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TWO BYZANTINE LEGAL PAPYRI IN A PRIVATE COLLECTION

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The two papyri published here are part of the collection of a private collector in the New York area. They were acquired by him from a dealer in whose family they were said to have been kept since before the second World War in France. Though both are fragmentary, they both have something of interest for the subject of testamentary disposition in Late Roman Egypt.¹

1. *Will*

The majority of this text is lost, but the scarcity of Byzantine wills (see below) makes the publication of even the remainder worthwhile. The text is written across the fibers, in the manner described as a rotulus or 'transversa charta.'² Turner points out³ that at least some wills were written in this fashion: from our period he adduces *P. Lond.* I 77 (= *M. Chr.* 319), to which he returns in detail (pp. 47 ff.). He suggests that original wills were normally written in this fashion; wills written parallel to the fibers would thus be copies.

Our papyrus is about 14 cm. wide as preserved. Since rotuli are as wide as a normal roll of papyrus is high, or about 30-33 cm., it can be seen that we have the right half of the text. The surviving papyrus is about 41 cm. long; there are kolleseis at 12 and 30 cm. from the top, with a width of kollema of 18 cm. Lines 15 to 34 are occupied by the subscriptions, all in unpracticed hands, of the testator, the scribe, and the witnesses. How much preceded line 1 I cannot judge, but none of the normal introductory phrases remains, and quite possibly half or more of the papyrus is lacking.

Wills of the period from 300 to 700 are notably scarce. In the standard list of wills by O. Montevercchi (*Aegyptus* 15 (1935) 68-72) we find 19 of the total of 119 listed, and her supplement in *La papirologia* (Torino 1973) 208 adds three Byzantine out of 18 total. (The 1969 supplementary list by

¹ For the sake of completeness, I may mention that the same collection contains a third fragmentary papyrus, from which I can extract no useful text.

² E. G. Turner, *The Terms Recto and Verso, Actes XV Congr. Pap.* I (Bruxelles 1978) 27-53.

³ *Ibid.*, 43-44.

P. J. Sijpesteijn in *P. Wisc.* I 13, introd., included 22 in all, with somewhat different inclusions and exclusions.) Even the meager figures are too high, however, for five of Monteverchi's citations are Coptic, with Greek only in subscription or date (*SB* I 4319, 5589-5592). However intrinsically interesting, these documents are not useful comparative material for a 'Roman' will in Greek. Moreover, the last two items on the list (PER 1562⁴ and *P. Monac.* ined.) are unpublished. And *P. Cair. Masp.* III 67152 is only a copy of 67151.

On the other hand, Monteverchi omitted *P. Oxy.* XX 2283 and *P. Ness.* 115, and *P. Col.* VII 188 has been published since she wrote. The net harvest is thus 17 of a total of 132. Considering the bulk of published papyri of the fourth through seventh century, this figure is not impressive.⁵

In a brief but suggestive article, Mario Amelotti has called attention to the small numbers of wills in this period and the comparatively greater role played by 'paratestamentary' documents like *donatio inter vivos* or *mortis causa*.⁶ He regards the institution of the will as being "in piena crisi." He traces this crisis to a search for certainty in legal acts which he regards as characteristic of "epoche turbate e declinanti," and which takes the form of preference for acts of immediate validity and immutable acts.

The facts to which Amelotti drew attention, in particular the small number of wills, are indisputable. But his characterization of the period as troubled and declining seems to me subjective (if hardly original) and of highly dubious applicability to a country so generally prosperous and free from outside disturbance as Egypt in the period before the Persian and then Arab invasions of the seventh century (and even these, after all, did not unhinge much of the normal life of the country). Whatever the explanation, it must be more interesting, though perhaps less cosmic than that.

