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P.Oxy. I 37.8-9: Who Got the Contract?

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In order to find out what the possibility was of reading a numeral in the Oxyrhynchus papyrus I asked R. S. Bagnall to check in Oxford a photo of the papyrus (the original of which is kept in Ghent). He reports: "What stands after Ἡρακλείδου (quite unexceptionable) and before πάγου (clear) looks like a lunate sigma from which the curve continues down, then rising from lower left to upper right in a straight line, then descending in a curve into the pi. One might take it as an alpha without a loop. But that yields no sense. So one can choose between $c\epsilon$, like the editors, $c\alpha$, or c/ζ followed by a stroke, but written in a single cursive motion. Gamma or epsilon cannot be read."

Under the circumstances I think that the last choice, i.e. ζ followed by a stroke, is the best option to get rid of the editors' unconvincing insertion of <του ὑπό> $c\epsilon$ πάγου between Ἡρακλείδου and $c\epsilon$ πάγου. On the basis of the parallel formed by the attribution of the village of $\text{C}\epsilon\rho\tilde{\upsilon}\phi\iota\varsigma$ (originally situated in the $\text{L}\iota\beta\omicron\varsigma$ τοπαρχία) to the 6th pagus in *P.Oxy.* 3795.13 I venture to think that the village of Ἡρακλείδου was also situated somewhere in the same (6th) pagus and that one should read in *P.Oxy.* XII 1430.7 $\zeta/$ instead of $c\epsilon$.

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P.Oxy. I 37.8-9: Who Got the Contract?

In quite a few texts from Roman Egypt one finds subscriptions to private contracts of the following type: "(Name + Patronymic) γέγονε εἰς με (Noun) καθὼς πρόκειται."¹ Various nouns are used as the subject of the verb γέγονε: next to the frequently occurring nouns ἡ ὁμολογία, ἡ πρᾶσις and ἡ ἀποχή one finds ἡ ἀρραβών (*BGU* II 446.20), ἡ ἐκτασις (*P.Mich.* V 350.34), ἡ μισθοπρασία (*P.Oxy.* XVII 2136.18), ἡ μίσθωσις (*P.Mich.* V 311.42), ἡ παραχώρησις (*P.Mich.* V 252.10, 259.36, 267.14-15, 273.11-12), ἡ παραχώρησις καὶ ἐκχώρησις (*P.Mich.* XII 636.20, ἡ συγγραφὴ (*P.Mich.* V 347.4) and τὸ συστατικόν (*P.Fam.Tebt.* 27.26). In only a few isolated cases (cf., e.g., *P.Petaus* 33.5 and *P.Mich.* V 348.33) is a noun describing the nature of the document lacking completely. After the γέγονε ... πρόκειται phrase, an additional clause may sometimes follow, cf. *P.Mich.* V 249.5-6 and 251.18 (καὶ ἔδωκα τὴν συγκεχωρημένην τιμὴν καθὼς πρόκειται), V 348.34 (καὶ τὰ ἄλλα ἀκ<ο>λοῦ(θως)) and *P.Oxy.* XVII 2136.18 (καὶ ἐπερωτηθέντες ὁμολογήσαμεν). It should be noted, furthermore, that all attestations of a γέγονε subscription with known provenance seem to come from the Fayum; they date from the 1st-early 4th centuries A.D.

Most editors seem to have understood these clauses to refer to physical possession of the document in question. In, e.g., *P.Vindob. Tandem* 22.22 one finds "Ἀρπαλος Κατύρου γέγονε ἔς (l. εἰς) με ἡ ὁμολογία καθὼς πρόκειται translated as "Harpalos, Sohn des Satyros: Die Abmachung ist in meinen Besitz gelangt, wie oben erwähnt." In a note illustrating this phrasing, reference is made to the introduction to *P.Meyer* 5, while for another attestation one is referred to *P.Med.* I 8 (cf. line 35). A selection of other texts is cited by R. H. Hübner in his note to *P.Münch.* III 83.33-34; see, e.g., *P.Mich.* III 188.25-26: [Ταπεκῦσις Ὡ]ρου μετὰ κυρίου ἰοῦ (l. τοῦ) ἀνδρὸς Ὡρου γέγον<ε> εἰς με ἡ ὁμο[λογ]ία κα- | [θὼς πρό]κειται, translated as "I, Tarekuisis, daughter of Horos, acting under the

¹ A search through PHI CD-ROM #6 for the combination "γέγον- εἰς" yielded more than 70 relevant attestations

