UNIVERSITY OF WARSAW
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UNIVERSITY OF WARSAW
FACULTY OF LAW AND ADMINISTRATION
CHAIR OF ROMAN LAW AND THE LAW OF ANTIQUITY

THE RAPHAEL TAUBENSCHLAG
FOUNDATION

The Journal of Juristic Papyrology

FOUNDED BY
RAPHAEL TAUBENSCHLAG

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VOL. XLII (2012)

WARSAW 2012

Computer design and DTP by
Tomasz Derda, Grzegorz Ochała, and Jakub Urbanik

Cover design by
Maryna Wiśniewska

Warszawa 2012

ISSN 0075–4277

This publication has been published with financial support
from the Institute of Archaeology, University of Warsaw

Wydanie I (wersja pierwotna)
Druk i oprawa: Drukarnia Duo Studio, Warszawa

The Journal of Juristic Papyrology
vol. XLII (2012)

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vol. XLII (2012), pp. 9–30

José Luis Alonso

ΠΙΣΤΙΣ IN LOAN TRANSACTIONS: A NEW INTERPRETATION OF P. DION. 11–12

1. ΠΙΣΤΙΣ IN THE DOCUMENTATION OF LOANS

Like the latin fides, the Greek *πίστις* was a highly productive legal notion. The term *πίστις* was therefore inevitably polysemous: 'oath', 'safe-conduct', 'credit', 'guarantee for a credit', 'personal surety', 'trust' are only some among its possible legal meanings,[1] leaving aside its use as translation for the Roman *fides,* notably regarding *fideicommissa* and in the expression *καλὴ πίστις*. Such polysemy poses difficulties for the interpreter when the context does not make it clear which among the many possible meanings the term adopts in a particular instance. This article will discuss two cases in point, that some interpreters have seen as related:[2] in the second part, the possible meaning of the expression *τιθέναι ἐν*

[1] W. Schmitz, *Ἡ πίστις in den Papyri*, Aachen 1963: 'Eid' (pp. 10–17), 'Schutzbrief' (pp. 17–31), 'Kredit' (pp. 32–33), 'Sicherheitsleistung bei Kreditgeschäften' (pp. 34–64), 'Vertrauensverhältnis, in dem der Vertrauende dem Vertrauensempfänger eine selbständige und eigenverantwortliche Stellung einräumt' (pp. 65–91), 'Bürgschaft' (pp. 91–97). Cf. also J. Partsch, *Griechisches Bürgschaftsrecht*, Leipzig – Berlin 1909, pp. 359–362. For the semantic shifts trustworthiness – trust – credit – security – documented security – document, A. Manigk, 'Gräko-ägyptisches Pfandrecht', *ZRG RA* 30 (1909), pp. 307–310.

[2] Cf. especially E. Rabel, 'Nachgeformte Rechtsgeschäfte', *ZRG RA* 28 (1907), pp. 358––359; vid. *infra* n. 11; p. 22 and n. 34.

πίστει συγγραφὴν ὑποθήκης in *P. Dion.* 11–12 (108 BC, Hermopolites); before, in this first section, we will consider a rather problematic group of loans described as documented *κατὰ πίστιν* to the name of a third party, who is neither the lender nor the borrower.

This latter type of transaction first came to light through a papyrus edited in 1903 in the third volume of Oxyrhynchus: *P. Oxy.* III 508 (AD 102), a ***homologia*** addressed to the lender, Heraklas, by this third party, a certain Stephanos, regarding two previous loans:

> |[5] ... ὁμολογεῖ Στέφανος ... |[8] Ἡρακλᾶτι ... |[10] ... γεγονέναι ἐπ᾽ ὀνόματος τοῦ ὁμολο|[11]γοῦντος Στεφάνου κατὰ πίστιν δάνεια δύο |[12] ⟦ ⟧ ὧν ἐκ τοῦ ἰδίου ὁ Ἡρακλᾶς ἐδάνεισεν ... |[25] ... ἄπ[ερ] |[26] δάνειά ἐστ[ι παρὰ τῷ Ἡ]ρακλᾷ, ᾧ καὶ ἐ[ξεῖ][27]ναι – *c.* ? –]

The two loans, i.e., the loan deeds (both secured by hypothec), had been executed, we read, *κατὰ πίστιν* to the name of Stephanos. Grenfell and Hunt translate as follows:

> Stephanus ... acknlowledges to Heraclas ... that he, Stephanus, the contracting party, has become security for two loans which Heraclas lent from his own money ... which loans are in Heraclas' possession, and Heraclas has the right ...

In this interpretation, Stephanos' *πίστις* is that of a guarantor, equivalent in function to the *fides* of a Roman *fideiussor*.[3]

Only three years later, the same kind of transaction appeared again, in the first volume of the Florentine papyri: *P. Flor.* I 86 (= *MChr.* 247, after AD 86, Hermopolites), a ***hypomnema*** addressed to the *archidikastes* of Alexandria requesting execution of a hypothec by means of *embadeia*:

> |[1] ... ὀφειλομ[ένων ... |[2] ... Εὐδ[αί]μονι ... ὑπὸ Διδύμης ... κ[αθ᾽ ἃ]ς |[3] [διέ]ταξεν ὁ αὐτ[ὸς] Ἐυδαί[μων γεν]έσθ[α]ι κατὰ πίστιν εἰς Σαραπι[άδα] ... συνγρα]φὰς |[4] [δαν]είων τρεῖς ἐφ᾽ ὑ[ποθ]ήκῃ κ[α]τοι[κικαῖ]ς τῆς

[3] In Roman law, the *fideiussor* is a guarantor who solemnly accepts that the debt shall be covered by his own *fides*, by answering 'id fide iubeo' to the creditor's question 'id (quod Titius debet) fide tua esse iubes?' (cf. *Gai* 3.116).

Διδύμης ἀρούραις δεκ[α]ὲξ [τετ]άρτῳ … |[5] … ἀργυρίου δρα[χμῶ]ν … ἀκολού|[10][θως ᾧ ἀ]νήνεγκεν ἡ [Σ]αραπιὰς πρὸς [τὸν] υἱόν μου Εὐδαίμωνα περιόντα δ[η]μοσίῳ χρηματισμῷ διὰ τοῦ αὐτοῦ ἀγορανο|[11][μείου] ἐπὶ τοῦ αὐ[το]ῦ πέμπτου ἔτους [μην]ὸς Νέου Σεβαστοῦ ἐξομολογουμένη τὴν πίστην τῶν αὐτῶν τριῶν συνγρα|[12][φῶν] …

The hypothec secured five loans granted by Eudaimon to Didyme. The first three, as we read in the text above, were documented in three *syngraphai* (spanning from the first to the fourth year of Domitian, AD 82 to 85), that Eudaimon, the lender, had ordered to be executed *κατὰ πίστιν* for a certain Sarapias: *κ[αθ' ἃ]ς [διέ]ταξεν ὁ αὐτ[ὸς] Ε̣ὐ̣δαί[μων γεν]έσθ[α]ι κατὰ πίστιν εἰς Σαρα̣π̣ι̣[άδα] … συνγρα]φὰς*. Later, in Neos Sebastos of the 5th year of Domitian (October – November AD 86), when the debtor had already defaulted on all three loans, this Sarapias, we are told, acknowledged through the *agoranomeion*, by public document, the *πίστις* of the three *syngraphai*.

The Florentine papyrus had already been edited by Breccia in 1904,[4] but only Vitelli's edition integrated the crucial *κατὰ πίστιν εἰς Σαρα̣π̣ι̣[άδα]*. Vitelli was fully conscious of the importance of this clause, and had been notified by Mitteis of the Oxyrhynchus parallel.[5] Led by this parallel, and following Grenfell and Hunt, Vitelli understood the role of Sarapias as that of a guarantor of the loans, who takes liability for them together with the debtor.[6]

[4] E. Breccia, 'Da papiri greci dell'Egitto', [in:] *Rendiconti della Reale Accademia dei Lincei*, ser. v, 13 (1904), pp. 121–125.