Amelotti notes that on the whole the surviving wills, all of a notarial form, only rarely have "attenuazioni formali," however much their formal elements are 'mere' formalities. We have too little of the provisions of the will published here to judge that side of it in general, but it is clear enough that there are only four witnesses (see the notes to those lines), instead of the legally required seven. Of the 17 wills published or described, starting with the first seven-witness will (*P. Col.* VII 188, cf. lines 26-31n.), 5 (*P. Oxy.* VI 990, *SB* V 8265, *P. Athen.* 31, *P. Ness.* 115, and *P. Grenf.* I 62) are too fragmentary to yield the number of witnesses; 4

⁴ The piece has not been able to be traced; cf. *Festschrift zum 100-jährigen Bestehen der Papyrussammlung der Österreichischen Nationalbibliothek* (Wien 1938) 79.

⁵ For that matter, five of the 17 are not fully published.

⁶ *RIDA* 3 ser. 16 (1969) 211-14.

(*P. Lond.* V 1894, *P. Oxy.* XX 2283, *P. Lond.* III 1040 and III 1308) were described without giving the needed information, and 7 (*P. Col.* VII 188, *SPP I*, p. 6, *P. Michael.* 53, *P. Oxy.* XVI 1901, *P. Cair. Masp.* III 67312, II 67151 and III 67324) are seven-witness wills.⁷ Only *M. Chr.* 319 has five witnesses (it is complete at the foot). Now the present papyrus joins it as an example of fewer than the legal number.

There is one other legal point of some possible interest. The editor of *SB* V 8265⁸ pointed out that it offered a case of instituting heirs each for particular assets rather than as heirs of the entire estate in common. Such a practice was not valid in classical law, but in the fourth-century Egyptian countryside it seems to have been acceptable. Amelotti argues that the practice is really just an old Graeco-Egyptian custom in new clothes.⁹ At all events, two of the later wills (sixth century) also institute multiple heirs with defined objects of inheritance (*P. Oxy.* XVI 1901, *P. Cair. Masp.* III 67312); in *P. Cair. Masp.* II 67151, however, the distinction between undivided shares for the heirs and specific legacies to others is clear. In general, I have the impression that the distinction between heirs and legatees was vague in most notaries' and testators' minds in this period. In our papyrus, we apparently have a series of commands that all of the testator's goods of one type are to go to particular heirs; the fragmentary condition of the text makes it difficult to say much more.

There are no indications of provenance preserved. The nomenclature (particularly Pinoution) seems Upper Egyptian, insofar as it is distinctive. Since most of the known papyri from this period which are Upper Egyptian come from the Hermopolite or from Aphroditopolis, these seem the most likely possibilities, and Pinoution is particularly Hermopolitan. But that is a slender thread on which to hang a provenance.

VI-VIIp

[τῷγ εὐλαβεστά-	± 27]. [...]. [...τ]ὴν παρουσίαν
[των	θίου	± 23	υἱὸν Στεφάνου καὶ Παῦλον υἱὸν Παμου-
[κελεύω εἰ τι ἔχω	± 27] υἱὸς Φοιβάμμωνος μονάζων;

⁷ The actual subscriptions are lost in *SPP* I, p. 6; 3 are lost in *P. Cair. Masp.* III 67324; and *P. Cair. Masp.* II 67151 was never signed. All three say that they are seven-witness wills. The editors of *P. Oxy.* XVI 1901 say that there are six witnesses, but there are actually seven.

