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LOAN WITH HYPOTHEC: ANOTHER PAPYRUS FROM THE CAVE OF
LETTERS?

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LOAN WITH HYPOTHEC: ANOTHER PAPYRUS FROM THE CAVE OF LETTERS?*

It is likely that this papyrus, like the other so-called *P.Se'elim*, was brought to the Rockefeller Museum in Jerusalem in the 1950s by Bedouin who had paid clandestine visits into Israeli territory.¹ It was preliminarily (and erroneously) described as a 'rental deed'.² Its upper and lower margins are preserved. The verso is blank. The writing is against the fibers.³ A strap of papyrus, 4 cm. long, with ink stains and some writing on it, projects to the left in l. 8. There is an ink stain on the far end of the strap, followed by some blank space. This is followed by three letters and again what looks like blank space, unless, of course, the vertical fibers, which by now have mostly rubbed away, contained writing. In the latter case we can assume the loss of ca. 16 letters on the left of all the other lines. Two considerations, however, work against this assumption: 1) it seems reasonable to assume that the document started with ὑπ]ατείαια,⁴ which would mean that only two letters are lost on the left hand side of the first line. Since it is hard to believe that the first line was inset, we must assume that in all the other lines no more than ca. two letters have been lost on the left;⁵ 2) the larger blank space in l. 8 looks like a real space, perhaps an inter-column space, in which case another column stood to the left of the document. It might even be suggested that a single word stood in l. 8, whereas the rest of the left hand margin remained blank. However, if very little was lost on the left hand side of the document, there must have been a considerable loss on the right hand side, as we shall see in the reconstruction of l. 1.

* It is a pleasure to thank my friends from the Papyrology Room of the Ashmolean Museum Library, Mr. Nicholas Gonis of St. John's College and Mr. Michael Sharp of Corpus Christi College for their kind help. I would also like to thank Ms. Lena Liebman of the Israel Antiquities Authority. As always, I owe a special debt to Dr. John Rea.

¹ See *ZPE* 99, 1993, 115ff.; 100, 1994, 547ff.; J.C. Greenfield, "The Texts from Nahal Se'elim (Wadi Seiyal)", *The Madrid Qumran Congress: Proceedings of the International Congress on the Dead Sea Scrolls, Madrid 18-21 March 1991*, eds., J. Trebolle Barrera and L. Vegas Montaner II, Leiden 1992, 662.

² Cf. E. Tov with the collaboration of S.J. Pfann, *The Dead Sea Scrolls on Microfiche, Companion Volume*, Leiden 1993, 66.

³ This seems to be common to the so-called *P.Se'elim*, see n.1.

⁴ The evidence for ἐπὶ ὑπατείας is so slight (see *P.Panop.* 22, l. 5; *P.Oxy.* I 42, l. 8 is a restoration) and late that I do not consider it here.

⁵ On the other hand it is possible that some such word as ἀντίγραφον and/or ἐρμηνεία came before; see *P.Yadin* 5a, col. i, l. 1 and N. Lewis (*The Documents from the Bar Kokhba Period in the Cave of Letters. Greek Papyri*, Jerusalem 1989), *ad loc.* I rule out the possibility that we could have had here something parallel to *P.Yadin* 25, l. 64 (= ll. 28-9): ἐπράχθη [ἐν] Μαωζα περὶ Ζ[οο]πρω ὑπατίας etc. (*cf.* 26, ll. 17-18), since it is not an opening formula.

Finally it may well be that what we have here is a draft: the interlinear additions may point in this direction, as do the corrections of letters in ll. 1 and 3 (see commentary).

The date and the place:

A. Cornelius Palma Frontonianus was ordinary consul for the first time in 99 with Q. Sosius Senecio; and for the second time in 109 with P. Calvisius Tullus Ruso. It seems plausible that like many of the so-called *P.Se'elim*, this document too originated in Arabia. If so, then the presence of a consular date indicates that by the time of its composition Arabia had become a Roman province. These considerations would put the document in Palma's second consulate in 109. This would make it the earliest dated papyrus in Greek from Arabia,⁶ and one of the earliest attestations for the use of Greek after the annexation⁷ — a small addition to our information on the early history of the province:⁸ the existence of financial ties between people from Philadelphia ('Amman), one of the cities of what used to be the Decapolis (see below), and some residents of what used to be the Kingdom of Nabataea .