[5] Cf. his introduction to the papyrus (*P. Flor.* 1, p. 169), and there also his interpretation of Sarapias' *πίστις*.

[6] In Vitelli's reconstruction of the events (*P. Flor.* 1, p. 170), the intervention of Sarapias as a guarantor takes place only in AD 86, through the agoranomic *πίστις* acknowledgment. Vitelli imagines her intervention motivated by the fact that in the meantime she had acquired from the debtor the hypothecated land, as we know through *P. Flor.* 1 92 (AD 84, Hermopolites). This interpretation, that makes Sarapias appear in the affair only as a result of her acquisition of the land, and only in AD 86, is unacceptable, because incompatible with our document: ll. 2–5 unambiguously state that the name of Sarapias figured from the beginning, by order of the lender, in the three loan *syngraphai*.

It was the merit of Otto Gradenwitz to dispel this notion.[7] His main arguments are three:

1. First of all, in both papyri the loan appears as documented solely to the name of the third party. Formally at least, therefore, these would not be instances of guarantee, whereby someone undertakes liability *together with* the borrower, but of something much rarer: someone assuming the position of sole debtor *in place of* the borrower.

2. Secondly, if the role of Sarapias in *P. Flor.* I 86 were indeed that of a substitute debtor (or of a co-debtor), it would be peculiar that the loans are documented κατὰ πίστιν to her name *by request of the creditor*. A substitute debtor needs to be accepted by the creditor, but he intervenes by request of the debtor, not of the creditor.

3. Much stranger still is the notion that the creditor would be interested in having this debtor explicitly admit to have acted κατὰ πίστιν, as a mere substitute. And yet, such is the acknowledgment we have in *P. Oxy.* III 508, and the one mentioned in *P. Flor.* I 86 as received in public document by the creditor. If Stephanos and Sarapias were substitute or supplementary debtors, as Grenfell, Hunt, and Vitelli imagine, *they* would be interested in receiving such acknowledgment from the borrower, not the lender from them. For the lender to proceed against them, the original loan document is enough. That they are not the true borrowers is, for him, irrelevant, since they have accepted full liability. A document disclosing this circumstance is not something that the creditor would request or even welcome.

To these arguments others still could be added. In *P. Oxy.* III 508 Stephanos emphasizes not only that his role was merely that of a substitute, but also that the money was the lender's own, and that the loan doc-

[7] O. Gradenwitz, 'Alius mutuam dedit alius stipulatus est', *ZRG RA* 27 (1906), pp. 336–340. The title, 'Alius mutuam etc.', comes from Ulp. 29 *ed. D.* 14.6.7.7, where someone other than the lender figures as creditor in the formal stipulation exacted from the debtor. The same happens in our documents, according to Gradenwitz. His interpretation was challenged only, in most aspects with scarce fortune, by Manigk, 'Pfandrecht' (cit. n. 1), pp. 311–314.

uments are in the lender's possession. It is difficult to imagine a reason why a creditor would demand from his debtor a document acknowledging these particulars. They make perfect sense, instead, if we assume with Gradenwitz that both Stephanos and Sarapias in *P. Flor.* I 86 did not figure in the loan documents as debtors, but as creditors, in place of the lender. These disclosures, then, become absolutely necessary for the lender to recover his rights – and such seems to be the function of these *πίστις*-acknowledgements. That is why the substitutes acknowledge that their position was merely such, i.e. that they acted *κατὰ πίστιν*, as fiduciaries of the lender. That is why Sarapias further stresses that she figured in the document by order of the lender. That is also why Stephanos is requested to underline that the money lent did not belong to him, but to Heraklas; and that the loan documents are in the hands of Heraklas; and, finally, that it is Heraklas who may request execution against the debtor (if Grenfell and Hunt's intuition for the line where the document breaks is right, as it seems). Such a document is obviously essential for the lender who decides to bring the debtor to court, when the original loan document does not mention the lender's name as creditor, but that of someone else.

The fiduciary, in conclusion, is not a debtor, but a creditor. The new papyri documenting the same phenomenon have only confirmed this hypothesis. They are, in the order in which they have come to light, *BGU* IV 1171 (10 BC Alexandria), *SB* III 6663 (6–5 BC, provenance unknown), *P. Mil. Vogl.* I 25 (AD 127, Tebtynis), *PSI* XV 1527 (after AD 161, Oxyrhynchos), and *CPR* VI 1 (AD 125, Ptolemais Euergetis).

The main mystery that these documents present remains unsolved, though. Why would a lender permit someone to take his place as creditor in a loan document? And why does the creditor's right come back inexorably, as it seems, to him? In sum, what causes the intervention of this fiduciary as creditor *κατὰ πίστιν*? I cannot fully address this question here, but I will present a critical review of the two main opinions, since one of them has been invoked to explain *P. Dion.* 11–12, the document to which the second part of this study will be devoted.

Two, in fact, are the main possibilities. A fiduciary may be a trustee, acting in the interest of the lender; in this case, becoming creditor in his place, and as such enabled to claim in trial in his stead. Or he may be a

creditor of the lender, who acquires the right against the borrower as a guarantee of his own credit. This same fundamental duality lies behind the Roman categories of *fiducia cum amico* and *fiducia cum creditore*.[8]

The contrived second possibility – a credit securing another credit – was not even contemplated by Gradenwitz. For him, our fiduciary is a trustee. A trustee, he writes, in the ancient sense, in possession of the full faculties of the creditor, akin to the Roman *adstipulator*.[9] This raises a question that Gradenwitz does not consider: why would the lender go so far as bestowing his full rights on a trustee, when he had the much safer option of merely appointing someone to represent him in trial. Precisely the lack of such option in the old Roman procedure of the *legis actiones* seems to have been the *raison d'être* of the figure of the *adstipulator* (and the reason of its decadence in Imperial times, when, under the formulary

[8] *Gai* 2.60: ... fiducia contrahitur aut cum creditore pignoris iure aut cum amico, quo tutius nostrae res apud eum essent ... – fiduciary ownership is contracted either with a creditor, holding the property as a pledge, or with a friend with whom our property is placed for safe-keeping... . On Roman *fiducia*, B. Noordraven, *Die Fiducia im römischen Recht*, Amsterdam 1999. The analogy ends in the duality trustee-creditor: Roman *fiducia* referred to property, while our case concerns a credit.

[9] Gradenwitz, 'Alius mutuam dedit' (cit. n. 7), p. 339: 'Denn Sarapias wie Stephanos sind im wesentlichen zu dem gleichen Zwecke eingeschoben, wie die adstipulatores in Rom der stipulatio hinzutraten. Sie sind Treuhänder im antiken Sinne ..., im Besitze aller Rechtsmacht, die der materiell Berechtigte haben soll ...'. In Roman law, the *adstipulator* was a trustee of the creditor, invested with full rights as a co-creditor, so that he could receive payment but also claim the debt for him. The figure had fallen into disuse long before Justinian, and it is not to be found in the *Corpus Iuris*. It was re-discovered only in 1816, when Gaius' *Institutions* were found in Verona: cf. *Gai*. 3.110–114. The discovery of Gaius also put an end to the speculations about the second chapter of the Aquilian enactment, a third century BC plebiscite: it contained a penalty against those *adstipulatores* who deprived the creditor of his right by formally releasing the debtor. These particulars are invoked by Gradenwitz, who writes for scholars trained in the categories of Roman law, to explain our papyri: the lender, he explains, needs to protect himself from a possible breach of trust; that was the aim of *lex Aquilia* in its second chapter, and that is also the purpose of the document whereby in our case the trustee formally acknowledges his condition. Since the function of this document is to recover from the trustee one's rights as creditor, Gradenwitz further compares the case to transplanting to *adsipulatio* the *actio fiduciae* whereby we claim back the property we have entrusted to someone's custody (*supra* n. 8).

procedure, there was no longer an obstacle for representation in trial).[10] Without an answer to this question, Gradenwitz' theory seems untenable.