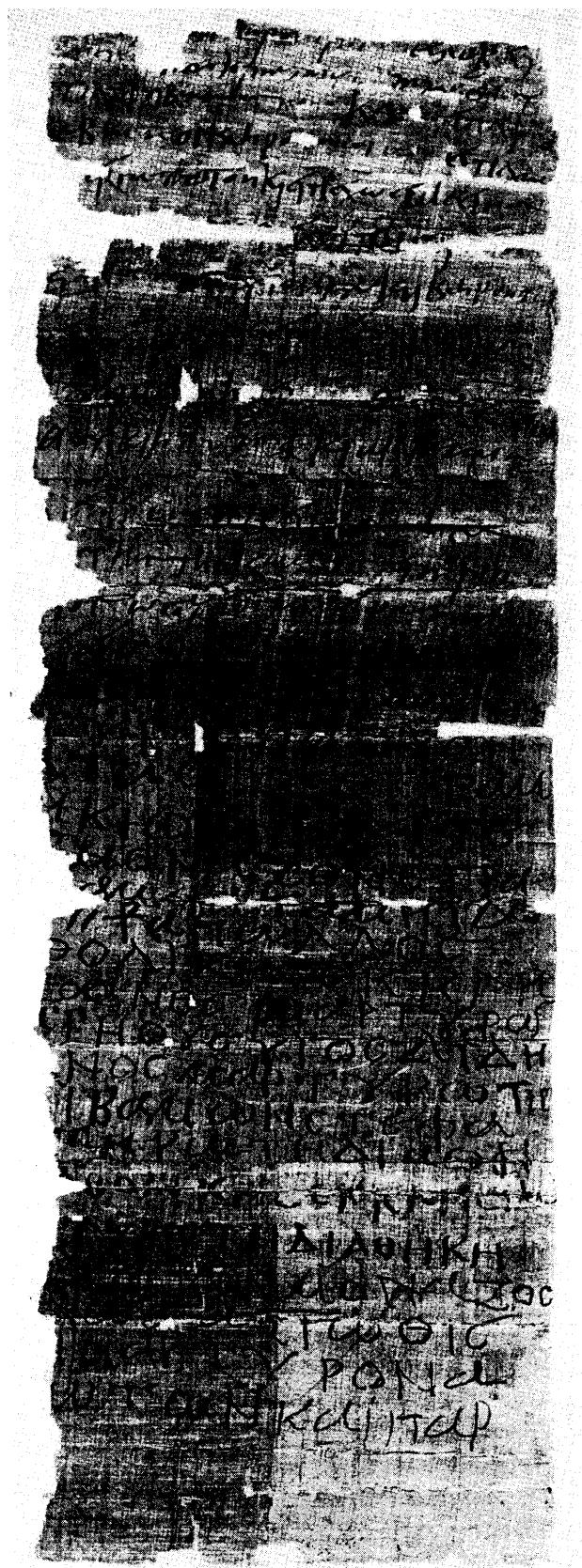
⁸ Published by L. Cohen in *TAPA* 68 (1937) 343-56. The date is 335, cf. R. S. Bagnall and K. A. Worp, *Chronological Systems of Byzantine Egypt* (Zutphen 1978) 110 s.a. 335. The text is reprinted by M. Amelotti in *Il testamento romano I* (Firenze 1966) 280-81 no. 19.

⁹ Amelotti (supra, n.8) 70.

4 [± 24 καὶ] Ἀβραὰμ οἱ κληρογόμοι μου· εἴ τι ἔχω
 [± 27] ἐργαστήριον καὶ εἴ τι ἔχω εἰδέσιμα
 [± 36]. παρέχει τοῖς.....
 [± 23] καὶ Ἀβραὰμ υἱοῖς μου καὶ κληρονόμοις
 8 [± 27]. ἔχω αὐτοῖς καὶ εἴ τι ἔχω χρύσινον
 [± 27].. σήμερ[ο]ν ἡμέρ[α] Θῷθ ι[ε]ς
 ἵνδ(ικτίονος)
 [± 18 νίος Παμου]θίου καὶ Ἡλίας μονάζ(οντος)
 καὶ Ἀβρααμίδη
 [± 25 καὶ] ἐπερωτηθεὶς ὅμολόγησα.
 12 [± 27]εργίας τῆς κώμης καὶ περὶ τὴν
 [± 27]. ος ὡς ὁ υἱός μου Ἀβραὰμ ἀδελφ()
 [± 27].ρέ.ουσιν οἱ ἀδελφοὶ ἔκαστοι
 [± 18 χυρία ἡ δια]θήκη καὶ βεβαία, καὶ
 ἐπερ(ωτηθεὶς) ὅμολ(όγησα) καὶ ἀπέλυσα.