On the other hand, unlike the other papyri which go under the title *P.Se'elim*, there is no apparent evidence that we are in the Jewish and Nabataean milieu with which we have become familiar through the Babatha Archive: there are no obvious Jewish or Nabataean names in this fragment, and consequently no evidence that the document was written in Arabia. One must never lose sight of the fact that this group of papyri was *not* found in the course of a controlled archaeological excavation, and there is even a remote possibility that Naḥal Ḥever and the Judaeian Desert are not the provenance of this particular papyrus.⁹

The presence of people from Philadelphia raises more doubts as to the place and date. Until the annexation of the Nabataean kingdom and the creation of the province of Arabia in 106, Philadelphia, like the rest of the Decapolis, was part of the province of Syria.¹⁰ In 106, together with a few other cities of the Decapolis it was incorporated into the newly created

⁶ See Lewis' introduction to *P.Yadin 5* dated to 2 June 110.

⁷ It is contemporary with a bilingual (Nabataean and Greek) epitaph found in Madaba and published by J.T. Milik ("Nouvelles inscriptions nabatéennes", *Syria* 35, 1958, 243-245, no. 6). The Greek reads, l. 4: ἔτους τρίτου ἐπαρχείας; the Nabataean says "the third year of the governor of Bosra— *BSNT TLT LHPRK BSR* ". The earliest inscription dated by the province is in Nabataean, see A. Negev, "Nabataean Inscriptions from 'Avdat (Oboda)", *IEJ* 13 (1963), 117-18, no. 11:

אחבני שנת תרתין להפרכיא — built in the second year of Province". For the vexed question of Greek before the annexation see F. Millar, *The Roman Near East: Empire, Communities and Culture*, Part III, ch. 6 ii: "The Kingdom of Nabataea" (forthcoming).

⁸ See most recently K. Strobel, "Zu Fragen der frühen Geschichte der römischen Provinz Arabia", *ZPE* 71, 1988, 251-280, who concentrates on the military units.

⁹ See above n.1.

¹⁰ Governed, perhaps, as a separate administrative unit, see B. Isaac, "The Decapolis in Syria: A Neglected Inscription", *ZPE* 44, 1981, 67-74.

province of Arabia.¹¹ If the document was written in Philadelphia, we cannot rule out the possibility that it belongs to Palma's first consulate, *i.e.* 99.¹² The use of the Greek language and the consular date will hardly be striking.¹³

Finally, it is possible that the papyrus was written in the province of Judaea along with some of the other so-called *P.Se'elim*¹⁴ as well as of those which have been published in *DJD II (P. Murabba'at)*.

P.Hever ? (previously known as *P.Se'elim Gr. 3*)

6 x 9 cm.

(TAFEL I)

Box 732 (Rockefeller Museum)

Date: 99 or 109 CE

- | | |
|----|---|
| 1. | ὑπατείας Κορνηλίου Πάλμα[|
| 2. |].ac Βαχχίου Φιλαδεلف[|
| 3. | δεδανισμένοι παρ' αὐτ[. |
| |].του |
| 4. | ἢ κληρονόμοι τῶν κ[|
| 5. |].αι τὸ δὲ προγεγραμμέν[ον |
| | καὶ βουλευθῆ ὁ δεδ[ανικῶς |
| 6. |].χρόνῳ τελέσει τοῦ ὑπε[|
| 7. |].αι ἐξέστω αὐτῷ διακατ[|
| 8. |].(vacat?) ἐλι (vacat?) ὑποθήκην τῷ δεδανικότι[|
| 9. |].[ca. 5 letters].λαι..ολ[. |

2 Βαχχίου 7 ἐξέστω

¹¹ E. Schürer, G. Vermes and F. Millar, *The History of the Jewish People in the Age of Jesus Christ (175B.C.- A.D.135)* II, 1979, 158, n. 388; M. Sartre, *Trois études sur l'Arabie romaine et byzantine*, *Coll. Lat.* 60, 1982, 44ff., esp. 45.