The alternative possibility, that the fiduciary receives the credit as a security for a debt that the lender had with him, has also found occasional advocates, at least for some of the documents.[11] The transaction would be analogous in function, if not in legal structure, to what came to be known in the Roman legal tradition as *pignus nominis*: [12] a security constituted not on a a thing but on a credit. This interpretation is in line with a certain tendency in the scholarship to assume, when the context is poor, that 'pledge' is the most likely legal meaning of the term *πίστις*.[13] The documents offer little support for this hypothesis, though: not a single one ever mentions a pre-existing debt between the lender and the fiduciary.

[10] The idea is already in S. Perozzi, *Istituzioni di diritto romano* II, Roma 1928 (2 ed.), p. 222, n. 4. The general rule excluding representation under the *legis actiones*, and its exceptions, are known to us through Gai. 4.82, Inst. 4.10 pr., and Ulp. 14 *ed.* (*D.* 50.17.123 pr.) Cf. M. Kaser, *Das römische Zivilprozessrecht*, München 1996 (2 ed.), pp. 62–63, with lit.

[11] Most categorically, Schmitz, *Ἡ πίστις* (cit. n. 1), pp. 52–64, for the cases of *P. Oxy.* III 508, *BGU* IV 1171, and even *P. Mil. Vogl.* I 25. Cf. also, regarding specifically *BGU* IV 1171, H. J. Wolff, 'An Oxyrhynchus Receipt for the Repayment of Loans', *TAPhA* 71 (1940), p. 622. The conjecture was no longer mentioned a year later, though, when considering the same document: H. J. Wolff, 'Praxis-provision in Papyrus-Contracts, *TAPhA* 72 (1941), p. 437 = 'Die Praxisklausel in Papyrusverträgen', [in:] *Beiträge zur Rechtsgeschichte Altgriechenlands und des hellenistisch-römischen Ägypten*, Weimar 1961, pp. 126–127. The first scholar to (cautiously) suggest this hypothesis was Rabel, 'Nachgeformte' (cit. n. 2), pp. 358–359: after endorsing Gradenwitz' interpretation of *P. Oxy.* III 508 and *P. Flor.* I 86, he adds '... wenn auch vielleicht der Grund der Fiduzia wieder in einer Sicherung des Treuhänders liegen mochte'.

[12] Cf. M. Kaser, 'Pignus nominis', *Iura* 20 (1969), pp. 172–190. Kaser argues convincingly that the Roman *pignus nominis* did not function as a mere assignment of the credit against the debtor – as it is most likely for its Greek counterpart. There are, in fact, reasons to think that in Roman law the action against the debtor was not the original one, transferred to the new creditor (as commonly assumed before Kaser), but an adaptation of the common *formula hypothecaria*. Only the latter would make possible to verify in trial three circumstances without which adjudication in favour of the hypothecarian creditor would be unconceivable: the existence of the hypothec itself, that of the secured debt, and the lack of payment.

[13] Cf. for instance R. Bagnall & Rafaella Cribiore, *Women's Letters from Ancient Egypt*, Ann Arbor 2006, p. 293, on *P. Mert.* I 32, l. 2, where the meaning of the term is anything but clear.

This silence is especially remarkable in the documents whereby the lender receives his right back from the fiduciary: if this happened because the lender had paid his due to the fiduciary, he would have all the interest in having the fiduciary acknowledge this crucial fact in the document. And yet, in all the cases that we know of, there is not a word of this.

If there was a practice of *pignus nominis* in the Greek tradition, these documents are not the evidence needed to prove it.[14] The practice they do attest, of loan documents executed not to the name of the lender but to the name of a fiduciary creditor, seems to have been common enough, but a convincing explanation for it remains, nevertheless, to be found.

[14] *SB* XX 15188 (*P. Flor.* III 318 + *P. Lond.* III 1164a, AD 212, Antinoopolis), would be such evidence, a credit assigned as security, according to P. VAN MINNEN. 'Gesuch und Bestellung eines Kyrios', *ZPE* 93 (1992), pp. 191–204, followed in this point also by J. HENGSTL, 'Rechtsprobleme in neueren papyrologischen Arbeiten', *AfP* 40 (1994), pp. 91–94. But VAN MINNEN's interpretation, although ingenious, is ultimately not convincing. A *hypallagma* over a credit, as VAN MINNEN conjectures, would be totally unprecedented, and hardly compatible with the nature of *hypallagma* as a non-alienation agreement. Furthermore, the αὐτῷ who shall receive the *hypallagma* from Demetria is for sure not the unnamed daughter of Aretion (as VAN MINNEN conjectures, forcing himself to read αὐτῷ as a *lapsus calami* for αὐτῇ), but very likely Sabinos, the grandson of Demetria. The kernel of the situation seems to be the following: when Demetria, as *phrontistria* of her grandson, collects a debt due to him, her liability to reimburse him the collected amount must be secured. The *hypallagma* seems to have precisely this function. That is why we are told that the *hypallagma* will be contracted πρὸς [ἐπιμ]έλιαν, where *epimeleia* is not the duty of the wet nurse imagined by VAN MINNEN (on this, already HENGSTL, cit.) but the *cura* of the grandmother as *phrontistria* (l. 10–12: βουλ̣ο̣[μένη πρὸς ἐπιμ]έ̣λιαν τοῦ προκειμένου ἀφήλικος … ὑ̣παλλάξαι αὐτο). Crucial also is the phrase ὑπαλλάξαι αὐτο … ἀντὶ τῶν περιλυ[θει]σ̣[ῶ]ν ὑπ' ἐμοῦ δρ]α̣χμῶν … ὀφ⟨ει⟩ληθε̣[ισῶν … μοῦ υἱῷ Σαβίνῳ (ll. 11–13). This ἀντὶ τῶν κτλ. prompted VAN MINNEN to imagine that the new *hypallagma* substitutes for the cancelled credit (of the son) that functioned as security until then. There is a much more simple interpretation, though: in security contracts (cf. *P. Flor.* I 81, l. 12, *P. Strasb.* I 52, ll. 7–8, and *P. Flor.* I 1, l.7, all from 2nd cent. AD, Hermopolis), ἀντὶ τῶν ὀφειλομένων simply means that the security 'substitutes' for the debt, since it secures its payment (and, when the security is a hypothec, it is accepted in lieu of payment). This seems to be what our document means by saying that the *hypallagma* is given in place of the cancelled debt.

2. ΤΙΘΕΝΑΙ ΕΝ ΠΙΣΤΕΙ ΣΥΓΓΡΑΦΗΝ ΥΠΟΘΗΚΗΣ: P. DION. 11–12

In the 10th year of Ptolemy IX Soter and Cleopatra III, 108 BC, Thoth 24 and 25, two practically identical petitions of Dionysios, son of Kephalas, were granted by the *strategos* and the *basilikoi grammateis* of the Hermopolites:[15] *P. Dion.* 11 (= *P. Lugd. Bat.* XXII 11 = *P. Rein.* I 18 = *MChr.* 26 = *Sel. Pap.* II 277), and *P. Dion.* 12 (= *P. Rein.* I 19 = *MChr.* 27). As we learn from these documents, in the previous year Dionysios and his mother had executed with a certain Admetos a loan *syngraphe* for 150 artabae of wheat, further secured by a hypothec *syngraphe* on some vacant land. Now the sowing season has arrived, and Dionysios argues that the harassment of the creditor impedes his work as cultivator of royal land, in violation of the royal *prostagmata*. Therefore, in *P. Dion.* 11 he addresses the *strategos*, requesting that the *epistates* of the village of Akoris be instructed, so that the creditor does not further disturb him or his mother. He also requests written safeconducts,[16] to keep them formally protected until the end of the season, when he will face the creditor's demands. In *P. Dion.* 12, he petitions the *basilikoi grammateis* that also the *xenikoi praktores* refrain until then from execution. Both requests are granted, in compliance with the royal *prostagmata*.[17]

[15] On this anomalous plurality of *basilikoi grammateis*, cf. *P. Dion.* 1, p. 174, *comm. ad l.* 6. For the reason why the *basilikos grammateus* is involved in the question at all, particularly regarding the *xenikoi praktores*, cf. the introduction to *MChr.* 27 (p. 22).

