007). Finally, let us observe that neither *P. Cairo Masp.* 67153 nor 67253 constitute a legally binding act as they both lack witnesses subscriptions, unlike, for example, 67155 (a settlement of divorce between Aurélii Sarapiōn and Maria). Both texts must have been copied by Dioskoros for the use of his law office (or perhaps for a scholarly use?).

- † βασιλείας καὶ ὑπ[ατ]είας τοῦ θειοτάτο[υ] ἡμῶν δεσπότο[υ] Φλαυῖ[ου]
 [Ἰουστίνου τοῦ αἰωνίο[υ]] αὐγούστο[υ] Α[ὐτοκρ]ά[τ]ορος ἔτους τρί[τ]ου,
 [Πα]χῶν δωδεκ[άτη, ἀ]ρχῆς δευτ[έρας ἰ]δ[ικτίονος]. ἐν Ἀντι[νόου] πόλ[ει] τῇ λαμπρο[τάτη].
- 4 † Αὐρηλίος Μη[νάς υ]ἱὸς Ὀρουωγχίο[υ], ἐ[κ μη]τρὸς Τσίας κραιμπίτης,
 [ἀπ]ὸ τῆς Ἀντι[νοέων] πόλε[ως], Αὐρηλία Μαρία [θυγατ]ρὶ Βίκτορος, τῇ συν-
 [α]φθείσῃ μοι ὡς εἰς ἐμὴν <π>οτε γαμετ[ήν, ἀπ]ὸ τῆς αὐτῆς πόλεως.
 [τ]όδε τὸ ῥεπουδίου τῆς ἀποζυγῆς τίθ[εμα]ί σοι καὶ διαπέμπομ[αι]
- 8 ἐπὶ τοῖς ἐφεξῆς λόγοις· πρῶην συν[ή]φθην σοι πρὸς γάμο[ν]
 καὶ βίου κοινωνίαν ἐπὶ χρήσταις ἐλπίσι[ν] καὶ τ[έ]κνων σπορῶ,
 οἰόμενος ἐκτελέσαι μετὰ σοῦ εἰρημικὸν σεμνὸν συνοικ[έ]σιον.
 ἔκ τε τῶν ἐναντίων οὐκ οἶδα πόθεν, ἔκ τινος φθόνο[υ] πο[ν]ηρο[ῦ]
- 12 δαίμονος, ἀηδεία τις σκληρωτάτη κατὰ μέσον ἡμῶν ἀμφοτέρων
 ἐξεγένετο καὶ ἐπεμβρίσατο ἡμᾶς ἀποχωρισθῆναι ἀπ' ἀλλήλων τοῦ
 κοινού ἡμῶν συνοικεσίου, καὶ μηκέτι ἡμᾶς συνδιατᾶσθαι
 ἀλλήλοις ἐπὶ τὸν διηνεκῆ χρόνον. κατὰ τοῦτο ὁμολογῶ ἐγὼ
- 16 ὁ προγεγραμμέ[νος] Μη[νάς, διὰ ταύτης μο[υ] τῆς ἐγγράφο[υ] διαλύσεως
 ἧτοι διαίσεως, μηδένα τοῦ λοιπο[ῦ] λόγον ἔχειν μήτε ἔξειν [πρὸς σέ]
 ἀπεντεῦθεν ἤδη περὶ οἴου δήποτε πράγματος ἐγγράφο[υ] ἢ ἀγράφο[υ], μ[ήτε]
 περὶ γάμων μήτε περὶ ἔδνων μη[τε] περὶ ἀναλωμ[άτων]
- 20 γάμων μήτε μὴν περὶ προικὸς ἢ οἴων δήποτ[ε] οἴκο]-
 σκευῶν συνεισ[εν]ηνεγμένων ἀλλήλοις παρ' ἀ[λλ]ήλ[ων],
 διὰ τὸ ἐ[μὲ] ὑφέν ἐπ' ἀπ[ασι] ἀπηλλάχθαι καὶ δι[ιαλε]λῦσ[θαι πρὸς]
 σέ, κ[αὶ] διὰ τὸ σέ πρὸς [ἐμ]ὲ ἐν ἅπα[σι] καὶ οὐκ ἐξ[εῖναι] μοι κρίνειν]
- 24 κατὰ [σο[ῦ]] ἐν δικαστηρ[ίοι]ς ἢ ἐκτὸς [δ]ικαστη[ρίων, μικρο[ῦ]]
 ἢ με[γάλο]υ], περὶ οὐδέ[νος] τ]ὸ σύνολ[ον], καὶ ἐξ[εῖναι] ἑκατέρω]
 μέρ[ει] ἡμ[ῶν] ἑτέρω γ[άμω] προσομ[ιλ]ῆσαι, διὰ [τὸ ἀμφοτέρους]
 ἡμᾶς τοῦ]το τὸ ῥεπο[ύδι]ον πρὸς [ἀλ]λήλ[ους] διαπέμψασθαι].
- 28 καὶ [εἰ συμβ]αίη τινα ἐξ ἡ[μῶν] πα[ραβ]ῆ[ναι] τα[ῦτα] τὰ προγεγραμμ[ένα] καὶ]
 ἐπεξ[ελθ]εῖν κατὰ τοῦ ἐτέ[ρου] περὶ οἴφ[υ] δήποτε π[ράγμ]α[τος], παρέξει]
 τὸ παραβαῖνον μέρος τῷ ἐμμ[έ]νο[ντι] χρ[υσο]ῦ ν]ομίσμ[ατα] ἔ[ξ] ζυγ[ῶ]
 δημο[σίου] Ἀντι[νόου], ἔργω καὶ δυνάμει ἀπαιτούμ[εν]α, καὶ καταβαλλόμενα ἀ[μάχως]
- 32 δι[ί]χ[α] κ]ρίσειω[ς] κ]αὶ δίκης καὶ οἷας δήποτ[ε] εὐρεσιλογί[ας] [καὶ τὸ]
 γράμμα τούτο[υ] τοῦ ῥεπουδίου ἐθέμ[ε]θα πρὸς ἀλλήλ[ους]