¹² The fact that in *inscriptions* Philadelphia, like other cities of the Decapolis, used the Pompeian era rather than consular dates (see Schürer, Vermes and Millar, previous note, 125-158), does not exclude the possibility that consular dates were used in documents on papyrus; thus the use of a consular date in our document does not speak against its being written in Philadelphia.

¹³ See Schürer, Vermes and Millar 155-58 on Philadelphia; Isaac (above, n. 10), 72-74 reviews the inscriptions of four soldiers from Philadelphia recruited into the Syrian army as proof of its full integration in the empire. As it happens there are very few Greek inscriptions from Philadelphia, see Millar (above, n. 6), Part III, ch. 6 iii: "The Decapolis in the First Century".

¹⁴ A cancelled marriage contract in Greek (*P.Se'elim Gr. 2*, Box 870 Rockefeller Museum, unpublished) and a deed of sale in Aramaic (*P.Se'elim 9*, Box 543 Rockefeller Museum, unpublished) record two neighbouring places on the southern slopes of the Hebron hills in the province of Judaea: Aristoboulias and Yakum (or Yakim).

The translation will follow the commentary since it is based on the reconstruction proposed in the commentary.¹⁵

Commentary:

1 If the year is 109, then we have to restore β after the name of Cornelius Palma as well as some of the elements of his colleague's name — P. Calvisius Tullus Ruso.¹⁶ I, therefore, suggest to restore in the first line: ὑπατείας Κορνηλίου Πάλμα[τὸ β καὶ Καλουκίου Τούλλου — a loss of 23 letters. It is a mere coincidence of course that three years earlier, A. Cornelius Palma Frontoianus, as governor of Syria, annexed Arabia.¹⁷ If the year is 99, we must restore the name of Q. Sosius Senecio: ὑπατείας Κορνηλίου Πάλμα[καὶ Σωκίου Σενεκίωνος - a loss of 19 letters. In both cases this might have been followed by the day and the month.

I am assuming that we have here a *homologia* and therefore the verb ὁμολογεῖν must have stood before the name in l.1. Later on we find out that there was more than one debtor (see l. 3: δεδανισμένοι),¹⁸ and therefore I suggest to restore here ὁμολογοῦσιν. It follows then that another name must have followed that of —as son of Bacchius and both are the debtors of l. 3. The *homologia* form appears in the three known contracts of loan from the Judean desert: *P.Yadin* 11, ll. 2-3 = 14-15: ὁμολογῶ ἔχειν καὶ ὀφείλειν ἐν δάνει ἀργυρίου etc. *P.Yadin* 17, ll. 2-3 = 14-15: ὁμολογήσατο Ἰούδας ... ὥστε ... ἀπεσχηκέναι παρ' αὐτῆς ... ἀργυρίου etc.; *DJD* II 114, ll. 9-12: Ὁμολογῶ σοι ἀργυρίου ... ἃ καὶ ἀπέσχον καὶ ἠρίθμημε.

2 .ac Βαχχίου: —as son¹⁹ of Bacchius. Since there is no other evidence in the papyrus for a Jewish and Nabataean milieu, I am not attempting to restore Ἰουδα, nor any of the

¹⁵ For the formulae in contracts of loans on papyrus see H. Kühnert, “Zum Kreditgeschäft in den hellenistischen Papyri Ägyptens bis Diokletian”, Diss. Freiburg im Breisgau 1965; H-A. Rupprecht, *Untersuchungen zum Darlehen im Recht der Graeco-Aegyptischen Papyri der Ptolemäerzeit, Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte* 51, 1967 and O. Montevecchi, *La Papirologia*, Milan 1973, 225-229.

¹⁶ *PIR*² C 1411-12; in the *fasti* the cognomen Ruso is missing, see L.Vidman, *Fasti Ostienses*, Prague 1982, 47. I am assuming that Calvisius's praenomen as well as the second cognomen of each consul (“Frontonianus” and “Ruso”) were omitted. If we were to include the two *cognomina* as well as the verb ὁμολογοῦσιν, then a loss of approximately 53 letters (+ day and month?), all on the right hand margin, must be allowed for — in other words a very wide piece of papyrus if we add to it the length of the papyrus strap in l. 8. I think this is less likely than the abridged forms of the consuls' names.