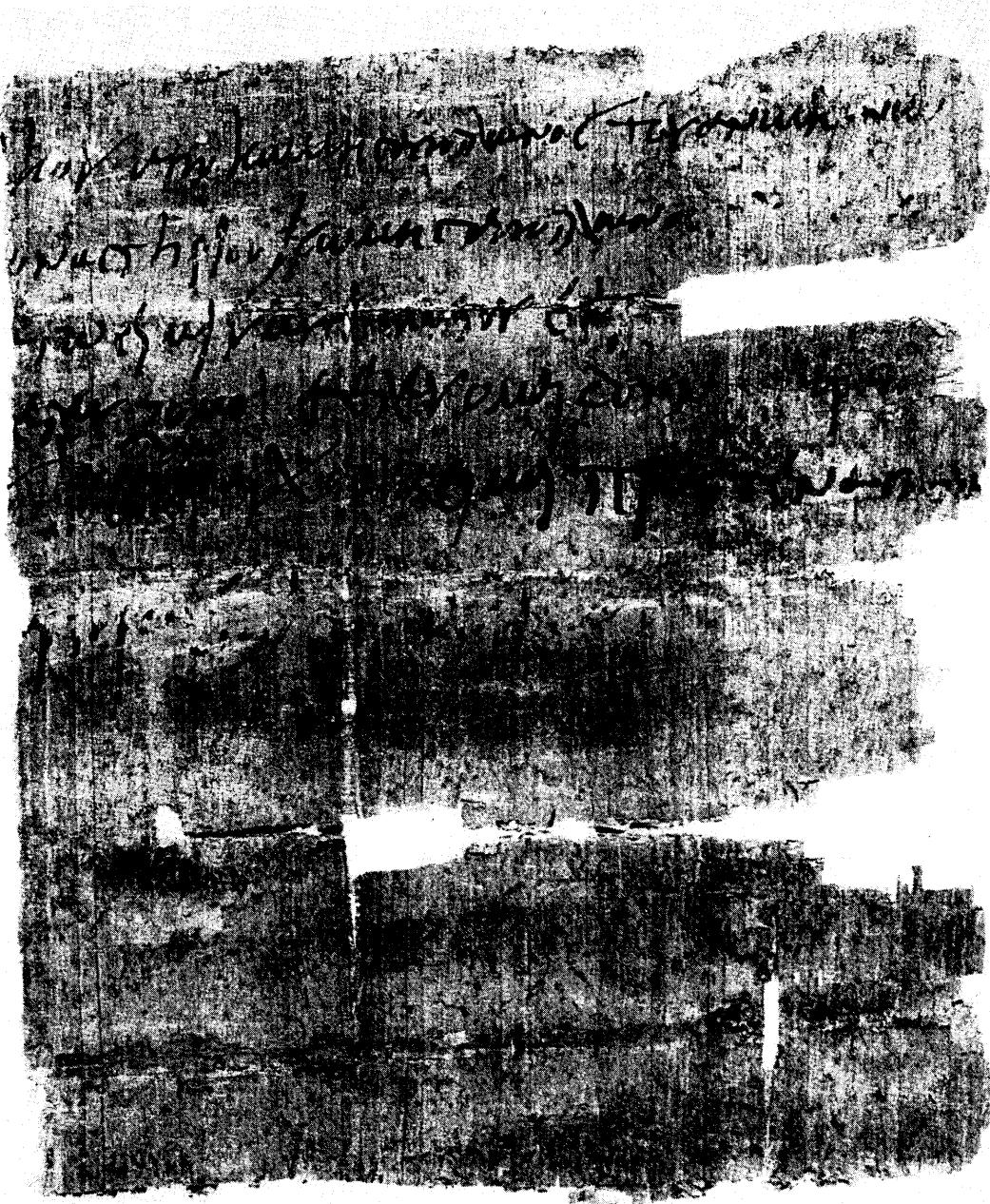
16 [(2 H.) Name title]ς υἱὸς Παοῦ δη-
 [± 9 πάντ]α τὰ ἐγγεγραμ-
 [μένα ἐν τῇ διαθ]ήκῃ ὃς πρόκιτε.
 []. μονάζον ἔγρα-
 20 [φα ὑπὲρ αὐτοῦ γρ]άμματα μὴ ἴδο-
 [τος ± 10]// (3 H.) Ῥ 'Απωλλός
 [(e.g.) διάκονος τῆς κα]θολικῆς ἐκκλη-
 [σίας υἱὸς ± 5].ωνος [π] μαρτυρῶ
 24 [τῇ διαθήκῃ. (4 H.) Ῥ].ηους υἱὸς Διδή-
 [μου ± 9]νος μαρτυρῶ τῇ
 [διαθήκῃ Ῥ Φ]οιβάμων Στεφά-
 [νου ± 6 μαρ]τηρῶ τῇ διαθή-
 28 [κη ± 10 κ]αθολικῆς ἐκκλησίας
 [υἱὸς ± 7 μα]ρτυρῶ τῇ διαθήκῃ
 [± 8 Ῥ Πιν]ουτίων μονάζος
 [υἱὸς ± 9]νως ἀξιωθής
 32 [ἔγραφα ὑπὲρ τῶ]γ μαρτύρον ἀ-
 [γραμμάτων γεγον]ώτων καὶ παρ-
 [όντων]

