Price in ‘Sales on Delivery’

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Among the more curious types of document found in the papyri of Ptolemaic, Roman and especially Byzantine Egypt is the contract whereby a party acknowledges receipt of money as the price for goods to be delivered later. Scholars have generally adopted terms like ‘sale on delivery’, ‘sale with deferred delivery’ or ‘advance sale’ to describe this type of text. Such terminology, however, is not very descriptive of these documents, for their language and terminology is closely similar to that of loan contracts, not of sales, and indeed some scholars have called them loans. Over the years there has been a considerable amount of discussion of the nature and function of the transactions recorded in such texts. The most recent contribution to this debate is an article by Zola M. Packman, in which she argue a novel and ingenious hypothesis. Thanks partly to a newly published text (BGU XIII 2133), however, it appears to me possible not only to demonstrate that her theory is incorrect but to reexamine the whole problem fruitfully.

The arguments presented by Packman center around fourth-century examples of the loan in cash with repayment in kind, in particular the Aurelia Toccius document in the Columbia collection; as the new text is also of the same period, I will focus my discussion also on this century. But there is in fact comparatively little change through the centuries in this type of document. I begin with a...
PRICE IN "SALES ON DELIVERY"

statement of as much of a communal spirit as may be found, the introduction by Boak and Youse to F.Caut., p. 92.4 "This type of agreement, in which a share of the anticipated harvest is sold and the price is paid several months in advance of delivery, has been widely discussed by papyrologists and jurists, but no definitive conclusion has so far emerged. It is sometimes regarded, especially when the price is not stated, as a donation in status, i.e. a cession of property in settlement of a previously existing debt, sometimes as a simple money loan of which the value is to be repaid in kind, but more commonly as a genuine sale with payment in advance of delivery. This controversy has elicited from C. B. Welles (A.J.P. 68 (1947) 94) a summary judgement which has every chance of being right: "This type of document ... has bothered the jurists who approach it from the point of view of Roman law, but the conception is Greek, and eminently sensible; payment in advance gives the farmer money to finance his crop, and in the case of wine, where the procedure is as common as to be regular, it assures him in immediate market, without the obligation of furnishing his own container; in Egypt, it should have been fairly easy to forecast the yield. Welles that justifies the view most generally held that these documents record true sales with payment in advance of delivery. It is necessary to modify this position only to the extent of admitting that the same transaction could be embodied in a loan as well as a sale."

It is important to emphasize that several interconnected questions are involved here. The first is that of the type of documentary formula employed. This is an acknowledgement of an obligation to pay something, in the language of a loan, commonly formulaised in a subjective or objective formula. In one sense, therefore, the question of "what kind of text this" is easily answered. But the most important aspect is for us to understand the motives of the two parties, for it is these, and not any formal conception of sale or loan, which determine the form of our documents.

4 Similar remarks in P.Ath. 21 375 in recit. (J. Bollon), with a good summary and bibliography. The view initially proposed by Rabl, that the texts are distinct in status, is to my mind sufficiently refuted by the arguments of the scholars cited above, and there is no reason to be cited by authors of papyri, it is accepted by practically none. It rested largely on the absence of stated price in most instances, and a more plausible explanation is that papyri in early 3rd century and perhaps in the 4th century and above, there is no real basis for Rabl's theory.

4 Goodall and Hense, 2. 218, 270-271 in recit., saw already that the formula was that of a loan. Either first or third person phonology may be used. The nature of the transaction is such as to make a loan contract the natural formula, for the point of the document is to acknowledge an obligation to pay in the future. The formula of a sale exists principally to provide the purchaser with legal title to that which he has in possession; it would be beside the point in the case of a loan of goods of the kind generally involved, and indeed annulment of sale for such goods are largely absent from the preserved sales (with present possession). The term "debt" is by no means used by the borrowers in these texts to describe the context there, or to be repaid after the goods have been delivered, e.g. 20 VI 1183 and 2022 IV 107. In 20 VI 1183, the text refers to the debt at the end of the contract in the former to be equal, but not the cash. In the face of this evidence, I do not see how the statement of the editors of P.Curt. p. 90 can be supported: "the body of No. 20 is phrased as a sale while its subscription (22-14) is phrased as a loan."

This renders text, if, in fact, the ... loan at the end of the goods in question. The formula is that of a loan in kind such as P.Mytil. 22 or 24 (e.g. the only one of numerous examples).