¹⁷ See Dio 68.14.5; for his years as governor of Syria see W. Eck, “Jahres-und Provinzialfasten der senatorischen Statthalter von 69/70 bis 138/9”, *Chiron* 12, 1982, 340-345.

¹⁸ Although the singular is used in l. 6: τελέσει. The interchange in the writer's mind between plural and singular may account for the fact that the final ι in δεδανισμένοι is corrected from ε.

¹⁹ Perhaps “daughter of Bacchius”.

other names from the the Babatha Archive ending in *ac*: Βησᾶς, Ἐγλας, Ἐλλουθας (Ἴλλουθας), Θεινας, Μαρας, Ὀνίας, Καβακας or Cωμαλας (or Βαβαθας).²⁰

Βάκχιος is a common Greek name, see P.M. Fraser and E. Matthews, *A Lexicon of Greek Personal Names I*, 1987, 98, with an example of the spelling Βάχχ- from Euboeia; see also Preisigke, *Namenbuch* pp. 70, 72; Foraboschi p. 75. For κχ becoming χχ see Gignac I, 100, citing *P.Gron.* 2, 1. 1: Βαχχιάδος.

Φιλαδελφ.[: Φιλαδελφε[ύς or Φιλαδελφε[ίς since both debtors could have come from Philadelphia; on the city of the Decapolis, Philadelphia, see introduction above.

It is in this line that the clause ἔχειν or ἐσχηκέναι with παρὰ δεινός with the sum of money borrowed must have come, since the παρ' αὐτοῦ in the next line implies that the creditor has already been named.

3 The left hand stroke of a μ is corrected to c in δεδανισμένοι; the final ι in δεδανισμένοι is corrected from c.

παρ' αὐτ.. could be safely restored as παρ' αὐτοῦ since the creditor in this document is certainly a single person as demonstrated by the participle of the verb δανείζειν in l. 6 (ὁ δεδανικώς) and in l. 8: (τῷ δεδανικότι).

4]ϛ <[ν]οτου> κληρονόμοι τῶν κ.[: once νότου is restored, it is clear that the abutters (γείτονες) of the hypothec of l. 8 are described in this line. I suggest therefore that in ll. 3-4 it was stated that the two debtors borrowed money from the creditor upon hypothec (ἐφ' ὑποθήκη), whose abutters are etc.

5 τὸ δὲ προγεγραμμένον scil. δάνειον or ἀργύριον or κεφάλαιον. However, the second letter in the line may be an α and not an ο (*i.e.* τὰ) and thus perhaps τὰ δὲ προγεγραμμένα.²¹ In either case it could have been followed by something like καὶ τοὺς τόκους. The verb of paying back — ἀποδότω or rather ἀποδότωσαν may have preceded the preserved text,²² or may follow it.²³ In view of what comes in the next line, it was at this point that the time of payment was fixed.

6 χρόνω (...) τελέσει τοῦ ὑπε[ρ]πέσοντος χρόνου τόκους,²⁴ and disregarding for the moment the interlinear addition, the preceding clause can be restored along the lines of *P.Grenf.* II, 18 (127 BCE), ll. 13-17 for example: ἐὰν δὲ μὴ

²⁰ Babatha is written Βαβαθας in *P.Yadin* 13, l. 2; 21, l. 6 and 22, l. 6 for example.

²¹ See for example *P.Adler* 4, ll. 14-15: [ἀ]ποτίσω σοι τὰ προγεγραμμένα διπλά, but the parallel is not exact.

²² As in *P.Mich.* III 190: ἀποδότω δὲ Ἀριστοκλῆς Θεοκλῆ τὸ προγεγραμμένον δάνειον etc.

²³ As in *P.Adler* 10, l. 11: τὸ δὲ δάνειον τοῦτο ἀποδότω ὁ δεδανισμένος etc.

²⁴ Ὁ τοὺς καθήκοντας τόκους, *e.g.* *P.Oxy.* 269 (57 CE), ll. 8-12, esp. ll. 9-10: (ἐκτείσω) καὶ τοῦ ὑπερπεσοντος χρόνου τοὺς καθήκοντας τόκους.