δισσὸν γραφῆν, καὶ ἐξεδόμεθα μετ' ὑπογραφ(ῆς) τοῦ ὑπ(ἐρ) ἡμῶ[ν ὑπο]γραφ(ομένων)
καὶ ἐπερ(ωτηθέντες) ὠμολ[ογήσαμεν]. † Αὐρήλιος Μηνᾶς υἱὸς
Ἵρουωγχι[ου] κ[ραμπ]ιτ(ᾶς) ,

36 ὁ προγεγραμμ[έν]ος, ἐθέμην τοῦτο τὸ ῥεπούδιον τῆς διαλ[ύσεω]ς
τα[ύ]της ἐπὶ π[ᾶ]σι τοῖς ἐγγεγραμμέ[νοις] ἐπὶ τῷ προστίμ(ω) ὡς πρόκ(εῖται). † Α]ὐρήλιος
Μαγίστωρ Ἵρουωγχιῦ ἀπὸ Ἀντι(νόου), ἀξιωθ(είς), ἔγραψα ὑπ(ἐρ) αὐτοῦ γράμμ[ατα μὴ]
εἰδότης,
παρόντος καὶ εἰπόντος μοι κατὰ πρόσωπον ὡς πρόκ(εῖται) †

4. probably: κραμπιτᾶσι 6. L. εἴθε μήποτε γαμετ[ῆ] εἰς ἐμήν <π>οτε γαμετ[ήν] 9. L. σπορᾶ 12. L. ἀηδία; 17.
L. διέσεως; 32, l. εὐρησιλογί[ας]

+ During the reign and consulship of our most pious Lord Flavios Iustinos, the eternal Augustus and Imperator, in the third year, Pachon the twelfth, at the beginning of the second indiction. In the most splendid Antinoopolis.

+ Aurélios Mênas son of Hôrouônchios, of mother Tsia, *krampis* (a cabbage-seller/producer?) from Antinoopolis, to Aurêlia Maria, daughter of Victor,¹⁴ once joined to me as wife, what would have rather not taken place!, of the same city.

I am preparing and sending you this deed of divorce¹⁵ in the following words: As I have joined together with you for marriage and community of life in hope for the best and for procreation of children wishing to end with you peaceful and holy living;

on the contrary, I do not know for which reason, because of some malicious and evil

Daemon, some odious hate has arisen between us two and has caused us to separate one from another as to our common joint-life and not live in the same household any further in the future.

¹⁴ the Version of P. Cairo Masp. II 67253 reads in the ll. 5–8: + Aurêlia Maria, daughter of Victor, of mother Hêrais, from the city of Antinoe to Aurélios Mênas son of Hôrouônchios, once joined to me as husband, which would rather have never happened. Who happens to be *krampites* [cabbage-seller or grower, see ft. 11], originating from the same Antinoopolis.

¹⁵ Litt. “this repudiation of divorce/separation/release”: the papyrus uses actually two synonyms, a latinism ‘repudion’ and its exact Greek counterpart.

And according to the this I, the above said Mênas declare,¹⁶ by this written by my act of divorce and repudial, that neither have I nor will I have any claim against you henceforth from this time at any time in regards any matter written or unwritten, or in regards to marriage, or *hedna* (donations on the occasion of marriage), or expenses in marriage, or dowry or house-gear or things brought during marriage by one side to another;

and (I declare) that through it (the deed of divorce) I am you are totally divorced from me and separated in everything and through it you (are separated) from me in everything; and that it shall not be allowed to me to seek justice with you either in a court or out of it, regarding a small or a big (thing), any at all;

and that it shall be allowed to either party to join itself in another marriage;

and (I declare) that through it (the deed) we both send each other away by (the means) of this act of repudial.

And if it happens that one of us will breach these things said above and will proceed against the other one regarding any matter the party in breach shall render to the non-breaching one six golden coins according to the public standard of Antinoou(polis), that will be really and unconditionally executed¹⁷ and that will be paid in with no protest, without the (a need of) trial and justice and of the whole payment of penalty.

¹⁶ P. *Cairo Masp.* II 67253 reads in the line 16: "I, the above-written Maria, declare ...".