[16] On these *πίστεις*, SCHMITZ, *Ἡ πίστις* (cit. n. 16), pp. 17–31, with lit., and the discussion in *P. Dion.* 1, p. 170, *comm. ad l.* 31.

[17] The royal legislation is invoked by Dionysios in both documents, and also explicitly by the *basilikoi grammateis* as the basis for their decision in *P. Dion.* 12, l. 4. These *prostagmata* protected cultivators of royal land from their creditors during the cultivation period, and were still invoked in the time of Augustus: cf. Marie-Thérèse LENGER, *Corpus des Ordonnances des Ptolémées*, Bruxelles 1980 (2 ed.), All. 82, 110, 115. In the face of these sources, ours included, it seems unjustified to hold (*P. Dion.*, p. 170, *comm. ad ll.* 20–22) that there were no precise *prostagmata* applicable to our case: despite Boswinkel and Pestman, there is nothing unconceivable in a legislation protecting cultivators from litigation in certain critical periods of the year (cf. the Roman parallel of the *oratio divi Marci* in *D.* 2.12.1–7). And precisely because Dionysios' plea is firmly supported by the royal legis-

This and the other wheat loans preserved in Dionysios' archive have attracted attention due to their sheer number – twenty four (!) in the twelve years from 116 to 104 BC – and due to the very considerable amount of wheat borrowed each year, well beyond the needs of a family.[18] Such needs, on the other hand, Dionysios should have been able to meet without credit, since he was by no means poor.[19] Two different questions arise here. What was the purpose of so much wheat? And why was it borrowed, and not bought?

The first question prompted Boswinkel and Pestman, in their edition of *P. Dion.*, to suggest that the wheat may have been destined to the sacred ibises that Dionysios had to feed as part of his priestly duties.[20] Orsolina Montevecchi, [21] instead, called attention to the subscription in two of the documents: an *apoche* whereby Dionysios declares to have received the price of the wheat, not the wheat itself to which the con-

lation, it is misleading to present it as 'an argument of practical nature, that chooses to ignore the legal aspects of the affair' – so *P. Dion.*, p. 165: 'L'argument qu'il utilise dans sa requête, et qui permettra de donner bonne suite à sa demande, est de nature pratique, et passe sous silence les aspects juridiques de l'affaire'. *Contra*, cf. already MITTEIS, who included in the *Chrestomathie* our two documents as instances of 'Ladungsprivilegien' ('summons privileges': *MChr.*, pp. 21–23; cf. also *Grundzüge*, p. 18).

[18] An estimation in *P. Dion.*, pp. 9–15. Any estimation must take the following into account: a) when, as in Dionysios' loans, there is no explicit interest rate, the documented amount is almost certainly higher than the amount actually borrowed: for loans in kind, the eds. of *P. Dion.* rightly assume a 50% interest rate, so that a loan documented for 150 artabae means 100 actually borrowed; b) in some cases the loan is only nominally of wheat (*infra*, n. 22), but actually of money; c) sometimes the loan is not a new one, but the renewal of a preexisting debt (*infra*, n. 50); d) it cannot be excluded that Dionysios took yet further loans lost to us.

[19] Leaving cattle aside, we know that he owned at least a garden (leased out in 106 BC: *P. Dion.* 5), the vacant land that he hypothecated with Admetos (*P. Dion.* 11–12), and some cultivated land that he leased out in 110 BC for 100 artabae a year (*P. Dion.* 1), an amount of wheat that should suffice for himself and his family. More property, not documented in the archive, is also likely.

[20] For their summary and discussion of Dionysios' 'strange' (their expression) wheat borrowing activity, *P. Dion.*, pp. 9–22. The ibis-hypothesis is improbable, cf. N. LEWIS, 'Notationes legentis', *BASP* 20 (1983), p. 57.

[21] Orsolina MONTEVECCHI, rev. of *P. L. Bat.* XXII (*P. Dion.*), *Aegyptus* 65 (1985), pp. 226–227.

tracts nominally refer.[22] These are not actual wheat loans, but money loans to be repaid in wheat.[23] This is hardly the case of the other loans in the archive, though: the very fact that the *apoche* refers to the price only in these two, while all the other subscriptions declare the wheat as actually delivered,[24] would be enough to exclude such assumption.

As for the second question, Dionysios' borrowing mania, it has predictably been taken as a symptom of financial difficulties, so pressing that he was forced to pay off defaulted debts by contracting new ones.[25] This

[22] *P. Dion.* 22 (= *P. Rein.* I 10, 111 BC, Akoris), ll. 29–31: *Διονύσιος Κεφαλᾶτος Πέρσ*]*ηϛ τῆϛ ἐπιγονῆϛ ἀπέχω τὴν τιμὴν τῶν* [*εἴκοσι τεσσάρων ἀρτα*]*βῶν τοῦ στερεοῦ πυροῦ καὶ πάντα ποιήσω καθ' ὅτι* [*πρόκειται καὶ δέδ*]*ωκα κυρίαν Δωριεῖ.* The same formula, in the subscription of *P. Dion.* 21 (= *P. Ross. Georg.* II 6 = *P. Rein.* I 34, 113 BC, Akoris), ll. 32–34.

[23] More precisely: they are wheat loans from a merely formal point of view, yet substantially equivalent to a sale of wheat for future delivery, rather than to a simple money loan.

[24] The documents are *P. Dion.* 13 (= *P. Rein.* I 9, 112 BC), ll. 34–36; *P. Dion.* 15 (= *P. Rein.* I 15, 109 BC), ll. 32–34; *P. Dion.* 16 (= *P. Rein.* I 16, 109 BC), ll. 40–47; *P. Dion.* 18 (= *P. Rein.* I 22, 107 BC), ll. 32–34; *P. Dion.* 19 (= *P. Rein.* I 23, 105 BC), ll. 31–33. The other loan documents do not include a subscription.

[25] Thus, *praecipue* P. W. Pestman, 'Dionysios, son of Kephalas. A bilingual family archive from Ptolemaic Egypt', [in:] *Acta Orientalia Neerlandica.* Leiden 1971, pp. 19–21. Both here and in *P. Dion.*, p. 166, Pestman illustrates his hypothesis through the events of the late 108 BC, after Dionysios obtained the safe-conduct against Admetos documented in our two papyri (*P. Dion.* 11–12, 12 October). This is how Pestman reconstructs the subsequent events: two months later, in december 16th, Dionysios sells two cows that he must have needed for cultivation (*P. Dion.* 4), and takes two small wheat loans, evidently needed – so Pestman – for personal consumption (*P. Dion.* 3 and 17); three days later (19 December), he takes a new loan of 150 artabae, forced no doubt – Pestman again – to get into a new debt in order to finally pay off the one with Admetos, 'thus robbing Peter to pay Paul'. In this narrative there are many unwarranted assumptions: that Dionysios needed the cows for his own cultivation, that the small loans are destined to his personal consumption, and, especially, that the bigger loan is destined to pay off the debt with Admetos. The coincidence in the amounts, 150 artabae in both cases, makes this last assumption particularly tempting ('il pourrait difficilement s'agir ici d'un hasard', Pestman and Boswinkel write), and also demonstrably misconceived: Pestman takes rightly for granted that wheat loans are obtained at a 50% interest rate, so that Dionysios would have actually received from Admetos only 100 artabae, even if he now owes him 150; but this also means that in order to cancel this debt he would have needed to incur a new one of 225. The fact that the new loan is again for 150 artabae, therefore, is very far from proving that it was taken to pay off the previous one.

seemingly so simple explanation raises its own paradox. Twelve years seem too long a period for a debtor in perpetual default to still find lenders ready to trust him. Dionysios must have been able to pay off the loans, or else he would not have obtained credit for so long.[26] This very consideration may help solve our first question, explaining why in most cases Dionysios does not borrow money, but wheat, and in such amount. It is not because he needs it himself, for his family or for the ibises in his charge, but in order to obtain profit by re-selling or lending it. Naphtali Lewis has made a strong case for this possibility,[27] showing that the loans were consistently taken at the end of the harvest season, when the grain prices must have been at their lowest. Dionysios would then wait for the prices to rise, obtaining benefit by selling or lending the wheat in smaller amounts to poorer peasants in times of scarcity: of such transactions, though, there is no trace in the archive.

