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NOTES ON SOME BYZANTINE LEASES OF BUILDINGS

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## NOTES ON SOME BYZANTINE LEASES OF BUILDINGS

## Two fifth-century leases from Heracleopolis

CPR XIV 12 is a lease of a half of a house and a number of *topoi*<sup>1</sup> at Heracleopolis dated to 25.2.450. Its wording is closely paralleled by PVind G 10869a+, a lease of a courtyard and a hayloft, also at Heracleopolis, dating from 17-25.3.481.<sup>2</sup> The two texts are of more than average interest: they are the only fifth-century leases of houses from Heracleopolis published hitherto;<sup>3</sup> and there appear persons of some standing: an *exceptor* on the staff of the *praeses* in the first instance, a *magistrianus* in the second. Both documents are fragmentary, but sometimes one helps to supplement the other. However, the similarities between the two texts have not been fully exploited for this purpose. This will be the focus of the second part of this note. Another issue will be discussed first: the identities of the lessor and the lessee in CPR XIV 12. The first three lines were presented as follows (for line 1 see BL IX 75):

[Φλόουῖος N. N. ἐξκέ]πτωρ τάξεως ἡγεμ[ονία]  
 [Αὐρηλίω N. N. υἱῶ C]αραπίωνος ἀφ' Ἡρακλέους  
 [πόλεως, ἐξῆς ὑπογρ]άφων ἰδίοις γράμμασιν

The names of the persons involved in this transaction do not survive; we only learn that the lessee is an *exceptor* on the staff of the *praeses*, and the lessor, the son of a Sarapion, was from Heracleopolis. Line 3 appears to contain a difficulty; the editor translates 'writing [below] in his own letters', and notes:

'The nominative ὑπογράφων indicates that it was the lessee, the *exceptor*, who wrote the contract, though the order of the sentence, with ἐξῆς ὑπογράφων κτλ. coming after the lessor's name which must have been in the dative, is ambiguous; it is conceivable that ὑπογράφων was a mistake for ὑπογράφοντι. The whole document was written in one hand. The subscriptions to the contract in l. 23ff. were written more quickly and consequently the letters become a fraction larger and more loosely formed.'

There are some problems here. ἐξῆς ὑπογρ]άφων ἰδίοις γράμμασιν means 'subscribing below in his own letters', i.e. not through an intermediary. In a lease of this period the subscription is normally that of the lessee, who declares his/her agreement with the terms contained in the contract. The lessee here has not written the entire document, and, judging from the plate, I believe that there is a change of hand in line 23 (note in particular the forms of nu and sigma). I would not exclude that the scribe was the notary Athanasios, who added his signature in line 29. It would thus seem that ὑπογρ]άφων looks back to ἐξκέ]πτωρ in line 1. This still leaves us with an anomalous sentence order. But a closer look at the 'subscriptions' is instructive; lines 23-24 were edited as follows:

— — — — — N. N. ] υἱὸς Cαραπίωνος  
 ] μεμίθωμαι τὸ ἥμισυ

The ed. pr. offers the following translation: '[I, N. N.] son of Sarapion. (paragraph) [I, N. N. *exceptor*,] am leasing the half'. Apparently the editor understood that both contracting parties have subscribed to the lease, and took this 'son of Sarapion' to be the same as the lessor, υἱῶ C]αραπίωνος (line 2). But at this point any reference to the lessor is unwarranted, since in leases of this type lessors do not normally subscribe;<sup>4</sup> and at any rate the kind of subscription reconstructed in the translation is a stranger to such

<sup>1</sup> See the remarks of A. Papathomás, *Tyche* 10 (1995) 147f.

<sup>2</sup> The document consists of several fragments with different inventory numbers: PVind G 10869a + 21090 + 21093 + 21190. It was published in *CE* 68 (1993) 160ff.; the discovery of an additional fragment (G 28643) led to a new version of lines 12-18 in *CE* 71 (1996) 120f.

<sup>3</sup> As the editor of CPR XIV 12 notes, 'Heracleopolite house leases of the Byzantine period are not common' (introd. para. 5). One of the items she lists, PFlor I 15, is now reprinted with an additional piece as SB XX 15008, and is redated to 6.4.578; it concerns 2 *topoi*. An addendum to her list is CPR VI 79, the upper part of a lease of an *epaulis* at Nilopolis (Heracleopolite) assigned to the fifth century.