4 For example, 30 1440.

5 These papyri of 1946 (P. H. Fiorese, Three Domotic Papyri in the Brooklyn Museum (Burlington Suppl. 21, 1942), 50 1948); they were included in the Revue de l'Égypte from 1948, and published by J. Quispel, and R. J. Vos (Göttingen 1949), nos. 3-8 (I owe to Professor Vos's kindness the use of this week in proof).
not decisive. Indeed, faced with these texts and posing the question of their proper title, Pestman remarks: "Nous croyons du reste que la question que nous avons soulevée n'avait aucun intérêt pour les personnes intéressées à la transaction. Elles avaient en vue une convention de crédit et ne se sont sûrement pas demandé si leur transaction constituait un prêt ou une vente à livraison différée." But the critical question of motives can be answered more confidently. Pestman, though admitting that the merchant's occupation might lead one to suppose that his interest was in securing the merchandise which would be delivered to him, points out (1) that the quantities involved are too small to be of any real commercial importance, and (2) that the merchant reserves the right to be repaid in cash rather than produce if he wishes. He concludes: "Nous pensons, par conséquent, pour la supposition que le marchand n'a pas calculé ces transactions en vertu de sa profession, d'aurait plus que nous avons des raisons d'admettre que l'initiative de ces transactions émane des débiteurs plutôt que du créancier... Les débiteurs se sont probablement adressés au marchand parce que dans leur communauté il dé là être un homme relativement âgé et d'une certaine puissance financière."

We will do well to acknowledge that not all transactions need spring from the same motive. In a few cases we can judge that the buyer was principally interested in consuming the produce, as was the buyer of BGU IV 1015 (Alexandria, 13 A.C.), who purchased a samos of milk a day for three months, or in reselling it, as in the case of the winemaker of P.Kar. III 314 (Hermopolis, A.D. 428), who purchased 224 arials of wine. No such interest, however, is discernible in most documents. Since one of the principal merits of Pockman's approach is that it takes into consideration the motives of both parties, a summary of his argument will be useful before we proceed further:

(1) The first Tetceis document, BG VI 903a, is dated 3 February 372, yet it calls for delivery in Epeiph (June-July) of 373. A delay before delivery of more than a year in such a contract is unparalleled, and in loans of commodities which are similar, only one other such period is found, also in a document dated early in 372, P.Vindol. Slip. 15. The only reasonable explanation of this anomaly is the assumption that the scribes have written the wrong constabul (i.e., ἐμποράς instead of ἐμποάς ἐμποράς). Such scribal errors in dating formulas of this period are common.

(2) The editors, Day and Porgera, took the price of barley in this document at face value and supposed a rise in price from 500 to 600 talents per ardrus between February and the date of BG 903c. December 372. N. Lewis, on the other hand, supposed that the price stated represents a price less interest; that is, that interest was deducted before a price was paid. A difference of price is therefore a difference of the time for which the money was used by the borrower; the longer the period, the lower the price.

(3) If the true date of BG 903a is 371, the situation is reversed from what Lewis supposed. The price is inflated by the incorporation of interest, not reduced by deduction of it. The parallel to commodity loans, where the amount that is stated as received is in fact that owed, i.e., with inclusion of interest, suggests that here too the amount of indebtedness is stated. This is true both for the money and for the goods to be delivered.

(4) The specification of price appears generally when there is no penalty clause, and vice versa. The only reasonable explanation of this phenomenon is that the two were essentially equivalent in function. The only explanation of this situation is that a sale was not legally binding until the delivery was completed, and that some provision to protect the buyer in the event the seller did not wish to make delivery was necessary.

(5) This variability of the transaction allowed a wide range of possibilities to the two parties for speculation according to their wishes, against possible changes in the value of the goods sold in advance.

Pockman proceeds to elaborate on the opportunities for speculation opened up by this kind of transaction. One is forcibly reminded in reading her remarks of the operation of a modern options exchange,
PRICE IN 'SALES ON DELIVERY'