As for the loan that prompted Dionysios' plea in *P. Dion.* 11 and 12, this is how the situation is described, in identical terms in both documents[28] (the line indications are those of the better preserved *P. Dion.* 11):

> |[4] ... διὰ τὰς ἐπὶ τοῦ πράγματος ὑπο|[5]δειχθησομέ[ν]ας αἰτίας γραψαμένου ἐμοῦ τε |[6] καὶ τῆς μη[τρ]ός μου Σεναβολλοῦτος Ἀδμή|[7]τῶι τῶι καὶ Χεσθώτηι τῶν ἐκ τῆς αὐτῆς |[8] κώμης συγγραφὴν δανείου διὰ τοῦ μνημο|[9]νείου πυρῶν (ἀρταβῶν) ρν ἐν τῶι θ (ἔτει), οὐ μόνον, |[10] δ' ἀλλὰ καὶ ἐθέμην αὐτῶι ἐν πίστει καθ' ὧν |[11] ἔχω ψιλῶν τόπων συγγραφὴν ὑποθήκης· |[12] ὁ ἐγκαλούμενος ἐγκρατὴς γενόμενος |[13] τῶν συναλλάξ[ε]ων οὐθὲν τῶν διασταθέντων

[26] In this sense, J. F. Oates, 'The status designation *Πέρσης τῆς ἐπιγονῆς*', *Yale Classical Studies* 18 (1963), pp. 89–90.

[27] Lewis, 'Notationes legentis' (cit. n. 20), pp. 55–58; idem, *Greeks in Ptolemaic Egypt: Case Studies in the Social History of the Hellenistic World*, Oxford 1986, pp. 129–131. His hypothesis is reproduced, in an unduly apodictic way, by M. Chauveau, *L'Égypte au temps de Cléopâtre*, Paris 1997 = *Egypt in the Age of Cleopatra: History and Society Under the Ptolemies*, New York 2000, pp. 156–158. Cf. also J. G. Manning, *Land and Power in Ptolemaic Egypt*, Cambridge 2003, pp. 191–192; more decidedly later, in *The Last Pharaohs: Egypt Under the Ptolemies, 305–30 BC*, Princeton 2010, p. 135.

[28] Lacunae aside, *P. Dion.* 11 diverges minimally from 12: *πυρῶν* in l. 9, compared to *πυροῦ* in *P. Dion.* 12, l. 9; *ὀλί[α]* in l. 15, instead of the correct *ὀλίγα* in *P. Dion.* 12, l. 11 (cf. *P. Dion.*, p. 169, *comm. ad l.* 15). For the errors of the copyist of *P. Dion.* 12, cf. the editors' remarks in p. 166.

> |[14] *μοι πρὸς αὐτὸν ἐπὶ τέλος ἤγαγεν, ὧν* |[15] *χάριν οὐκ ὀλί[α] μοι βλάβη δι' αὐτὸν παρη*|[16]*κολούθησεν* … – '... For reasons which shall be disclosed in trial, my mother Senabollous and myself issued to Admetos, also called Chesthotes, from the same village, a loan *syngraphe* for 150 artabae of wheat, through the *mnemoneion*, in the 9th year; not only, but I also gave[29] him in trust a hypothec *syngraphe* regarding some vacant land that I own; having obtained these contracts, the accused complied with nothing of the agreed, due to which not little harm has come to me for his cause ...'.

Boswinkel and Pestman, assuming an interest rate of 50%, standard for loans in kind, calculate that Dionysios actually borrowed in this case 100 artabae.[30] Like them, all the scholars who have so far considered these documents assume that this was an actual wheat loan, and a perfectly ordinary one at that.

Yet, for an ordinary loan there are many strange elements in the petition. As Mitteis noticed,[31] it is peculiar, for instance, the way in which the hypothecation is described. Instead of merely saying that he has hypothecated the land with Admetos, Dionysios says that he has given him in trust a hypothec *syngraphe*: *ἐθέμην αὐτῶι ἐν πίστει καθ' ὧν ἔχω ψιλῶν τόπων συγγραφὴν ὑποθήκης*. This could merely mean that Dionysios executed the hypothec *syngraphe* as a guarantee for Admetos – and, indeed, it is so understood by the editors of both *P. Rein.* 1 and *P. Dion.*[32] But, given the ambiguity of the verb *τίθημι*, and the remarkable emphasis on the document as its object, it could also mean, as Mitteis points out, that Dionysios hypothecated with Admetos a hypothec *syngraphe*: that is, a pre-existing one that he had received from a debtor of his.[33] If so, the

[29] On this *ἐθέμην αὐτῶι … συγγραφὴν*, 'I executed with him a *syngraphe*', or 'I deposited' or even 'hypothecated with him a *syngraphe*', cf. *infra*, pp. 21–24.

[30] *P. Dion.*, pp. 164 and 169, *comm. ad ll.* 5–9, cf. *supra*, n. 18.

[31] L. Mitteis, 'Neue Urkunden', *ZRG RA* 26 (1905), pp. 489–490.

[32] *P. Dion.*, p. 169, *comm. ad ll.* 9–11; *P. Rein.* 1, p. 97: 'je lui ai signé en garantie un contrat d'hypothèque.'

[33] Mitteis, 'Neue Urkunden' (cit. n. 31), p. 489: 'Die Worte sind freilich zweideutig genug; man kann mit R. an eine Verpfändung von *ψιλοὶ τόποι* denken, die dem Schuldner

text would prove a practice of *pignus nominis* in Egypt, although in this case the hypothecated credit is such that the debtor's liability has been absorbed by a hypothec, and thus it is this hypothec to be hypothecated, rather than the credit. Unsurprisingly, Ernst Rabel, following this interpretation, links the document to the already discussed (*supra*, pp. 10–16) *P. Oxy.* III 508 and *P. Flor.* I 86, where, as we have seen, he equally suspects that the credit (in both cases secured by a hypothec) may have functioned as a security for the fiduciary.[34]

This alternative interpretation, though, is hardly compatible with Dionysios' statement that the hypothecated land belongs to him: *καθ' ὧν ἔχω ψιλῶν τόπων*. It could still be argued that, as hypothecary creditor, Dionysios would have a sort of suspended property on the land, but this would be a rather strained interpretation of his claim.[35] Mitteis himself considered the hypothesis of a sub-hypothecation less likely on the basis of the written *πίστεις* requested by Dionysios in line 31. Contrary to what Mitteis seems to assume, though, these *πίστεις* are safeconducts requested from the *strategos*, and not the same documents that he had issued or others that he may want from the creditor.[36] In any case, as Mitteis concludes, the expression *τιθέναι ἐν πίστει συγγραφὴν ὑποθήκης* is 'remarkably twisted and legally unclear'.[37]

gehörten; ebensogut aber auch an eine Afterverpfändung, d.h. Verpfändung einer *συγγραφὴ ὑποθ.*, die der Schuldner selbst als Gläubiger eines Dritten bezüglich der *ψιλοὶ τόποι* sich hatte ausstellen lassen.'

[34] RABEL,'Nachgeformte' (cit. n. 2), pp. 358–359, and *supra* n. 11.

[35] So already MANIGK, 'Pfandrecht' (cit. n. 1), p. 315 and n. 1.

[36] Cf. MITTEIS himself, seven years later, in *MChr.* 26, *comm. ad ll.* 31 (p. 22). Wrong in this respect also MANIGK, 'Pfandrecht' (cit. n. 1), p. 315 s., and RABEL, 'Nachgeformte' (cit. n. 2), p. 359, n. 2. Both, like MITTEIS initially, imagine these *πίστεις* as coming from the creditor: either as a written guarantee that he will not request execution, or, as in *P. Oxy.* III 508 and *P. Flor.* I 86 (*supra*, pp. 10–13), as the documents whereby the creditor acknowledges his condition of mere fiduciary owner; Rabel, in fact, considers the possibility that the hypothecation of the land was a fiduciary sale, as the *ὠνὴ ἐν πίστει* of *MChr.* 233 (see, *infra*, p. 24 and n. 42).