ἀποδώσει ἐν τῷ ὠρισμένῳ χρόνῳ, ἀποτεισάτωσαν παραχρήμα ἡμιόλιον καὶ τοῦ ὑπερπεσόντος χρόνου τόκου.²⁵ We find a somewhat different formula in *DJD* II, no. 114, ll. 14-16: Ἐὰν δὲ μὴ ἀποδῶ τῇ ὠρισμένῃ προθεσμίᾳ, τελέσω σοι τὸν ἐγ διατάγματος τόκ[ον] μέχρι οὗ ἂν ἀποδῶ; as well as in *P.Yadin* 11, ll. 7-8 = 22-23: καὶ ἐὰν σοι [μ]ὴ ἀποδώσω τῇ ὠρισμένῃ προ[θ]εσμίᾳ, καθὼς προγγέγραπται τ[ὸ δίκαιον] ἔ[σ]ται σοι etc.

The interlinear clause καὶ βουληθῆ ὁ δεδ[ανικῶς] introduces a new element, absent from the model we have so far followed: it seems to me to modify the harshness of the protasis (ἐὰν δὲ μὴ ἀποδώσει ἐν τῷ ὠρισμένῳ χρόνῳ) by leaving to the discretion of the creditor whether or not to carry out the so-called penalty clause.

7]αι ἐξέσσω αὐτῷ διακατ: one could restore κ]αι but it is difficult to know what other phrase was linked to the foreclosure phrase which comes now. It is hard to decide whether we should restore διακατ[οχή] or διακατ[έχειν], and impossible to take either of them in the technical sense of *possessio bonorum*.²⁶ I would, therefore, translate it in the general sense of “to take possession of”, “to possess”, as seems to be the sense in *UPZ* II 162 (117 BCE = *MChr.* 31 = *Jur.Pap.* 80), col. ix, l. 18.²⁷ Although the hypothec appears only in l. 8, it seems reasonable that the διακατ[οχή] or διακατ[έχειν] refer to it.²⁸ Unfortunately all the examples of διακατέχειν with ὑποθήκη are late (vi century) and they all appear in an identical formula, which is seen most completely in *SB* XIV 11373, ll. 4-6: ὁμολογῶ ἐκουσίως καὶ ἀθαιρέτως μεμιθῶσθαι παρὰ τῆς κῆς εὐγενείας ἐφ’ ὅσον χρόνον

²⁵ See also *P.Grenf.* II, 21 (113 BCE), ll. 12-16; and Vol. I, no. 20 (127 BCE), ll. 12-14; *SB* XI 11284 (100-117 CE), ll. 10-13; cf. *P.Diog.* I 25 (132 CE), ll. 10-12: ἐὰν δέ τι πα]ραβαίνω, ἐκτείω σοι τὸ δ[άνειον] ἐν ἡμιολίᾳ καὶ τοῦ ὑπερπεσόντος χρό[νου] τοῦς τόκου[s]; *P.Oxy.* II 269 (57 CE), ll. 8-10: ἐὰν δὲ μ[ὴ] ἀποδ[ῶ] καθὰ γέγραπται ἐκτείω σοι τ[ὸ π]ρο[κ]είμενον κεφ[άλ]αιον μεθ’ ἡμιολίας καὶ τοῦ ὑπερπεσόντος χρό[νου] τοῦς καθήκοντα[s] τόκου[s].

²⁶ That is praetorian succession (as opposed to κληρονομία = testamentary succession, see *P.Meyer* 23 (end of iv CE) ad l. 3, p. 95), see H.I. Mason, *Greek Terms for Roman Institutions*, Toronto 1974, 36. He gives as an example *SB* 1010 (249 CE) = *FIRA* III², p. 183, a bilingual text which has in Latin: “Rogo domine des mihi bonorum possessionem matris meae Aureliae ... ex ea parte edicti quae legitimis heredibus bonorum possessionem daturum te polliceris”; and in Greek: Αἰτῶ τὴν διακατοχὴν τῶν τῆς μητρός μου.