¹⁷ Cfr. P. *Münch.* I 4, l. 34 with L. WENGER's commentary and the English Translation in *The Elephantine Papyri in English*, D34, p. 489 and ft. 23 where *ergo kai dynamei* is rendered by 'by (court) judgment and authority'. According to A. Berger, *Die Strafklauseln in den Papyruskurkunden*, Leipzig – Berlin 1911, pp. 97–99 the formulation had no practical meaning and was a typical repetition. Wenger with caution, referred St. Braßloff's idea, 'Zu den Quellen der byzantinischen Rechtsgeschichte: II. Zur Gesichte der Konventionalstrafe', *ZSS* 25, p. 302 ff, who had thought of the possibility of using of the extra-court help of a judge 'tatsächlich (*ergo*) und mit Hilfe der staatlichen Gewalt (*dynamis*) d.i. vom Richter eingetrieben werden', finally opting for a possible facilitation of the execution, but without a firm conviction. As there are no examples of such state aid aimed at execution of a conventional penalty, I have chosen to translate this clause as suggested by PREISIGKE *WB* ('unbedingt und tatsächlich').

And the letter of repudial we have executed to each other twice in writing and we have given to one another with the signature of those who have signed on our behalf.

And being asked the formal question we have consented. + Aurélios Menas son of Hôrouônchios, the cabbage-seller, the above-mentioned, has made this deed of divorce under all the above-written conditions and under the penalty, as above. + Aurélios Magitôr son of Hôrouônchios from Antinoe, deemed worth, has signed for him, as I do not know letters, in my presence and with me having spoken wordily, as above.

2.4 Texts 4, 5 & 6:

Unilateral Divorces and their Repression by Constantine the Great

All these three texts, two petitions and a report of legal proceedings bring about data on the unilateral dissolution of marriages unions. Even more interestingly they all are dated to the 4th century AD: the time of great change in the Roman marriage law due to the Constantine's limitation of divorces. *Text 4* (AD 361) is a petition of Aurélios Serênos directed against his mother-in-law. Apparently, the woman has deceitfully caused her daughter's return and given her into a new marriage. In the *Text 5* (AD 362) a husband postulates arrest of his wife, who has deserted him and stolen his things. A similar situation is presented in two more documents: the above-discussed petition of the maltreated Christian wife, *P. Oxy. VI 903* (dated last quarter of the 4th cent.), and a complaint of Aurélia Hêrais expelled from the marriage home by her husband (*PSI I 41* – roughly dated to the 4th cent., Antinoopolis). In all four papyri the petitioner, notwithstanding the actual desertion of the spouse, still terms him or her as husband or wife. The scholarship¹⁸ has used these texts to advocate for the successful application of the Constantine's reform, seeing in them a proof that desertion of a spouse did not result in divorce, as unilateral divorces had been made illegal. Such an approach seems, however, slightly problematic.

Actually both *Text 4* and *5* may post-date the possible repeal of the Constantine's legislation by Julian the Apostate. But such a consideration – especially in view of only hypothetical existence of Julian's return to the customs of the fore-fathers – may still seem inconclusive. More importantly, Constantine – and none of his successors until Justinian – dared not declare illegal divorces void. They were

¹⁸ Cf. LEVY 1925: 122; MERKLEIN 1967: 60. Differently, W. ERDMANN, "Ehescheidung in Rechte der gräko-ägyptischen Papyri", *Zeitschrift der Savigny Stiftung. Romanistisches Abt.* 61 (1941), pp. 53-54..

punishable, but nonetheless still effective. And thus, there must be some other explanation of the supplicants' perception of their troublesome partners as still married to them. I would suggest that even if their marriages had legally ended (in case of Hêrais ten years before the petition!), they were not ready to accept it. The Christian wife of *P. Oxy.* VI 903 and Hêrais of *PSI* I 41 probably only with the present petitions decided to give up hopes for reconciliation (hence the lament of Hêrais uses the typical expressions found in the divorce documents: "had I not looked at him, had I not been united with him at the beginning", ll. 19–20). In *Text 4* Serênos sees Tamounis as his lawfully wedded wife, because her mother had no right to take her away. The deserted and robbed husband in *Text 5* might have still not decided for divorce, he is more concerned with the deeds snapped by his wife than with the future of his marriage. Curiously, however, he accuses his wife to have performed an "illegal exit". This might be – with all reservations as the document is dated to the last regnal year of Julian the Apostate – the only indication of Constantine's norm in practice.

There is one more direct reference to "the laws". In the *Text 6* the girl's barrister suggests that she has obtained the right to divorce her husband once he has deserted her. The date of the document is problematic again. However, even if the original text (most probably we have a copy made for scholarly use at our disposal) had been executed under the rule of *CTh.* 3.16.1, this mention does not find any plausible explanation. Constantine allowed women to repudiate their husbands in case of three very specific grave crimes: homicide, poisoning (or magic) and destruction of tombs, any minor offences (like a husband womaniser, drunkard or game-addicted) were not enough: leaving a husband under these pretences was labelled as "deprived debauchery". It is obvious therefore that Olympianê's attorney cannot have meant the Constantine regulation.

I suggest therefore that we cannot draw from the papyrological material any conclusion as to the efficacy of Constantine's reform. We also have to bear in mind that with a consensual divorce still permitted, the party willing to divorce may still be able to induce the other to separate, be it by financial or social means (an adequate parallel may be provided by the the so-called "ransom-divorce" practised under Coranic or Talmudic law, a situation in which the woman, forfeiting her dowry, persuade her husband to divorce her).