[37] MITTEIS, 'Neue Urkunden' (cit. n. 31), pp. 489–490: 'merkwürdig geschraubt und juristisch unklar'.

In fact, we have no other document where the hypothecation itself is said to be made *ἐν πίστει*,[38] unless we count as such one that became renowned and disputed as soon as it was published by Gerhard in 1904, with a commentary by Gradenwitz:[39] *MChr.* 233 (III BC, Pathyris), a cancellation of mortgage where we read*: ἐπελύσατο Πανοβχοῦνις … ὠνὴν ψιλοῦ τόπου … ὃν ὑπέθετο … Πατοῦτι … καὶ Βοκεν̣ο̣ύ̣π̣ε̣ι̣ … κατὰ συγγραφὴν ὠνῆς ἐν πίστει.*[40] The conjecture that the Roman ***mancipatio fiduciae causa*** and the Greek *πρᾶσις ἐπὶ λύσει* had a Ptolemaic parallel in a figure called *ὠνὴ ἐν πίστει* stems from Gradenwitz' interpretation of this text. But in this phrase, as it was soon pointed out, *ἐν πίστει* may qualify not *ὠνὴ* but *συγγραφή*[41] – or, much less likely, *ὑπέθετο*, and only this latter improbable assumption would provide a parallel to our text.

[38] In a series of well known documents, the expression *ἐν πίστει* qualifies a sale or a purchase or the way property is held or registered: *BGU* III 993 (127 BC, Hermonthis) col. III, l. 11: *… καὶ εἴ τι ἄλλο ὑπάρχον αὐτῶι ἐστιν ἥτ⟨ο⟩ι κατὰ συνβόλαια ἢ κατ' ἐπενέχυρον καὶ ἔν τισιν ἐν πίστει …*; *P. Oxy.* III 472 (AD 131, Oxyrhynchos), ll. 23–25: *… τῶν γὰρ ἐν πίστει καταγραφέντων τὸ ὄνομα μ[ό]νον εἰς τοὺς χρηματισμοὺς παρε[θ]έντων …*, cf., referred to the same case, *P. Oxy.* III 486 (= *MChr.* 59, AD 131, Oxyrhynchos), l. 26: *… φάσκων κατὰ πίστιν . . [. .] . ἐγγεγράφθαι …*; *BGU* II 464 (after AD 138, Arsinoites), l. 3: *… [α]ὐτὰ τὴν [γ]ενομένην πρᾶ[σ]ιν [ἐ]ν πίστι γεγονέναι …*; *P. Oxy.* LX 4060 (AD 161 , Oxyrhynchos), l. 51: *… [ἀ]ναζητῆσαι δὲ καὶ ε[ἴ τινα ἄ]λλον πόρον κέκτηται παρ' ἡμεῖν ἐπὶ τοῦ ἰδίου ὀνό[μα]τ[ος] ἢ ἑτέρων ἐν πίστ[ει] …*; *P. Oxy.* VI 980 *verso* (3rd. cent. AD, Oxyrhynchos): *… Κορνήλιος ποικιλτὴς τιμῆς οἰκίας ἐν πίστει ἰς ἣν τιμῆς (δραχμαὶ) Β̅ …* It is generally assumed that in all these cases *ἐν πίστει* means that the items are sold, bought, held, or registered in guarantee, securing the payment of a debt. The assumption is far from certain, though, particularly for *P. Oxy.* III 472, and *P. Oxy.* LX 4060, where the expression could very well refer to a trustee, not to a secured creditor. In any case, even if these documents, or some of them, contained fiduciary sales fulfilling the role of hypothecations, none of them links *ἐν πίστει* to the verb *τιθέναι* or *ὑποτιθέναι*.

[39] G. A. GERHARD, *'Ὠνὴ ἐν πίστει'*, *Philologus* 63 (1904), pp. 498–583; the commentary by O. GRADENWITZ, in pp. 577–583.

[40] The same expression is conjectured in *P. Adl.* G 2 (124 BC Pathyris), l. 8*: … κ[ατὰ συγγραφὴν ὠνῆς ἐν πίστει …]*.

[41] Therefore, there would have been no legal figure called *ὠνὴ ἐν πίστει*, but merely a *συγγραφὴ ὠνῆς* that in the case of *MChr.* 233 happens to be executed *ἐν πίστει*, 'in guarantee': so, against Gradenwitz, MANIGK, 'Pfandrecht' (cit. n. 1), p. 307. The fact that the expression *ὠνὴ ἐν πίστει* has not appeared so far in any other document makes it reasonable to keep Manigk's scepticism.

A deeper connection between *P. Dion.* 11–12 and *MChr.* 233 was postulated by Ernst Rabel.[42] Rabel shares Mitteis' wonder at the construction *τιθέναι ἐν πίστει συγγραφὴν ὑποθήκης* in *P. Dion.* 11–12, and contemplates also his conjecture that it may have been a previously contracted hypothec that the creditor receives, possibly in guarantee. Yet the expression may also – so Rabel – have the same meaning as *ὑπέθετο … κατὰ συγγραφὴν ὠνῆς ἐν πίστει* in *MChr.* 233: both would simply refer to a fiduciary sale. The fact that in our document we find *τιθέναι ἐν πίστει* instead of *ὠνὴ ἐν πίστει* could merely be yet another example of how in legal language the actual transaction (here, the sale) often hides behind the cause (here, the guarantee), as still happens in many modern legal expressions, the German 'Pfandfiduzia' offering a very close parallel. The passage, in any case – Rabel concludes – is indeed ambiguous.[43]

The oddities of *P. Dion.* 11–12 go well beyond the *τιθέναι* clause that puzzled Mitteis and Rabel. Dionysios commences his request announcing that in the course of the future trial the reasons will be revealed why he and his mother issued the loan contract to Admetos. Here again we find the same peculiar emphasis in the document: Dionysios does not say that he and his mother took the loan, but, remarkably, only that they issued a loan ***syngraphe*** (ll. 6–8: *γραψαμένου ἐμοῦ τε καὶ τῆς μη[τρ]ός μου … Ἀδμήτῶι … συγγ̣ρ̣αφὴν δανείου*). Striking also is the inexplicable weight given to the motives why the document was issued: in an ordinary loan, the motives to take it are hardly relevant as means of defence for the debtor, and yet here they seem to be the core of Dionysios' future strategy in trial.

It is difficult not to connect all this with yet another remarkable assertion of Dionysios: Admetos, once in possession of both the loan and the hypothec ***syngraphai***, did not comply with anything of the previously agreed (ll. 12–14*: ὁ ἐγκαλούμεν̣ος ἐγκρατὴς γενόμενος τῶν συναλλάξ[ε]ων οὐθὲν τῶν διασταθέντων μοι πρὸς αὐτὸν̣ ἐπὶ τέλος ἤγαγεν*). An ordinary loan creates no duties for the lender that the borrower may reproach him for not fulfilling, let alone such that he may use to dispute the lender's

[42] Rabel, 'Nachgeformte' (cit. n. 2), p. 359. *Contra*, Schmitz, *Ἡ πίστις* (cit. n. 1), pp. 34–36.

[43] 'Der Passus ist aber gewiß vieldeutig genug', Rabel, 'Nachgeformte' (cit. n. 2), p. 359.

claim. One may think that Dionysios merely struggles to justify his own default invoking unrelated agreements that Admetos has not honoured.[44] This sort of argument is hardly surprising in a defaulting debtor, but it is not what we read in the text. The document clearly implies a connection between these agreements and the loan. The editors of *P. Dion.* suggest a possible connection: in the wheat loans of the archive, the document executed in Hermopolis usually predates the actual delivery of the wheat, that takes place only later in Akoris. This reflects the universal practice of requesting borrowers to undertake liability in advance, before actually receiving the sum.[45] Dionysios' allegation would be, so the editors conjecture, that he did not receive the agreed amount of wheat in full.[46] Yet, if that was the case, one wonders what stops him from stating it clearly in his plea, which would thus become notably more forceful. Furthermore, this conjecture leaves unexplained the weight that Dionysios gives to the reasons for which the loan documents were issued, and how these reasons may be connected with Admetos' breach of contract.