2 υἱὸν, υἱὸν pap. 3, 13, 16, 24 υἱὸς pap. 5 αἰδέσιμα? 6 εχω, ω ex corr. 7 υἱοι
 pap. 10 Ἡλία 11 ὅμολόγησα 15 ὅμολ(όγησα) 18 ὡς, πρόκειται; προκίτε
 pap. 19 μονάζων 20 ειδο-, ιδο- pap. 22 καθολικῆς pap. 23 .ωνος, ο ex
 ε 24 ἵηους, Διδη- pap.; Διδυ- 26 Στεφα-, α ex corr. 27 μαρτυρῶ; διαθη- pap., η
 ex θ 30 μονάζων 31 ἀξιωθεὶς 32 μαρτύρων 33 γεγονότων; καὶ pap.



5

1. The Will



2. The Deed of Gift

The persons mentioned in the body of the text are mostly represented by one of their names. We find the following:

- NN son of Stephanos (2)
- Paulos son of Pamouthios (2, 10?)
- NN son of Phoibammon, the monk (3)
- NN and Abraham my heirs and sons (4, 7, 13)
- Elias the monk (10)

It is possible that Elias, who is named immediately before Abraham in line 10, is the other son of the testator. We do not know whether all of these people mentioned are heirs or legatees; none of them can be identified with any of the witnesses' names preserved at the foot.

5 εἰδέσιμος is unknown to me; it may be a misspelling of αἰδέσιμος, which I cannot read. The latter, meaning "reverend" or "sanctified", is often used in the Byzantine papyri to refer to people (clergy, in general); perhaps in this case it refers to religious articles of some sort. The testator seems to me likely to have been a cleric of some sort, though that cannot be proven.

12-15 These lines contain the summary of the will, with a repetition of the validity clause; they are written in the same hand as what precedes. I cannot identify the verb in 14 with confidence; π]αρέξουσιν would be difficult, as the first letter looks more like epsilon, the fourth (corrected?) like iota.

15 The addition of καὶ ἀπέλυσα is found also in *P. Lond. I* 77.71 (alone of the surviving wills, so far as I am aware). It is common at the end of notarial contracts.

16-18 Apparently these lines are the testator's "signature". δη- may begin δηλῶ, a form of which occurs in *P. Lond. I* 77.71 in the testator's closing declarations, but I cannot see how to restore the remainder of line 17 if so. Assumption of a possible spelling error would give δηθέμην for διθέμην, the expected verb, and give a 10-letter (or 11, ἀπαντά) restoration.

19-21 The signature of the man writing the subscription for the testator is still in the same hand as lines 16-18. What occupied the remainder of the lacuna in line 21, I do not know, but I take it that the double stroke ends this subscription.

21-24 Apollos is the first witness.

24-26].ieous son of Didymos is the second witness. It seems very likely that the name is Πιηοῦς. I do not know why (apparently) a grandfather's name is given here (Φοιβάμμωνος would fit well); perhaps the man was young and had no title to give; the next witness may have given a third name as well. An occupation or title ending in -νος may be possible, but word-order weighs against it.