2.5. *Text 4: P. Cair. Preis.* 2–3
(AD 362, Hermoupolis Magna)

This petition of which have survived two almost identical copies was addressed to the police officials, *riparii*, of the Hermopolitan Nome. I have based my translation on the version of *P. Cair. Preis.* 3, as it bears a very interesting variant of the text: a mysterious *χωρ[ι]ς* followed by a lacuna, which has provoked quite a discussion in the scholarship.

Serênos denounces that during his absence for a business trip his mother-in-law gave his wife Tamounis to another man. He married Tamounis six years before, she received on that occasion *bedna*. The unlucky husband claims to have tried to fulfil his marital duties so well as he could. Probably after three years of joint-life (the mention of this period is not very clear in the context) the evil mother-in-law intervened taking Tamounis back to her home under pretences of her daughter's possession by a daemon.

The translation of the concluding, much disputed, lines of the papyrus depends on their reconstruction. In the translation I have preferred the restoration suggested by Joëlle Beaucamp: *ἐτέρω ἀνδρὶ χωρ[ι]ς* || *[γνώμης αὐτῆς] ἐ[ξέ]δωκε[ν] τὴν αὐτὴν σύν[β]ιον* – “(the mother-in-law) has given this (my) wife to another man without [her consent]” (Beaucamp 1994: 122 & ft. 117) to the one postulated by Uri Yiftach *χωρ[ι]ς* || *[ἀπαλλαγῆς]* “without [a document/dutiful proceeding of divorce]” (Yiftach 2003: 217 & ft 77) and to the one suggested in *Berichtigungsliste* I *χωρ[ι]ς* || *[γνώμης ἐμῆς]* – “without [my consent]”. As for the latter proposal: it would be bizarre to expect that Serênos would put forward that invalidity of his divorce depended on lack of his approval to the new marriage. I repeat: unilateral divorces also in the times of Constantine's reform were still effective even if sanctionable. Never had a ex-consort prerogative to give consent to the subsequent marriage of his/her former partner. The former restoration does not convince either in view of non-existence of any compulsory divorce proceeding either in the papyrological practice or under the imperial law; as I have already written in the section 1.4, a document of divorce – at least until the reform of Theodosius II – was by no means obligatory. It is therefore more plausible that the petitioner regards the divorce as invalid because it was imposed by the mother, who had (*contra* Taubenschlag 1929, 330 & ft. 37) never a prerogative to dissolve her daughter's union – unless the daughter approved of course (in such a case, in the line of the precedents cited by Dionysia separation would be considered to have been executed by the child itself).

Unfortunately the document breaks before exposition of the object of the petition, so we do not know whether Serênos has given up the idea of marriage with Tamounis altogether and demanded back only the *bedna* and the expenses or whether he has claimed the return back home of his wife as well.

[ὕπατειας Μαρμερτίνου κ[α]ὶ Εἰ[ο]νίττα τῶν λαμπροτάτων.
 [Αὐρηλίους] Νίλω Γενναδίω καὶ Θεοδώρῳ Κωμασίῳ
 [ρίπαρίοις] νομοῦ Ἑρμοπολείτου
 4 [παρὰ Αὐρη]λίου Σερήνου Πινουτίωνος ἀπὸ κώμης Ἐγσεὺν
 [τοῦ αὐτοῦ] Ἑρμοπολείτου. πρὸ ἕξ τούτων ἐνιαυτῶν
 [ἔγλημα γυνα]ϊκα[ν] Ταμοῦνις τοῦνομα ἐκ πατρὸ[ς] Δη-
 [μητρίου κ]αὶ τὰ ἕξ ἔθ[ους] δ[ι]δ[όμενα] α[ἴ]τνα ἐξέδω-
 8 [κα τῇ αὐτῇ γ]υναικὶ κα[ὶ] τοῦς νόμους τῶν γάμων ἐ[ξ]ετέλε-
 [σα καὶ τὸ σύ]νηθες τῶν γάμων, καὶ τρία ἔτη συν[ε]β[ί]ο[υ]ν
 [αὐτῇ. ἡ δὲ] μήτηρ τῆς ἐνγεγραμμένης ἐπέπεξέν με
 [ὡς τῆς γυ]ναικός μου πείραν λαβοῦσαν δέμονος.
 12 [ἐμοῦ οὖν ἀ]ποδημήσας εἰς τὸ ἰ[δ]ι[ο]ν ἔργον, ὅπως
 [εὐρῶ ἐξυ]περετήσαι τὸν βίον, ἐτέρῳ ἀνδρὶ χωρ[ι]ς
 [γνώμης αὐτῆς] ἐ[ξ]έ[δω]κε[ν] τὴν αὐτὴν σύν[β]ιον [ὀ]νό-
 [ματι Π]εεῦτι ἀπὸ κώμης Ἀχιλλέως τοῦ αὐτοῦ Ἑρμο[πο]λεί[του]
 16 [-----]

2. 1 Νίλω Γενναδίου καὶ Θεοδώρῳ Κωμασίῳ 6. L. Ταμοῦνιν [γυνα]ϊκαν Παπ. 7. L. ἔδνα
 10. L. ἐνέπαισέν 11 I. δαίμονος Παπ. 12 ἀποδημήσαντος 13 ἐξυπηρετήσαι 14. Cf.
 introduction; 14. Πεεῦτι BL IX. 46 Παεῦτι orig. ed. 15. 1 Ἀχιλλέως.