<sup>4</sup> 'Die meisten Urkunden werden vom Mieter oder von seinem Schreibvertreter unterschrieben; nur in einem Fall unterschreibt außer dem Mieter auch der Vermieter' wrote H. Müller, *Untersuchungen zur ΜΙΣΘΩΣΙΣ von Gebäuden im Rechte*

contexts. We are clearly dealing with the subscription of the lessee. This would mean that both the *exceptor*-lessee and the lessor were ‘sons of Sarapion’, a remarkable coincidence, and of course the oddity in line 3 would remain. I am tempted to think that in line 1 the scribe mistakenly wrote ἐξκέ]πτωρ for ἐξκέπτωρι (unless of course he took the word to be indeclinable);<sup>5</sup> the *exceptor* would thus be the lessor,<sup>6</sup> while the ‘son of Sarapion’ would be the lessee who subscribes with his own hand. That is, lines 1-2 should run [Φλαουίω N.N. ἐξκέ]πτωρ τάξεως ἡγε[μονία] | [Αὐρήλιος N.N. υἱὸς C]αραπίωνος etc. This would cure the anomaly of line 3, and would eliminate the second son of Sarapion. But I admit that conjectures involving presumed scribal errors *iuxta lacunam* are perilous.

The extensive damage of the papyrus has caused several other problems in the reconstruction of the text, but it seems that some further progress is possible. Below I present a revised version of lines 17-28, with translation and notes; some of the new readings derive from direct examination of the original.<sup>7</sup>

----- καὶ χρηστη-  
 [ρίων πάντων, ἐπὶ χρόνον ἐνιαυτ[ὸ]ν ἕνα ἀπὸ τῆς κῆμερ(ον)  
 [ἡμέρας, ἥτις ἐστὶν Φαμ]ενῶθ πρώτη τῆς [τ]ρίτης ἰνδικ(τίονος), ἐνοικίου τοῦ  
 [συμπεφωνημένου π]ρὸς ἀλλήλους τοῦ ὅλου ἐνιαυτοῦ χρυσοῦ  
 20 [νομισματίου ἐνὸς ἡ]μιου, (γίνεται) νο(μισματίον) α /, ὅπερ ἀποδώσω σοι  
 [ἐν τέλει τοῦ ἐνιαυτοῦ ἀνυπ]ερθέτως. ἡ μίσθ[ωσις κυρία καὶ ἐπερ(ωτηθεῖς) ὡμολ(όγησα).]  
 [ὑπατείας (?) Φλ(αουίω)ν Πρωτογένους] καὶ Ἀστουρίου τῶν λαμπ(ροτάτων), Φαμενῶθ α.  
 (m2) [Αὐρήλιος ± 8 ] υἱὸς Cαραπίωνος  
 [ὁ προγεγραμμένος] μεμίθωμαι τὸ ἡμιου  
 25 [μέρος ἀπὸ τῆς προεγ]ραμμένης οἰκίας  
 [ ± 8 σὺν τοῖς δη]λωθεῖσιν τόποις ἐφ’ ἐνιαυτὸν  
 [ἕνα καὶ ἀποδώσω ὑ]πὲρ ἐνοικίου χρυσοῦ νόμισμα-  
 [τίον ἐν ἡ]μιου καὶ συ]μφωνί μοι πάντα ὡς πρόκειται.

26 l. ἐπί 28 l. συμφωνεῖ, πρόκειται

‘... (all) the appurtenances for one year as from today, (which is) the first of Phamenoth of the third indiction, the rent (having been agreed) between us for the whole year (at one and a) half gold (solidi), total 1 1/2 sol., which I shall give to you (at the end of the year) without delay. The lease is (valid and in reply to the formal question I assented).

‘(In the (?) consulship of Flavii Protogenes) and Asturius, *virī clarissimi*, Phamenoth 1.

‘(I, Aurelius ...), son of Sarapion, (the aforesaid), have taken on lease the half (part of the) aforesaid house ... with the indicated rooms for (one) year, (and shall pay) as rent (one and a half) solidi, (and) agree to everything as stated above.’

17 ἐπὶ χρόνον: λογιζόμενον ed. pr., which produces an impossible accusative absolute. For the construction compare e. g. PHaun III 55.7f. (325) ἐπὶ χρόνον ἐνιαυτὸν ἕνα ἀπὸ τῆ[ς] ἐ]νεστῶτος τῆς ιγ ἰνδικτίονος ἥτις ἐστὶν Παῦνι κβ; PPrinc III 151.9f. (IV) ἐπὶ χρόνον[ν] ἐνιαυτὸν ἕνα ἀπὸ τοῦ ὄντος μην[ὸ]ς Ἀθῦρ κτλ.; also PWisc I 4.7f. (53), POxy II 275.9f. (66), SB XVIII 13305.11f. (271). In PAberd 182.7f. (III), where the edition has εἰς μ[ὲ]νον ἐνιαυτὸν ἕνα | [ἀπὸ τοῦ ὄντος] μηνὸς Φαμενῶθ, ἐπὶ χρόνον should be preferred to εἰς μ[ὲ]νον.