[44] So Boswinkel & Pestman, in *P. Dion.*, p. 168, *comm. ad l.* 4. They assume that Dionysios aspires merely to a setoff between his debt and the damages he claims to have suffered. Cf. also p. 171, *comm. ad ll.* 33–34.

[45] It is widely believed that the Roman *stipulatio* was often requested from the borrower in advance: this has been the traditional explanation for the so-called *exceptio non numeratae pecuniae*, a defence granted under Caracalla to those debtors who never actually received the loan. Cf. M. Kaser, *Das römische Privatrecht* 1, München 1971 (2 ed.), p. 542, with lit., and, among the studies published since, Maria Rosa Cimma, *De non numerata pecunia*, Milano 1984, and W. Litewski, 'Non numerata pecunia im klassischen römischen Recht', *SDHI* 60 (1994), pp. 405–456.

[46] *P. Dion.*, p. 169, *comm. ad ll.* 12–13. Boswinkel and Pestman assume that this argument of Dionysios is mere pretense, that in truth he has no real defence against Admetos' claim (cf. also p. 165). This assumption is based on two arguments: a) the fact that he takes refuge in his privileges as royal cultivator to merely defer payment; b) the loan that he takes only two months later precisely for 150 artabae (*P. Dion.* 23), since the coincidence in the amounts would show that its purpose is to finally pay Admetos his due. Both arguments are fallacious. On the second, cf. *supra*, n. 25. The first is equally flawed: in general, a debtor may use a dilatory exception, when such is available, even if he has a peremptory one; in simpler terms, the fact that Dionysios uses his privilege to defer the trial does not prove that he lacks any other defence; it does not even make him suspicious of not having one; even having a defence, it would be reasonable to postpone the trial until the end of the sowing period.

A better explanation for all these oddities comes by itself if we take them at face value: Dionysios states that he issued a loan *syngraphe*, never that he received a loan; he underlines that the hypothec *syngraphe* was given ἐν πίστει; finally, he insists that both documents were issued for some still undisclosed motive, on the basis of an agreement that Admetos eventually did not honour. All this means that, in Dionysios' account at least, he did not actually borrow wheat from Admetos, but merely issued two documents acknowledging so, in exchange for something that Admetos has not performed to his satisfaction. Undisclosed until the future trial remain only the details of the performance expected from Admetos in this *quid pro quo*, and the damages that the alleged unfulfilment has brought about. What we do know is that, despite what has been generally assumed, according to Dionysios the loan in this case was not real but 'fictitious', as this type of transaction is usually styled; or, to recover an older, maybe preferable expression, 'imaginary'.[47]

If this hypothesis holds true, our document is one further example of the survival in Egypt of an institution perceived by Rome as distinctively Greek, if we are to believe the reports of Gaius and the Pseudo-Asconius:[48] the use of the *daneion syngraphe* as a general means of undertaking liability

[47] Fictitious – 'fingierte' – is the standard term since the Pandectists and Mitteis. Fiction, though, is in our legal tradition the technical term for the command of the jurisdictional power or the legislator to take as fulfilled an unfulfilled legal requisite. For this reason, it may be preferable to recover for our purpose the term 'imaginary', that Gaius uses precisely in this sense to describe the Roman *mancipatio* (*imaginaria venditio*, *Gai* 1.113 and 119, cf. also *Tit.Ulp.* 20.2) and *acceptilatio* (*imaginaria solutio*, *Gai* 3.169 and 171). For this type of transactions, that keep the form of an act or its apparent cause while changing its actual purpose, Rabel famously coined the notion 'nachgeformte Rechtsgeschäfte': E. Rabel, 'Nachgeformte Rechtsgeschäfte', *ZRG RA* 27 (1906), pp. 290–335, and *ZRG RA* 28 (1907), pp. 311–379.

[48] Ps.-Ascon. *in 2 Verr.* 1.36.91: in syngraphis etiam contra fidem veritatis pactio venit et non numerata quoque pecunia aut non integre numerata pro temporaria voluntate hominum scribi solent more institutoque Graecorum; *Gai* 3.134: Praeterea litterarum obligatio fieri videtur chirographis et syngraphis, id est si quis debere se aut daturum se scribat; ita scilicet si eo nomine stipulatio non fiat. quod genus obligationis proprium peregrinorum est. The notion, in Elizabeth A. Meyer, *Legitimacy and Law in the Roman World*, Cambridge 2004, pp. 18–20, that Gaius' *videtur* makes the texts contradictory depends on interpreting this verb as a sign of uncertainty. It was not such thing: the

for whatever cause, since the documented cause, the loan, hides the real one and suffices for the contract to be enforceable.[49]

It is not always apparent when a loan is imaginary. In this case, the hints in the document seem clear, and the suspicion is made still more likely by a further remarkable circumstance: Dionysios' archive is the single most prolific source of imaginary loans known to us so far. No less than four have been already detected in the archive: in three of them, all but one contracted by Dionysios himself, the new loan absorbs and therefore cancels the old one, as a form of novation[50] – which presumably

Roman jurisprudence uses it constantly to state uncontroverted points of law, merely as a cautious sign that all jurisprudential formulation of the law is by its own nature provisional. In this case, it is further justified by the fact that Gaius is establishing an only approximate analogy between the Greek practice and the Roman *obligatio litteris*.

[49] On this practice, after the truly ground-breaking L. Mitteis, *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs*, Leipzig 1891, pp. 460–498, cf. among the inexhaustible literature: Rabel, 'Nachgeformte' (cit. n. 1), pp. 319–44; R. Taubenschlag, 'Die Novation im Rechte der Papyri', *ZRG RA* 51 (1931), pp. 84–91 (= *Opera Minora* II, Warszawa 1959, pp. 557–566); W. Kunkel, v. syngrapha, *PWRE* IV A 2 (München 1932), coll. 1376–1388; F. Pringsheim, *The Greek Law of Sale*, Weimar 1950, pp. 244–267; H.-A. Rupprecht, *Untersuchungen zum Darlehen im Recht der graeco-aegyptischen Papyri der Ptolomäerzeit*, Stuttgart 1967, pp. 118–147; G. Thür, 'Fictitious loans and novatio: *IG* VII 3172, *UPZ* II 190, and *C. Pap. Jud.*I 24 reconsidered', *PapCongr. XXV*, pp. 757–762. A related – but different – question is the dispute concerning the existence in the Greek and Egyptian traditions of 'dispositive' – as opposed to merely 'probatory' – documents: on this, cf. the careful reappraisal by H. J. Wolff, *Das Recht der Griechischen Papyri Ägyptens*, München 1978, pp. 141–169, with lit.

[50] *P. Dion.* 9 (= *P. Rein.* I 7 = *MChr.* 16 = *C. Ptol. Sklav.* I 17, *c.* 139 BC, Hermopolites), is an *enteuxis* of Dionysios' father, Kephalas, requesting protection against his creditor, who forced him to renew his liability issuing an 'Egyptian *syngraphe*' for 10 talents of bronze, although the debt had already been paid – or so Kephalas claims; *P. Dion.* 26 (= *P. Rein.* I 31, 116 BC, Hermopolis) is nominally a loan granted to Dionysios by Hermias for 150 artabae of wheat, that in truth have not been delivered: in fact, after the ordinary ἐδάνεισ[εν Ἑρμίας …] … Διονυσίω[ι …]… πυροῦ στερεοῦ ἀρ̣τ̣[άβας ἑκατὸν πεν]τήκοντα, the document proceeds (ll. 6–9): τοῦτο δ' ἐστὶν τὸ δ̣[άνειον ὃ προσ]ω̣φείληκεν Διονύσιος Ἑρμίαι ἀπ[ὸ συγγραφῆς δαν]είου οὗ συνῆρται αὐτῶι ἅμα τῆι συγ̣[γραφῆι ταύτηι ἀ]ναφερομένηι – 'this is the loan that Dionysios owed still to Hermias by virtue of a loan *syngraphe* cancelled by him at the same time that this contract has been brought.' *P. Dion.* 27 (= *P. Rein.* I 8, 113–112 BC, Hermopolis), is nominally a loan of wheat taken by Dionysios and his mother from Dioskourides; in truth, again, they have not received the wheat, since they already owed it to the same Dioskourides by virtue of previous contracts, that the

meant an adjournment for the debtor, and for the creditor, as a result of the consolidation of capital and unpaid interests, a renewed and more profitable calculation of the interest rate. The fourth instance, less sure than the others, may have served as a means of having a loan secured by guarantors.[51] Our own papyrus would be yet a fifth imaginary loan in the archive, and one serving a different purpose: here, in fact, there seems to be no novation or guarantee of a previous debt, but a *quid pro quo* that the creditor did not fulfil.