During the consulship of Mamertinus and Nevitta, the most illustrious. To Aurélii Nilos son of Gennadios and Theodôros son of Kômasios¹⁹ the *riparii* of the Hermopolitane Nome from Aurélios Serênos son of Pinoutiôn from the village Enseu in the same Hermopolitane nome.

Six years ago I married a wife, Tamounis by name, [born] from father Dêmêtrios and I gave to the same wife customarily given bridal gifts (*bedna*), and I fulfilled all laws of marriages and the duties as husband, and made three years of married life with her. But the mother of the above-written fooled me that my wife was

¹⁹ The papyrus actually gives the *patronimika* in dative, but already Wilcken in AfP 3 (1905), p. 115 pointed out it was a mistake.

possessed by a Daemon. When I was away from home for the sake of my own business, as I was looking for an opportunity to make my life longer, she (the mother) gave the same spouse to another man of name Paeuti from village Achilleus in the same Hermopolitane (nome) without [her consent?].²⁰

P. Cairo Preis. 2: 15-16. And now I[ask? the object of the petition has not been preserved)

2.6. Text 5: *P. Lond. V 1651*
(Hermopolis, 20th of April AD 363)

This petition to a strategus sent by Aurêlios Dios against his wife Hermionê brings out a little family scandal. As Dios was away, Hermionê left the marital household taking away some valuable objects belonging to him. The man seems especially worried (“he is not able to sit in peace) that the woman has also robbed some important documents: loans and the deed of sale of (his?) house, which as we know from the late Antique sales of real estate constituted a proof of ownership of a house and was transmitted to the new owner. In the line 10 Dios accuses his wife to have performed an illegal exit. This might be the only indication of the Constantine norm in the documents of legal practice. Dios was certainly interested in encumbering his (former) wife with the gravest accuses: he requests her arrest until the “fortunate” arrival of the *praeses* of Thebais, who will be able to decide the lawsuit. Dios was probably contemplating the possibility of summoning Hermionê by means of *actio rerum amotarum*, used in case of theft between the ex-spouses (the regular *actio furti* as infamatory was not admissible).

An interesting feature of this text is the fact that again (like in the *Text 4*) the weaker-sex contrary to the popular stereotype results not so weak at the end of the day!

*ὑπατέας τοῦ δεσπ[ό]του ἡμῶν Ἰουλιανοῦ τοῦ αἰωνίου Αὐγ[ο]ύστου
τὸ δ καὶ Φλαυί[ου Σ]αλ[λ]ο[υ]στί[ο]υ τοῦ λαμπροτάτου ἐπάρχου*

²⁰ *P. Cairo Preis. 2* lacks the reservation “without [? ???]”. For other possible restorations of the clause, see the introduction.

- του ἱεροῦ πρετωρίου[υ].
- 4 Αὐρηλίω Ἑρμεί[α] Ἡλιοδώρου ἄρξαντι βουλευτῇ ἐνάρχῳ στρα-
[τη]γῶ Ἑρμουπ[όλεως] τῆς λαμ[προ]τάτης
π(αρά) Αὐρ(ηλίου) Δίου Ἀ[πό]λλωνος ἀπὸ τῆ[ς] αὐτῆ[ς] πόλεως. ἔτι ἀπὸ
του μηνὸς Μεσορῆ ἢ ἐμὴ σύμβιος Ἑρμιόνη καιροτηρησαμένη
- 8 τὴν ἀπουσίαν μου ἐπὶ κώμης διατρίβοντος πάντα τὰ ἔνδον
ἐπὶ τῆς ἡμετέρας οἰκίας ἐν ἧ καὶ ἀναγκαῖα βιβλία ὑφιλα-
μένη ἄνομον ἔξοδον πεποιήται καὶ πολλάκις
ἔ[π]εμπον ἐπι.σεω[.]κλαι.λω. τότε μὲν ἐφάνη ὅτε
- 12 τ...νετ..ρ[.] ενετ[.]ο[.] ἀνέσχυντο ...
τὰ ἡμέτερα οὐκ ἀποδέδ[ω]κεν μάλιστα τὰς πράσεις
[τ]ῶν ἐμῶν οἰκοπέδων. δ[ι]ὰ τοῦτο μὴ δυνάμενος
ἀ[φ]η[σ]υχάσει ἐπιδ[ί]δωμι τ[ῆ] σῆ] συνέσει τάδε
- 16 τ[ὰ] βιβλία ἀ[ξ]ιῶν ταύτην [πα]νταχόθε[ν]
ἀχθῆναι καὶ ἐν ἀσφαλεῖ εἶνα[ι] ἀ[χ]ρι τῆς εὐτυχούς
ἐπιδημίας τοῦ κυρίου μου διασημοτάτου ἡγεμόνος
Κερεαλίου Τηλεφίου Ἱεροκλέ[ου]ς ἐμοῦ μέλλοντος
- 20 τὴν περὶ τούτου ἐντυχίαν ποι[ή]σασθαι. διευτύχει.
ὑπατ[ε]ίας τῆς προκε[ι]μένης Φαρμούθι κε .
Αὐρ(ἡλίου) Δίου[ς] Ἀ[πό]λλωνος [ἐ]πιδέδωκα. Αὐρ(ἡλίου)
Ολ[κουει]ς Παθερμουθί[ο]υ ἔγραψα ὑπὲρ α(ὐτοῦ) γράμμ(ατα)
- 24 [μὴ εἰ]δό(τος).