Two of these explain what interest is to be charged; in one case it is nothing, in the other, a percentage of hay per month. It has been established by P. W. Pestman (see n. 16 infra) that the clause referring to interest does not indicate that no interest was charged, but rather that no interest was charged on the amount stated, i.e., interest was included in the amount of the loan. In the London piece there was probably interest charged, but it cannot be recovered. In SPF III 132, the rate of interest may not have been evident until the end of the loan, since the amount of interest in kind was fixed but the principal in kind was not. P. Gem. 8 yields no information. The provision is in fact awkward if something to regulate interest is not put in, like that in IGU 2332, and in fact its use is a curious borrowing from a well-known penal clause in contracts of this type where the amount to be repaid in kind has been specified, but not the amount of money borrowed. Here the borrower, on default, must pay the cash value of some multiple (usually 1.5 or 2) of the sum of produce, the value being determined by that current at the time of default. In this situation, the use of the then-current price is a convenient means of providing an equivalence which does not openly show variances, where the lender’s profit is already secured by the size of the penalty. In the main body of the contract, however, it is difficult to manage unless one wishes, as in the new Berlin text, to reveal indirectly the use of a uniform rate of interest, and most lenders did not want the rate revealed.

We may note that a phrase somewhat similar to that about reduction of price occurs in a penal clause in PSI III 239: ἐὰν δὲ μὴ λαμβάνῃ τὸ χόρτον τῷ ἔναδμῳ τῆς φοῖνικὸς (τοῦ χόρτον τῆς φοῖνικὸς), τοῖς ἐπὶ τὸ τιμήθημα τῆς φοῖνικὸς μέροι, τὸ τιμήθημα τῆς φοῖνικὸς τοῖς ἐπὶ τῷ τιμήθημα τῆς φοῖνικὸς τῆς τόκου. That is, an unpaid amount of produce would be repaid in cash with the cash reduced in accounting by a third of its value; the true interest rate would be then 50 per cent in the Berlin text.

When we return to the Tournai document, we notice that they—like such documents generally—state consistently the amount to be repaid but are not consistent about giving the amount borrowed. In the case where the amount borrowed is not stated (SB 9603), the amount to be repaid is the only amount given in the contract. (There

is no penalty clause.) I take it, therefore, that this is the true amount to be delivered. Now ‘advance sales’, other than those where only the money amount is stated (discussed above), divide into those where only the amount in goods to be delivered is given and those where the price is also stated, the ratio is about 5:2 between these types. In the former, as in SB 9603, we must accept that the amount of goods to be received is the true amount of the contract. Scholars have long been suspicious of the reliance of these texts about how much cash was advanced, and with reason. The documents try too hard to emphasize that the price was fair and agreed upon. The standard Byzantine formula is τὸ ἄνδρι ἐν ἐδραῖο μέροι, and some variants are stronger; common is the inclusion of some form of ἐνδιδομένως to indicate mutual agreement. Cf. P. Sest. 12 (III 24), ἐνδιδομένως καὶ ἐνδιδομένως μάλαι ἐνδιδομένως. One’s suspicions are also increased by P. Athen. 24 (Arsoine, a.d. 285), where the amount is stated, and it is called ἀνδρὶ καὶ ἐδραῖο μέροι ἐνδιδομένως. (A similar phrase is found in P. Bod. 25.) One asks, ‘balance’ after what? Deduction of interest is the natural response, considering IGU 2332.

When one turns to the transactions where the price is given, one is struck, in those cases where one can judge from good contemporary parallels, by the low prices paid; these also point to a deduction of interest before the amount is stated. Some examples are P. Corr. 2 (Philadelphia, 199 a.c.), where the editors conclude that the profit over fifteen months must have been nearly 100 per cent; P. Mich. XI 605, where 4 solidi buy 18 arbutus of barley, 18 of wheat, 4 of vegetable seed and 200 jars of wine; and P. Mich. 85, where a solidus (of 225 carats) buys 20 arbutas of wheat. The editor of this last text was led
by the enormous amount purchased (twice what a solidus would normally buy) to see his text as "a means of avoiding the law limiting interest." There is then, at least some reason to believe that usury was the prime motive of the lender in many documents, regardless of whether price, gold or to be delivered, or both were specified.

We can now summarize the types of transactions involved in the Tuscus documents and the new Berlin text: (1) loans in kind to be repaid in kind with interest of 50 per cent; (2) loans in money to be repaid in kind, with both parties specified but not the interest; (3) loans in money, amount unspecified, to be repaid in kind at a price not specified but reduced by a third; (4) loans in money, with amounts not specified, to be repaid with a fixed amount of produce. The essential feature which links the last three groups, I think, is the absolute avoidance of any statements that one party is paying so much interest. From what has been said about other similar documents, it is surely the case that this insistence is owed to the fact that the rate of interest was charged on loans of money; the figure in the Roman period was 12 per cent. But these are abundant examples in the papyri of a willingness to borrow at a higher rate and, in fact, of a severe imbalance between demand for cash at 12 per cent and availability. Why should one lend money at 12 per cent when one could buy wheats and lend it at 50 per cent? And in the fourth century, why should one lend at 12 per cent when inflation might cost one a substantial part of the sum even in the course of the year?