²⁷ See Wilcken, *UPZ* II, p. 89: “Διακατέχειν steht ... als Äquivalent für κυριεύειν”; Meyer, *Jur.Pap.* p. 276: “διακατέχειν hat in ptolemäischer Zeit die allgemeine Bedeutung ‘besitzen’”: I believe that we have here the same pre-Roman *allgemeine Bedeutung*. *P.Tebt.* I 88, l.16 given as an example for this general sense in Preisigke, *Wörterbuch* is apparently not a good example: the editors suggest that the διά of διακατέχειν is a mistake (see *ad loc.*); I think that this general sense is also present in *P.Dura* 32 (254 CE, a divorce), l. 9, where the husband declares that he restored to his wife everything which he had received from her: πάντα ὅσα παρὰ αὐτῆς διακατεῖχεν (repeated in l. 13 from the wife’s point of view).

²⁸ See E.R. Wolfe, “A Contract of Loan with Mortgage”, *Collectanea Papyrologia: Texts published in Honor of H.C. Youtie* I 1976, 305-308 for a short summary of the distinct nature of the loan with hypothec.

διακατέχεις τὴν γενομένην σοι ὑποθήκην παρὰ Θεονίλλας Ἐπιφανίου ἀπὸ τῆς αὐτῆς πόλεως.²⁹

I could find only three instances of the foreclosure formula beginning with ἐξεῖναι: *P.Mert.* III 109 (ii CE), l. 3-4: ἐὰν δὲ μὴ ἀποδῶ καθαῖ γέγραπται ἐξέειτω τῷ Ὀφελᾶτι ... ἐμβαδεύειν ... [τὰς προκειμένας ἀρούρας] καὶ κρατεῖν;³⁰ *P.Oxy.* XVII 2134 (ca. 170 CE), where we find in ll. 24-25: <καὶ> ὁπότεν βούλη ἐξεῖναί σοι τῆς ὑποθήκης κατοχὴν ποιήσασθαι καὶ τῶν αὐτῶν ἀρουρ[ῶ]ν κατοχὴν ποιεῖσθ[αι]; similarly *P.Oxy.* (143 CE) 506, l. 49: ἐξόντος τῷ δεδανεικῶτι ὁπότεν αἰρήται κατοχὴν [αὐτῶν] χρίσασθαι πρὸ τοῦ τῶν ἐκκτήσεων βιβλιοφυλακίου.

8 Clearly the forfeit of the hypothec to the creditor is envisioned here as well, but the context is unrecoverable.

The praxis-clause³¹ is missing, and cannot be read in the traces left from l. 9. We find it even in loans guaranteed by hypothec. Thus *P.Yadin* 11 (124 CE), ll. 24-25: [καὶ ἡ πράξις ἔσται σοι καὶ τῷ παρὰ σοῦ καὶ ἄλλω παν[τι] τῷ διὰ [σο]ῦ ἢ ὑ[πέρ] σοῦ κυρίως τ[οῦτο] τὸ γράμμα προφέροντι, ἔκ τε ἐ[μ]οῦ καὶ ἐκ τῶν Ἐλαζάρου πατρός μου ὑπαρχ[ό]ντων [πάντη] π[ά]ν[τ]ω[ν], ὧ[ν] κεκτήμεθα] κα[ὶ] ἰ[σ]ῶν ἐ[ὰν] ἐπικτησώμεθα.

Translation:

1. In the consulship of [A.] Cornelius Palma[and], X and
2. —as son (or daughter) of Bacchius from Philadelphia [acknowledge that they have received from Y a sum of money?
3. they have taken a loan from him [upon an hypothec, of a house? an orchard? whose abutters are
4. on the south the heirs of K[... they should pay the debt]
5. mentioned before[and the interest? on such and such a date. And if they fail to pay it
6. at the time that is fixed and when the creditor wishes, he (the debtor) will pay [the interest for overtime
7. and let it be possible for him (the creditor) to take possession of[
8. the hypothec [will be forfeit] to the creditor[
9. (traces).