1. 1. πραιτωρίου; 15 ἀφησυχάσαι; 17. L. ἀχθῆναι. 6 BL III 97

During the consulship of our Lord Julian (the Apostate) the Eternal Augustus for the fourth time and Fl. Allousthios, the most illustrious praefect of the holy praetorium. To Aurelios Hermeias son of Heliodô's first councillor and acting strategus of the Hermopolis, the most illustrious city, from Aurelios Dios son of Apollon of the same city. Since the month of Mesore my wife Hermione having waited for my absence to an away village took away all things which were in our house among which were debts records and committed an illegal exit. She sent many times... When it all turned out that ???? and above all she did not give back the deeds of sale of my household. Therefore I, not being able to sit in peace, submit to your Sagacity these letters, asking that she be brought from all places and kept in safety until the happy arrival of my lord most eminent praefect Kyrillos Telephios Hierokleus as I am thinking of making a petition about all that. Be well!

In the consulate of the above, Pharmouthi 25. Aurélios Dios son of Apollon has submitted. Aurélios Olkueis son of Pathermouthios has written for him as he does not know the letters.

Text 6: *P.Lips* 41 = *MChr.* 300

(Hermoupolis Magna, paleographically dated to the last quarter of 4th cent.)

This copy of a proceedings protocol contains the speech of barrister Nilammôn representing Olympianê, an orphan, deserted by her husband Besarion. A few years before the girl married Besarion with the consent of her curator. The groom who was not ready to provide habitual marriage gifts that he had promised proposing, executed an IOU to secure the fulfilment of the matrimonial promises. When the wife assisted by her curator requested the promise to be fulfilled, Besarion left the “family fire” taking some of his wife’s property which he probably later sold (if we understand correctly ll. 11–12). The barrister warns that the woman therefore has obtained right to divorce the man. As I have argued above, section 2.4, this annunciation is not very clear: if the document dates back to the times of Constantine’s ban on divorce, a mere desertion did not constitute a rightful ground for divorce (*iusta causa*); at any rate it always resulted in an unilateral dissolution. The lawyer cannot have addressed the marriage document (our document preserves the last mention of a marriage started without a document, *agraphos gamos*), could it be possible that he had in mind the terms of the IOU mentioned at the beginning of his speech? At the end of his discourse Nilammôn petitions that the *bedna* be finally delivered, the stolen things returned and the marital harmony restored.

It is interesting to observe the curator’s role in the whole story, he seems to have taken the place of the late father. Kastôr was asked for Olympianê’s hand. According to Wilcken 1913 he also might have received some gifts on the occasion of engagement, just as a father would do. Mitteis interpretation of the *bedna* in line 4 and 5, *MChr.* 300 (the first ones would be the bridal gifts promised by the groom, the latter counter-gifts actually presented by the girl), seems less convincing: *bedna* a technical term always mean the gifts provided by groom.

According to Mitteis (*P. Lips.*, p. 140) the curator had also to give consent to the girl’s divorce. This seems however quite strange especially in view of D. 24.2.4 which expressively excludes such a prerogative even in case of insanity of the ward (see Urbanik 2002). Either we deal were with application of the local rules contradictory

to the imperial law (cf. provision of *Liber Syro-Romanus* § 81 [ed. Selb & Kaufhold]), or perhaps curator's was needed because a divorce of a ward implied financial settlements and these had to be approved of by the guardian (see commentary to the *Text 2* as well). Another clarification – not without reservations – is offered by Ulrich Wilcken (Wilcken 1909: 475–476), who combines “with the curator of this girl” with the verb *ὑπάρχω* and the following participle *ἀξιούσα*, suggesting that the writer has omitted the beginning of the last period (we would expect it to start by “<so now the ward procures, puts forward> that it would be allowed to her together with her curator, to demand that...”. I have preferred to keep the original editor's idea, as the restoration suggested by Wilcken imposes too-far reaching modification of the preserved text and does not offer a plausible explanation either.