All these imaginary loans, together with the cases of a money loan formalized as a wheat loan (*supra*, n. 22), counsel caution regarding Naphtali Lewis' hypothesis about the speculative purpose of Dionysios' loan contracts. Convincing as it is in general, it cannot be extended to every loan document in the archive: in some cases at least, the document demonstrably serves a different purpose than actually acquiring wheat to speculate on its price.

Regarding *P. Dion.* 11 and 12, the imaginary loan hypothesis provides also an explanation for the peculiar turn of phrase *τιθέναι ἐν πίστει συγγραφὴν ὑποθήκης*, that had puzzled Mitteis and Rabel. Mitteis' unlikely idea, that the object hypothecated by Dionysios was not the land but a hypothec *syngraphe* that he had received from his own debtor, becomes unnecessary. The emphasis on the document, that misled Mitteis, is, in fact, inevitable if the transaction consisted only in the documents, the loan having never actually been received.

new one renovates and therefore cancels: *ἐδάνεισεν Διοσκουρίδης … [… Διονυσίωι …] … [… καὶ τῆι] τ̣ο̣ῦ̣τ̣ου μητρὶ Δημητρίᾳ̣ι πυροῦ στερεοῦ [ἀρτάβας ἑκατὸ]ν̣ τεσσαράκοντα δύο, ἃ̣ς προσωφειλ[ήκασιν οἱ δε]δ̣ανεισμένοι Διοσκουρίδει ἀ̣π̣ὸ συναλλαγ̣[μάτων αὐτῶ]ι συνηρμένων ἅμα τῆι σ[υ]γγραφῆι ταύ̣[τηι ἀναφερομέ]νηι* (ll. 2–10).

[51] *P. Dion.* 17 (= *P. Rein.* 1 20 = *MChr.* 133, 108 BC, Akoris) is an ordinary loan *syngraphe* whereby Dionysios borrows form another Dionysios, son of Asklepiades, 33⅓ artabae of wheat. But, as Th. REINACH observed (*P. Rein.* 1, p. 105 n.2), the transaction seems connected to *P. Rein. Dem.* 3, a demotic *syngraphe* with the exact same date, whereby two women acknowledge to have received from the same creditor 50 artabae, 'including the interest rate'. These two women (Dionysios' wife and mother?), seem thus to secure his loan by a separate imaginary one. This demotic contract together with the expression 'Egyptian *syngraphe* in *P. Dion.* 9 (*supra*, n. 50) raise doubts regarding the pure Greek roots of this practice in Egypt (*supra*, n. 48: 'more institutoque Graecorum').

Also the expression *ἐν πίστει* appears now under a new light. It is of course possible that it means merely 'in guarantee'. But, as we have seen (*supra*, p. 23 and n. 38), the pleonastic 'I hypothecate in guarantee' has no parallel in our sources. For the editors of *P. Dion*. these terms would merely underline Dionysios' good faith.[52] More likely seems to me that *ἐν πίστει* refers here to the fact that, by issuing the documents without having actually received the loan, and before Admetos performed his due, Dionysios was indeed acting on trust. It is only natural that he underlines this fact, if, as he claims, such trust has been violated.[53]

This sense of *ἐν πίστει* is fairly general: whenever one of the parties in a reciprocal agreement anticipates his own performance or liability we can say that he acts *ἐν πίστει*. Thus, in *P. Oxy*. XII 1413 (AD 272, Oxyrhynchos), ll. 32–33, *ἐν πίστι ἀναλίσκεται* means to pay in advance.[54] For the same reason, the English word 'credit' means 'trust' and 'trustworthiness', but also 'loan' or any transaction whereby we receive goods or services for a deferred payment. In this same sense, the Roman jurist Ulpian, commenting the rubric *de rebus creditis* in the praetorian Edict, observes that *credere* is a rather general term, referred to any contract whereby we put our trust (*fides*) in someone else (*omnes contractus, quos alienam fidem secuti instituimus*), since it can be said that we 'give credit' whenever we trust

[52] *P. Dion*., p. 169, *comm. ad l.* 10. The idea is unfortunate: *ἐν πίστει* may mean 'in guarantee', or 'in trust', but certainly not 'in good faith'. In Roman times, when it became necessary to find a translation for *bona fides*, it was obvious that it could not be just *πίστις*, but *καλὴ πίστις*. Also unfortunate are the considerations of BOSWINKEL & PESTMAN, *ibid*., on *ὠνὴ ἐν πίστει*. On the *ὠνὴ ἐν πίστει* problem problem, *supra,* n. 23 and n. 41.

[53] Unacceptable, in any case, the interpretation of SCHMITZ, *Ἡ πίστις* (cit. n. 1), p. 36, for whom *πίστις* denotes here the trust that Admetos, as creditor, has placed in Dionysios. Against such interpretation it is enough to observe that the subject of *ἐθέμην ἐν πίστει* is not Admetos but Dionysios.

[54] The papyrus reports several debates in the senate of Oxyrhynchos. In the last preserved one, from l. 25, the *prytanis* informs that 12 extra talents are to be spent in the completion of a golden crown. In ll. 32–33, the syndic promises to report any payments made in advance to the artificers: *Σεπτίμιος Διογένης ὁ καὶ Ἀγαθὸς Δαίμων γενόμ*[*ενος ὑπομνηματογράφος* | *καὶ ὡς χρημα*(*τίζει*) *σύνδικος εἶπ*(*εν*)· – *c*. ? – *εἴ τι τοῖ*]*ς τεχνείταις ἐν πίστι ἀναλίσκεται, παρατεθήσεται ὑμῖν*. Paying *ἐν πίστει* means here clearly paying in advance.

someone, accepting that only later we will receive something (*cuicumque rei adsentiamur alienam fidem secuti mox recepturi quid*): *credere* is, in this large sense, equivalent to '*fidem sequi*'.[55]

A trivial remark in place of conclusion. Generations of legal scholars have for centuries devoted their attention to the Roman *fides* from every conceivable point of view. Many aspects of the Greek πίστις remain, instead, virtually unexplored: for legal historians, if not a land of promise, then at least a promising land.

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[55] *D.* 12.1.1.1 (Ulpianus 26 *ad ed.*): Quoniam igitur multa ad contractus varios pertinentia iura sub hoc titulo praetor inseruit, ideo rerum creditarum titulum praemisit: omnes enim contractus, quos alienam fidem secuti instituimus, complectitur: nam, ut libro primo quaestionum Celsus ait, credendi generalis appellatio est: ideo sub hoc titulo praetor et de commodato et de pignore edixit. nam cuicumque rei adsentiamur alienam fidem secuti mox recepturi quid, ex hoc contractu credere dicimur. ... – The Praetor has inserted under this Title many rules referred to various contracts, and it is for this reason that he has prefixed as a Title the words 'Things which are credited', for this includes every contract concluded relying upon the faith of others. As Celsus states in the first Book of his *Questions*, the term 'to credit' is a general one, and hence also the edicts concerning property lent and pledged fall under this Title. For whenever we, relying upon the faith of others, assent to anything whereby we shall afterwards receive something, then we are said to give credit by virtue of such contract. ... [tr. Scott, with substantial emendations].