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46 Similar views about the incidence of "advocata solvi" may be found in Monneret, op. cit. (pp. 254 et al.), which uses a fuller citation of such views.
48 See for a thorough and illuminating discussion N. Lewis, ZPE 94 (1985) 276-292; the remarks of H. Stahl, "Debate Numeri" (in Edinburgh London 1974) 39-49, are interesting for the earlier period. 279, 33, 1, permits the imitative type of loan only for loans in kind, p. 283, K. V. K. V. 12, Acta Antiq. 18 (1979) 334.
49 For bibliography see Schiller, op. cit. (pp. 1-34).
50 See R. S. Bagnall and P. J. R. Hylenes, ZPE 24 (1977) 111-134, for the course of prices in the fourth century.

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ROGER J. BAGNALL

The loan of money to be repaid in kind is, I suggest, the answer to these questions, especially in the fourth century, when this kind of text for the first time became so common. For the lender there was the security of the crop, a good rate of interest, and repayment in a non-depreciating commodity. For the borrower there was at least relatively easy access to cash which would be inaccessible at 12 per cent and illegal at a higher rate. It was easy to obey the letter of the law in this way: no interest was being charged in money. This type of contract, in fact, is capable of concealing almost any interest in the price; the absence of a statement of the amount of interest in these documents is natural. Somewhat the same phenomenon is no doubt involved in the use of "vexillum" of loan of money where the sum lent is described as "diescum." P. W. Pestman's penetrating study of these loans leaves no doubt that this phrase means that the interest is already included in the amount of money stated as having been borrowed; no interest is due on the stated amount precisely because interest, at an unraised rate, has already been added in. A fine example of the functioning of these contracts was recently published by John Shelton in a fourth-century Karanis document from the Michigan collection, a loan is stated to be "diescum" in the body of the loan, but the docket (this is presumably the lender's copy) gives an amount a third less as being the principal, "vestegonon." Nothing on the borrower's copy indicated that an interest rate of 50 per cent was being charged.

The contract of loan in money with repayment in kind, then, is most correctly to be seen as one of the manifestations of the ingenuity of the population of Roman Egypt in avoiding laws which were wholly contrary to actual conditions. But while one may admire this ingenuity, the conditions which made it necessary are anything but laudable. The perennial shortage of cash and the continuing inflation which helped make this contract profitable are not earmarks of economic health and stability. Worse still, one may suspect that these loans form part of a worsening cycle of economic dependence...
PRICE IN 'SALES ON DELIVERY'

of the farming class on the wealthy. In the case of Aurelia Tertulia, it is suggestive that she borrowed 18 arres of wheat from Aurelia Korine in September 373 to be repaid with 27 arres in Pasani (June-July) the next year (P.Mer. I 37); but in late 374, Tertulia borrows 27 arres from Korine to be repaid with 49 in the following year. A consistent willingness to pay interest of 50 per cent, or more accurately perhaps an inability to do otherwise, whether in money or in kind, and a pyramiding of such debts, are symptoms of the increasing desperation of the small farmers. Karanis was certainly a dying village in this time.99 Our pattern is one of dependence.99

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99 On the death of Karanis see H. Bédoulian, Actes XIII Congress Int. d’Égyptologie (Bordeaux 1948) 139 n.5, and H. Germerot, Karanis, Commissariat aux Égypètes antiques d’Egypte (1939 n.5). The latest detailed documents from Karanis is now P.Kein. iv. 318, published by J. Bédoulian and S. Ebbesen in Five Copenhagen Papyri (University of Copenhagen. Cérémonies de l’Institut des Mecenes Grec et Latin 4. Copenhagen 1973) pp. 27, dated to 480; but there are no discrete papyri in the sixty-five years preceding this text, and indeed the Copenhagen text seems to me too sound the absolute date-wright of the village. Cf. now a loan of 12th with repayment in wheat from Karanis, dated a.n. 377, TAE 14 (1927) 148-52.

99 Schedel: Z. De Pasquie and William Brushe for letting me see the contributions discussed here in advance of publication.