- Νι(λάμμων (?)) ὑ[πέ]ρ Ὀλ[υ]μπιανῆς [θυγ]ατρὸς Διονυσί[ο]υ ἀπὸ πριμιπιλαρίων μετὰ Κάστορος 2nd Hand κουράτορος βουλευ[τ]οῦ τῆς λαμπρᾶς Ἐρμο[π]ολεϊτῶν πόλεως. ἔ[στιν] ἀμφοῖν τοῖν γονέοιν ὄργανή ἢ βοηθ(ουμένη). τοῦ οὖν κουράτορος αὐτῆς τοῦ προωνο-
μασμ[έ]νου Κᾶστ[ο]ρος [ὑ]π[ὲ]ρ Βη[σ]αρίωνός τιν[ο]ς ἀπὸ βενεφικιαρίου τῆς σεμνῆς ταυτησεὶ τάξεω[ς] ἀξιω[θ]έν-
4 τος ἐπὶ ἔδνοις τ[ι]σὶν ὡς ἄγεσθαι βο[ύ]λεσθαι τὴν παῖδα, ὁ μὲν κ[ο]υράτωρ γνώμης γενομένη[ς] τῆς βοη[θ]ουμένη[ς] ἐπὶ συμφώ-
νοισ [ἔδ]νοισ ἀγράφως τὸν γάμον ἐδεξιάσατο, ἐξ ἐτοίμου δὲ μὴ ἔχων ὁ γῆμαι βουληθεὶς τὰ ἔδνα παρα-
σχέ[σθ]αι [γραμμα]τ[ί]ον ἔθετο [τ]ῆ νῦν βοηθ(ουμένη) με[τὰ] τοῦ κουράτορος καὶ ὄντο γε κατὰ τὴν πίστιν τοῦ γραμματείου
τὰ ἔδν[α] παρ[α]σχ[ή]σεσ[θ]αι, δι[ὸ] καὶ οἱ γάμοι συνήφθησαν. τούτων οὕτω πεπραγμένων καὶ τῆς [συ]μβιώσεως
8 κατὰ ταῦτ[α] ca 9 Ἰκνας ἡρμ[ο]σμένης ὁμοῦ οὐκ εἰς μακράν, ἐπειδὴ τὰ ἔδνα ἀπαιτεῖσθαι πρὸς τε τοῦ κου-
ράτορο[ς] καὶ αὐ[τ]ῆς τ[ῆς] γ[η]μαμ[έ]νης ἔμελλεν, [ο]ὐκ ἔσμεν ὃν τρόπον βουληθεὶς τὰ μὲν οὐκ ἀπεδίδου
ἀνεχώ[ρ]ει δὲ ἀπὸ τ[ῆς] ἐστ[ί]ας, τῆς [[θ]έν ἢ οἱ γάμοι ἐπετελέσθησαν, οὐ τὰ ἑαυτοῦ ἐπικομιζόμενος μόνον,
ἀλλὰ κα[ί] τιν[α] τ[ῆς] γη[μ]αμέν[η]ς. ἐπεὶ τοίνυν τὸ[[ν]] μὲν ἔδνον οὐκ ἀποδέδωκεν, ἀλλ' ἔτι καὶ νῦν χρεωστὶ
12 ἀλλ' ὁ διήρπασεν [τῆς] παιδός[ς] ἔτι διακατ[έ]χει ἐν ἀργυρίῳ, καθ' ἑαυτὴν δὲ ἔασας δαιτᾶσθαι ὄχετο ὡς
ἑαυ[τ]ὸν π[έ]μ[π]ειν [κατὰ] τ[οὺς] νόμους μετὰ τοῦ [κ]ουράτορος αὐτῆ ὑπαρχθῆναι παύτ[[η]]{α} ἀξιούσα · προηγου-*

μένως μὲν αὐτῇ [ἐ]γγράφως τὸ χρεωστούμενον ἔδνον ἀποδοθῆναι, ἔπειτα δὲ κα[ὶ] ἀ
ἀπηνέγκατο

[...].οντα αὐ[τὸν] τῷ οἰ[κ]είῳ ἀποδοῦναι τόπῳ. τούτων γὰρ οὕτω πεπραγμένων
εἰκότως καὶ ἡ

16 τ[οῦ γ]άμου ἀρμ[ονία] τέλει[ος] ἔσται.

3 l. βενεφικιαρίων ; l. ταυτησὶ 11 l. χρεωστει 13 l. ταῦτα; ἀξιούση 14. l. τὸ ἐγγράφως χρεωστούμενον

Ni(lammôn) for Olympianê daughter of Dionysios the ex-Primpilianus with guardian Kastôr, the councillor of the Illustrious city of Hermopolis. The ward is an orphan by both parents. And since her curator, the above-called²¹ Kastôr was asked with some gifts²² by a certain Bêsariôn, ex-beneficiary of this noble office, to take the girl for himself (as wife) – if she wanted so –, the curator with the consent of the ward welcomed the unwritten-marriage of the ward upon the condition of agreeable marriage-gifts (to be given to the bride).²⁴ But because the groom²³ was not ready to provide the gifts, he issued a document for the ward²⁴ with her guardian, so they thought that the gifts would be provided upon the security of the document, on which account they contracted the marriage. After it all had been done, and marriage contracted under [the given-conditions?] with a happy life together but not for a long time, but he (the groom) did not have any intention to give gifts – as the they had been demanded by the curator and the married woman herself — and we really do not know what he thought! – Instead he left the family fire of the household, in which the marriage had been contracted, taking away with him not only his own things, but also some things of his married wife. And now he has not only not given the gift, but he also owes, and moreover he has sold (things belonging) to the wife but still has got (their value) in money, and having let her live just by herself, he has gone away. So that according to the laws it is allowed to her, putting forward these demands, and assisted by her curator, to send him away: first of all that the gift owed by writing

²¹ ‘above-named’ according to Wilcken clearly refers to the fact that we deal here with a court-speech. Instead of the usual ‘above-written’, the author uses a rare ‘pro-onomazo’: Olympiane’s guardian has already been named during the proceedings, in the part of the document which is now lost.

²² For discussion between Wilcken and Mitteis on the understanding of the *hedna* in these places, see the introduction.