*der gräko-ägyptischen Papyri* (1985) 34, commenting on the Byzantine *Tabellionenkunde*. The document that Müller regards as exceptional is PBad 91b (Herm.; 471), but there the lessor’s subscription is of a different type than that of the lessee; he is one of the two persons who act as witnesses to the transaction.

<sup>5</sup> For the inverse type of error compare POxy LVIII 3934.9 (588) Θεόδωρος κούρσορι instead of Θεόδωρος κούρσορ.

<sup>6</sup> There are a few leases in which civil servants, mostly of modest rank, appear as lessors, cf. Müller, op. cit. 88-90; one of them is an *exceptor* on the staff of the *praeses Thebaidis* (PLond V 1714, of 570). To Müller’s examples add POxy XVI 1964 descr. [an edition of this text will appear elsewhere] (Oxyrhynchus; 518), where the lessor is probably an employee of the praesidial *officium* of the province of Arcadia, and SB VI 9592 (Arsinoe; 581), in which the lessor is the holder of some position on the staff of the *praeses Arcadiae*.

<sup>7</sup> At Vienna on 28 July 1997. I wish to thank Professor H. Harrauer for his generous help during my visit. I am also grateful to Dr A. Papathomas for another check of the papyrus.

- A separate note on BGU III 940 (398), another Heracleopolite lease, may be appended here. Lines 13ff. run καὶ τὴν χρῆσιν τῶν χρηστ[ηρίων] | πάντων τοῖς κ..... | ἐνιαυτῶ [ | τοῦ ὄντος μην[ὸς] Ἀθύρ κτλ. The papyrus was destroyed by the notorious fire in the harbour of Hamburg, and the edition derives from a rough transcript that Wilcken made in Egypt. It is conceivable that 14-16 had τῆς οἰκίας (?) ἐπὶ χρόνον ἐνιαυτὸν [ἕνα ἀπὸ νεομηνιας] τοῦ ὄντος κτλ. I should add that there are several logical gaps in 18-21, which can be explained only if Wilcken's transcript did not record everything that was written on the papyrus.
- 18 [ἡμέρας, ἥτις ἐστὶν Φαμ]ενῶθ: [ἥτις ἐστὶν Φαμ]ενῶθ ed. pr. ἀπὸ τῆς σήμερον ἡμέρας is a very common expression in the papyri.
- 18-19 ἐνοικίου τοῦ | [συμπεφωρημένου: ἐνοικίου τοῦ]του συμπεφωρημένου ed. pr., an unviable sequence. Compare PRein I 43.11f. (102) οἰνυκίου τοῦ συμπεφωρημένου τῶν προκειμένων μηνῶν ἀργυρείου δραχμῶν τεσσεράκοντα; PLond V 1715.10f. (VI) ἐνοικίου τοῦ πρὸς ἀλλήλους συμπεφωρημένου | ἐκάστου μηνὸς ἀργυρίου μυριάδων τριακοσίων.
- 20 [νομιματίου ἐνὸς ἡ]μικυ: [νομιματος ἐνὸς καὶ ἡ]μικυ ed. pr. καὶ is unidiomatic, and may safely be discarded. For the supplement νομιματίου cf. PVind G 10869a+.14-15 νομιμα]τίου (see below).
- 21 ἐνιαυτοῦ: ἔτους ed. pr., a restoration which does not take account of the fact that in line 17 the word used to denote 'year' is ἐνιαυτ[ό]ν (similarly in 26). The collocation ἐν τέλει τοῦ ἐνιαυτοῦ also occurs in BGU III 940.21, and PVind G 10869a+.16.  
ἡ μίσθ[ωσις κυρία καὶ ἐπερωτηθεῖς ὁμολ(όγησα)]. The formula καὶ ἐπερωτηθεῖς ὁμολόγησα was not restored in the ed. pr., but there is no reason to think that it was omitted; cf. e.g. BGU III 940.22-3.
- 22 The restored ὑπατείας is presumably a mistake for μετὰ τὴν ὑπατείαν, which seems too short for the available space, see K. A. Worp, *JÖB* 40 (1990) 443 (= BL IX 75). Otherwise, one would have to assume that this line was set out in relation to the rest of the document.  
Φαμενῶθ α: Φαμενῶθ | [α, ἰνδ(ικτίονος) γ ed. pr. It is not clear whether the dating clause contained a reference to the indiction. In line 23 we have the start of the lessee's subscription, which is in a different hand from that responsible for the rest of the text (this is not indicated in the ed. pr.). One might expect the subscription to start in a new line, but there are several parallels to the contrary. We do possess a few mid-fifth-century Heracleopolite texts which exceptionally mention the consulate, month and day, but not the indiction, see K. A. Worp, *APF* 33 (1987) 94.
- 23-24 For the restorations proposed here and those of the ed. pr. see the discussion above. If the scribe did not make a mistake in line 1, one may present the following text:  
[Φλάουῖος ± 9 ] υἱὸς Σαραπίωνος  
[ἐξέκπτω ὁ προκειμένος] μεμίσθωμαι κτλ.  
In 24 if ἐξέκπτω started the line, προκειμένος would suit the space better than προγεγραμμένος, unless of course an abbreviation was employed.
- 24 προγεγραμμένος is restored on the analogy of line 25; προκειμένος would be too short for the space.
- 25 I have restored ἀπὸ with the ed. pr., which is in line with the usage of the period, but [μέρος τῆς προγε]γραμμένης would also be unobjectionable.  
After οἰκίας the ed. pr. has a square bracket, but there is no textual loss at this point.
- 26 I cannot see how to restore this line convincingly (the ed. pr. makes no suggestion). I have considered ὀλοκλήρου, which has about the right length, cf. lines 6-7 as restored in Papatomas, loc. cit. 148; but the sequence would be rather awkward Greek.
- 27 The supplement καὶ ἀποδώσω is mine (there is no suggestion in the ed. pr.). In the context, τελέσω is more frequent than ἀποδώσω, but the latter may receive support from line 20; cf. POxy VIII 1129.26f. (449) ὁ προκειμένος μεμίσθωμαι [τοῦ]ς τόπου]ς καὶ ἰ ἀ]π[ο]δώσω τὸ ἐνοίκιον [ὅς] πρόκειται.
- 27-28 νόμιμ[ά]τιον ἐν ἡ]μικυ καὶ συ]μφωνί: νόμιμ[ά] | συ]μφωνί ed. pr. See above, 20 n. In PVind G 10869a+.18 probably restore κ[αὶ συμφωνεῖ μοι πάντα ὡς πρόκειται] in place of κ[αθὸς πρόκειται].