25-28 Phoibamon son of Stephanos is the third witness. He may have given a title or occupation in line 27, or perhaps his grandfather's (short) name (cf. 24-26n.).

28-30 The fourth witness must have had a very short name plus title (like Ἰσάχ διάκονος), giving his patronymic after the title, like Apollos in lines 21-24. What stood in line 30 I do not know; perhaps ὡς πρόχιτε?

30-34 The length of the missing patronymic again makes one think of Phoibammon. The form μαρτυρον seems to exclude any possibility that Pinoution is a witness himself. I am not sure that the hand is the same as that which wrote for the last three witnesses, but the difference in appearance does seem to be more one of pen than of hand.

2. *Deed of Gift*

This papyrus, which measures 13.6 × 15.8 cm., is written in the upper half of the sheet across the fibers. There is no preserved kollesis, but the foot of the piece may have been on one. Only the right half (or part, at any rate) of the document is preserved, and there is some loss (probably slight) at the right. The top is complete. The damage makes the exact course of this very brief text uncertain, but it apparently begins with an address from one resident of the village of Apollon of the Upper Kynopolite Nome to another, the second being attached to the monastery in that place. The writer speaks in the first person, "I am his mother." It is hard to see to whom she is referring if not the second person mentioned. The key point is the use of the verb ἀποχάριζομαι in line 5. There are not many examples of this term in the papyri; the late ones mostly include the right to ἀποχάριζεσθαι among the privileges conferred on a purchaser of property. A couple of documents from the Roman period (*P. Fam. Tebt.* 21.19, 31, *CPR I* 141.6) use the term of gifts to daughters, and it seems clear enough that the word means to alienate property by gift.

P. Monac. I 8.29 (etc.) provides useful evidence. It is a seven-witness *donatio mortis causa* by a woman; the term ἀποχάρισμα is used to refer to this legal act, and the verb used (e.g. line 10) is δεδωκέναι, just as δοῦναι is used here in line 4. It seems likely enough that the present document is also an example of *donatio mortis causa*, but the brevity of the text makes it unclear whether this is the actual legal act or only a memorandum of it.

VIp

].κού ἀπὸ κώμης Ἀπόλλωνος τοῦ ἄνω Κυνωπ[ολίτου
μ]οναστηρίου κώμης Ἀπόλλωνος τοῦ αὐτ[ο]ῦ ἐγ[ω] Κυνωπολίτου
] ἐγώ εἰμι ὁ μυτήρ αὐτοῦ ει.ξ[

4] ελευζομοι γελεύομαι δοῦνα[ι] παρα.[
]υ[..ριζομαι] `ἀπό χαρίζομαι πρὸς Σεναπολλ[
] ἀργυρ..... ἀποχαρίζομαι
 3 ή μητήρ; ü pap. 4 γελεύομαι, γ ex ε 5 `από χαρίζομαι, ο ex αι (Back blank)

1 The village Apollon of the Upper Kynopolite Nome is not securely attested elsewhere, cf. Calderini-Daris, *Dizionario geografico* I.2 173. There is a place 'Απόλλωνο(ς) in *WO* 1093, where the editor supplies πόλεως; similarly in *WO* 1121. One could argue that village should be understood instead, or that they refer to the same place; but our evidence is too scanty to allow any conclusions. The most recent treatment in detail of the problem of the Kynopolite Nomes is R.A. Coles' note ad *P. Oxy.* XLVII 3345.50, which is decisive in favor of the view that the Upper/Lower distinction is one between a nome in the Delta and that between the Oxyrhynchite and Hermopolite Nomes; *XLIX* 3477.5 has since provided some further evidence on the subject. The view of Daris, *Diz. geogr.* III (1980) 165 that the distinction refers simply to two parts of the same nome is to be rejected.

4 I do not know what the beginning of the line can mean. After that, presumably read κελεύομαι. I have not found a good parallel for this middle usage.