²³ litt. the one willing to marry

²⁴ litt. To the one who is presently under the guardianship

be given to her, and then that the things he has carried away, he will restore to the home-place. If this all happens, there will be achieved harmony of the marriage.

Bibliography:

BAGNALL, Roger S. (1987), "Church, State and Divorce in Late Roman Egypt", [in:] K.-L. SELING & R. SOMERVILLE [ed.], *Florilegium Columbianum: Essays in honor of Paul Oskar Kristeller*, New York, pp. 41-61

BEAUCAMP, JOËLLE, *Le statut de la femme à Byzance (4-7 siècles)* 1: *Le droit impérial* (Paris 1990) 2: *Les pratiques sociales* (Paris 1992)

CHRISTENSEN, Thorolf (1998), "SB XIV 11355 - a reedition. Copy of a census-retum", *Archiv für Papyrusforschung* 44, pp. 27-39 [= SB XXIV 15987]

EVANS-GRUBBS, JANE E. 1995, *Law and Family in the Late Antiquity. The Emperor Constantine's Marriage Legislation*, Oxford 1995

LESQUIER, JACQUES, "Actes de divorces gréco-égyptiens", *Revue de philosophie, de littérature et d'histoire anciennes* 5 (1906) 5-30

LEVY, ERNST 1925, *Der Hergang der römischen Ehescheidung*, Weimar 1925

MERKLEIN, Andreas 1967, *Das Ehescheidungsrecht nach den Papyri der byzantinischen Zeit* (Diss. Erlangen), Nürnberg.

PRÉAUX, CLAIRE 1962, "Acte de Divorce du Brooklyn Museum (P.Brooklyn gr. 4)", *Chronique d'Égypte* 37, 323-33

RUPPRECHT, Hans-Albert (1971), *Studien zur Quittung im Rechte der Graeco-Ägyptischen Papyri* [= *Münchener Beiträge* LVII], München, *passim*, in part. pp. 43-50

TREGGIARI, Susan 1991, *Roman marriage: iusti coniuges from the time of Cicero to the time of Ulpian*, Oxford
Divorce Roman Style: How Easy and how frequent was it?, in: B. RAWSON, *Marriage, Divorce, and Children in Ancient Rome*, Oxford 1991, 47-78

TAUBENSCHLAG, Rafał (1929), "Materna potestas im gräko-ägyptischen Recht", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 49 (1929), pp. 115-128 (= *Opera minora*, II, pp. 323-337)

URBANIK, JAKUB 2002, "D. 24.2.4: ... Pater tamen eius nuntium mittere posse: l'influsso della volontà del padre sul divorzio dei sottoposti", [in:] T. Derda, J. Urbanik & M. Węcowski, *EËerge!€a! xārin. Studies Presented to Benedetto Bravo and Ewa Wipszycka by Their Disciples*,

URBANIK, JAKUB 2005, "A Priestly Divorce in the Seventh Century Palestine: Various Legal Orders at Work (the Case of P. Nessana III 57, a. 689)" [in:] Z. Służewska & J. Urbanik (ed.), *Marriage: Ideal – Law – Practice. Proceedings of a Conference held in Memory of Henryk Kupiszewski*, Warsaw, 199-218

- URBANIK, JAKUB 2007, "Compromesso o processo? Alternativa risoluzione dei conflitti e tutela dei diritti nella prassi della tarda antichità", [in:] G. Thür – E. Cantarella, *Symposion 2005. Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, Wien 2006, pp. 377-397.
- VOLTERRA, EDOARDO 1940, *La conception du mariage d'après les juristes romains*, Padova, [= *Scritti giuridici*, II, Napoli 1991]
- VOLTERRA, EDOARDO 1948, "Quelques observations sur le mariage des *filiifamilias*", *RIDA* 1, 213-242 [= *Scritti giuridici*, II, Napoli 1991, 97-126]
- VOLTERRA, EDOARDO, "Intorno ad alcune costituzioni di Costantino", *Rendiconti dell'Accademia Nazionale dei Lincei. Classe di Scienze morali, storiche e filologiche*, seria 8, 13 (1958)
- VOLTERRA, EDOARDO 1959, "Quelques remarques sure le style des constitutions de Constantin", [in:] *Mélanges Levy-Brühl*, Paris
- VOLTERRA, EDOARDO 1975 "Precisazioni in tema di matrimonio classico", *BIDR* 78, 245-270 [= *Scritti giuridici*, III, Napoli 1991, 351-338]
- VOLTERRA, EDOARDO 1980, Ancora sulla struttura del matrimonio classico", [in:] *De iustitia et iure. Festgabe Ulrich von Lübtow*, Berlin-München, 147-153 [= *Scritti giuridici*, V, Napoli 1991, 599-605]
- WILCKEN, ULRICH, "Zu den Florentiner und Leipziger Papyri", *Archiv für Papyrusforschung* 4 (1908), pp. 423-486, at 475-476.
- WILCKEN, ULRICH "Zu den Brautgeschenken in P. Lips. 41", *Archiv für Papyrusforschung* 9 (1913), pp. 186-188
- YIFTACH-FIRANKO, Uri 2003 *Marriage and marital arrangements. A History of Greek Marriage Document in Egypt. 4th century BCE – 4th Century CE*, MBPAR 93, München