We may now turn to the second lease. In the version that appeared in *CE* 71 (1996) 120 some of the supplements were taken from the printed text of CPR XIV 12. In the light of the above discussion, it is possible to offer a revised text of lines 12-15 (I have introduced two further changes. In 12-13 the ed. pr. has ἀπὸ τῆς νεομη]νιας παρελθόν[τος μην]ῶς κτλ. But in 12 the article before νεομη]νιας is otiose; and in 13 the plate indicates that παρελθόν[τος is preceded by the article τοῦ.<sup>8</sup>):

- λάκκου καὶ τῶν χρ[ηστ]ηρίων ἀπ[άντων ἐπὶ χρόνον ἐνιαυτὸν ἕνα ἀπὸ νεομη]-  
νιας τοῦ παρελθόν[τος μην]ῶς Τῦβι τῆς τετάρτης ἰνδικτίονος ἐνοικίου τοῦ]  
συμπεφωρημ[ένου πρὸς ἀλλήλους τοῦ ὄλ[ου ἐνιαυτοῦ χρυσοῦ νομιμα]-  
15 τίου ἡμῖς παρὰ κεράτ[ια] ἐν ἡμικυ κτλ.

<sup>8</sup> My thanks are due to Dr E. Papapolychroniou, who drew my attention to this point, and to Dr A. Papatomas, who examined the original for me.