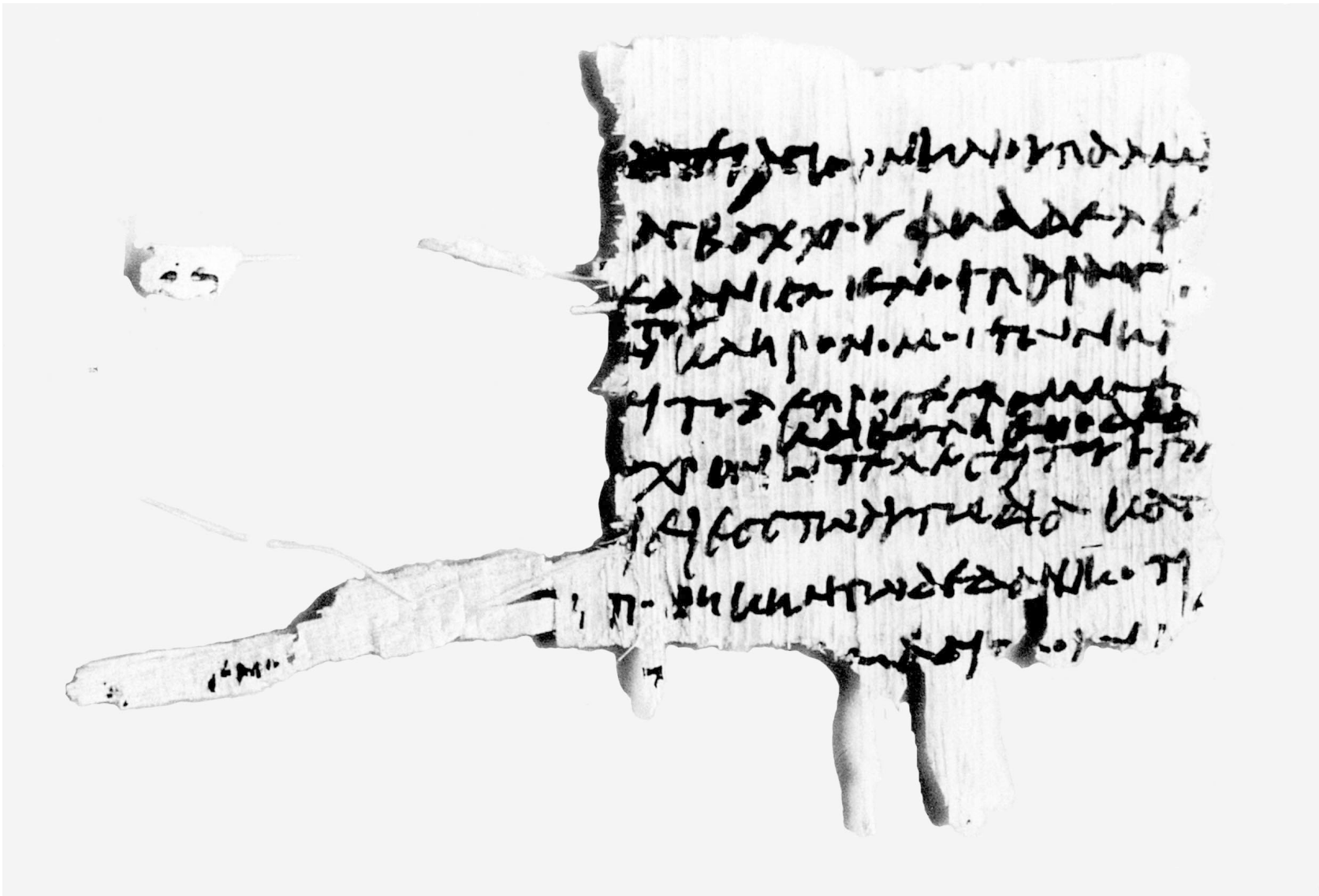
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²⁹ Cf. *SB* V 7519 (510 CE), ll. 4-6; *P.Stras.* IV 248 (560 CE), ll. 4-5; V 398 (553 CE), ll. 5-8

³⁰ See J.D. Thomas' introduction to the papyrus.

³¹ E.g., *P.Oxy.* XIV 1640 (252 CE), ll. 8-9: τῆς πράξεως παρὰ τε ἐμοῦ καὶ ἐκ τῶν ὑπαρχόντων μοι πάντων.



P.Hever ? (previously known as P.Se'elim Gr. 3), Box 732 Rockefeller Museum