**PBod I 38**

In this text, assigned to the sixth/seventh century, but, to judge from the plate (Pl. 26), probably a little earlier, Aurelia Tinouthia, originating ἀπὸ κώμης | [Τανυαίθε]ως τοῦ αὐτοῦ Ἀπολλωνοπολίτου νομοῦ (lines 3-4), acknowledges that she has leased<sup>9</sup> [τὸ ὑπάρχον] σοι καθαρουργίον τόπον διακείμ(ενον) | [ἐν τῷ πεδίῳ] κώμης Τανυαίθεως (lines 7-8). The supplement [ἐν τῷ πεδίῳ] would have been good if the object of the lease had been a plot of land, but is not justifiable in the present context. I therefore propose to supplement [ἐπὶ τῆς αὐτῆς] κώμης Τανυαίθεως; parallels abound.<sup>10</sup>

**PSI XIII 1365**

The lessee in this Oxyrhynchite lease of 419 is a *singularis* on the *officium* of the *praeses* of Arcadia. The object of the lease stood in the part of the papyrus that is lost, but we may surmise that it was city (house) property. There seems to be a similar case in POxy LVIII 3934, of 588, where the lessee is a *cursor* on the staff of the *praeses* of the same province: as J. R. Rea put it, ‘it seems unlikely that a minor civil servant would take agricultural land on lease, so that the property ... was probably in the city itself, cf. [POxy] XVI 1958, 1965’ (introd. para. 2).

**SB VI 9592**

This is a lease contracted in Arsinoe in 581. In the edition the object of the lease is described in these terms (for the date and l. 14, see BL VII 211):

ἀπὸ τῶν ὑπαρχόντων[v]  
[σοι ἐπὶ τ]οῦ αὐτοῦ ἀμφοδου ἔνδο(v)  
[τοῦ οἰκείου νεύ]οντος εἰς ἀπηλιώτη(v)  
15 [ἐν ἀν]εωργμέν[ο]ν εἰς κτλ.

The first editor translated the passage from ἔνδο(v) to ἔν as ‘in einem gegen Osten hin orientierten Hause ein Zimmer’ (*JÖB* 8 (1959) 10). In 14 he supplemented τοῦ οἰκείου on the apparent assumption that it is equivalent to τῆς οἰκίας; but the word, however spelled, is a stranger to documentary contexts.<sup>11</sup> Two near contemporary rent contracts from Arsinoe indicate a different supplement:<sup>12</sup> CPR VII 51.19ff. (629/644)<sup>13</sup> εἴ[ς]ωθεν | ἐποικίου καλουμένου | Ἄλλι τόπον ἔνα; *M. Chr.* 147.19ff. (633) ἔσωθεν | τοῦ ἐκεῖθε ἐποικίου βλέπον(ο)ς | εἰς λίβα. ἔνδο(v) is equivalent to εἴσωθεν; our papyrus evidently had ἐποικίου. After that, we should probably restore βλέπ]οντος (although βάλλ]οντος is another possibility); the verb νεύω is found in similar constructions in texts from various Egyptian localities, but it does not occur, as far as I can see, in the Arsinoite nome. Last, in line 15 the supplement is plainly impossible; τόπον, which fits the space,<sup>14</sup> seems to be the best candidate, and perhaps this was what the editor had in mind when he translated ἔν as ‘ein Zimmer’; but other possibilities (e.g. [κέλλαν ἀν]εωργμέν[η]ν) cannot be excluded. On this basis we may restore the following sequence in lines 13-15:

ἔνδο(v) | [ἐποικίου βλέπ]οντος εἰς ἀπηλιώτη(v) | [τόπον ἀν]εωργμέν[ο]ν εἰς κτλ.<sup>15</sup>

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<sup>9</sup> The duration of the lease has been thought to be πρὸς | [x ἔτη] (*sic*; read [-ετη]) χρόνον (lines 5-6), but πρὸς | [ὄν βούλει] χρόνον may also be considered.

<sup>10</sup> They include PHermRees 25.8 (V), POxy XVI 1959.10 (499), PLond V 1691.15 (532), PFlor III 285.10 (552), PCairMasp III 67313.54 (VI), PPar 21.21 (616). Note also that in l. 7 the papyrus has [ὑπάρχο]ν, not [ὑπάρχον].

<sup>11</sup> For the presumed occurrence of the word in SB VI 9586, which was edited by the same editor as SB VI 9592, and may have served as the basis for the supplement, see H. Maehler, *ZPE* 25 (1977) 192. (The reedition of SB VI 9586 announced in BL VII 210 for SB XVIII has not yet appeared.)

<sup>12</sup> Compare also SB I 5825.2 (‘Byz.’); SPP XX 157.3 (VI); VIII 786.2 (VII).

<sup>13</sup> The suggestion recorded in BL IX 114 that the 644 date should be excluded is misconceived.

<sup>14</sup> My thanks go to Dr A. Papatomas, who kindly examined the original at Vienna.

<sup>15</sup> I wish to thank Dr C. V. Crowther for some helpful comments on an earlier draft of this paper.