guardianship of my husband Horos, have received the agreement as aforesaid." Likewise in ll. 26-27 of P.Lond. inv. 1976 (published in *Stud.Amst.* XXXV, p. 513ff.) one finds in the subscription to the sale of a house in Soknopaiou Nesos (20.xi.134) the following statement made by Gaion, son of Hipparchos, who was the guardian of a minor, Herieus: Γαίων Ἰππάρχου [γέ]γον' ἐς τὸν φροντιζόμενον ὑπ' ἐμοῦ Ἐριεῦν ἀφή- | ⁽²⁷⁾λικά ἡ ὁμολογία καθὼς πρόκειται], translated as: "Gaion, Sohn des Hipparchos: der Vertrag ist, wie es oben festgesetzt worden ist, zu dem von mir vertretenen minderjährigen Herieus gekommen." Also illustrative are, e.g., *P.Petaus* 33.5-6, where the subscription Σισό- | ις Νείλου γέγονε εἰς ἐμὲ ὡς πρόκειται is rendered as "Die Urkunde ist mir Sisois, dem Sohn des Neilos, ausgehändigt worden wie oben geschrieben steht," *P.Kron.* 9.31-32, Δίδυμος Διδύ[μο]υ γ[έ]γο[γ]ε [εἰς ἐ]μὲ ἡ ὁμολογία καθὼς πρόκειται, translated as "Didymos, figlio di Didymos, è venuto in mio possesso il contratto come prestabilito," and *P.Soter.* 25.40, Θαισάριον Χάρητος μετὰ κυρίου το[ῦ] υἱοῦ Χάρητος(ς) το[ῦ] Σωτηρίχου γέγον' εἰς με ἡ ἀποχὴ καθὼς πρόκειται, translated as "Ich, Thaisarion, Tochter des Chares, mit meinem Sohn Chares, Sohn des Soterichos, als Frauenvormund, habe die Quittung in Empfang genommen, wie oben geschrieben steht."

These renderings of the γέγονε εἰς... statement are in agreement with the translation given by F. Preisigke, *Wörterbuch* I, s.v. γίγνομαι, 9 ("übergeben werden"), and F. Preisigke and E. Kießling, *Wörterbuch* IV 426.22ff. (where also a number of parallel documents are cited). In this perspective, the function of the statement was apparently a simple statement about which person the written contract has been handed over to, i.e. the document in question was handed over to that contracting party which might need the document in case of any future dispute for, e.g., claiming newly acquired property rights, or (in the case of an ἀποχή = receipt) for proving that he had indeed paid a debt.

There is, however, an alternative view, i.e. that the subscription was made by the party who stated that, after an oral agreement had been reached, the written document has now been "made to him/her"; cf. the renderings by, e.g., E. M. Husselsman in *P.Mich.* V 249.5; 250.1; 251.18; 252.10; 253.14; 257.11; 258.18; 259.35; 260-61.44; 263.39-40; 264-65.28; 267.14-15; 272.11-12, etc. (for this interpretation, cf. H.-J. Wolff, *Das Recht der griechischen Papyri Ägyptens* [München 1978] 41 at n. 34 ["Empfänger der Er-

klärung”)).² The latest example of this view is P. van Minnen in *ZPE* 96 (1993), discussing *P.Oxy.* I 37.8-9, where one finds ἐγένετο ἐνθάδε ἡ τροφεῖτις εἰς υἱὸν τοῦ Πεσοῦριος. While arguing convincingly that the enigmatic Theon (who made a statement in ll. 27-28) is in fact Pesouris' son, he writes: “The phrase in ll. 8-9 does not mean that Pesouris made a contract ‘concerning’ (εἰς) his son, but rather that the contract was drawn up by the wet-nurse with (εἰς) his son, rather than with Pesouris personally. The use of εἰς is well attested. See in general E. Mayser, *Grammatik* II 2 (Berlin 1934) 412. In other words, Pesouris' son was mentioned in the contract as one of the parties.”

The two views have in common the understanding that this declaration is made by the beneficiary of the contract or receipt to the issuer, the ὁμολογῶν. But in other respects they differ sharply.

As R. S. Bagnall formulates it,³ the basic question is “why does this clause exist?” As it is written by the beneficiary of the contract or receipt, it must be intended for the copy retained by the ὁμολογῶν/ὁμολογοῦσα party. As most documents we have are apparently copies kept by the beneficiary, this explains why the clause is not commoner than it is.

If this is right, then the question is: which would be useful to a ὁμολογῶν/ὁμολογοῦσα—(a) a clause stating that the document had been made out to the benefit of a particular party or (b) a clause stating that the beneficiary had received the document?

There seems to be no merit to (a); the document itself would show in whose favor it was made. On the other hand, (b) has much in its favor. Because documents were of great value in legal affairs, the clause would prevent someone from trying to come around and, e.g., say “You never issued me a receipt for the payment I made.”⁴

² Other texts, however, published in the same fifth volume of *P.Mich.*, but translated by A. E. R. Boak have been rendered as “I have received the....” (cf. *P.Mich.* V 311.42 and 348.33).

³ I would like to use this occasion to thank him warmly for kindly discussing the meaning of the γέγονε ... εἰς με clause with me and for polishing parts of my English text. I am also grateful to D. Hagedorn for sending me his views on the meaning of the γέγονε ... εἰς με clause; of course, for the final result of these discussions (mostly per email) I alone am responsible.

⁴ And then, when a duplicate receipt was made out, use it as evidence for the payment of some other debt. Taxpayers no doubt tried this ruse too, hence the

It is, therefore, not so easy to accept van Minnen's view that the contract referred to in *P.Oxy.* I 37 would have been made between the wet-nurse and Pesouris' son, rather than between the wet-nurse and Pesouris himself (who took up the foundling and who is clearly the protagonist in the law-suit vs. the wet-nurse). In keeping with the usual understanding of the γέγονε ... subscriptions referred to above, it is much more likely that the contract made between Saraeus and Pesouris *de facto* came into the hands of Pesouris' son Theon (cf. Theon's statement in l. 28: γράμματα τοῦ σωματίου ἔχομεν). Why this so happened, rather than that Pesouris himself kept the contract, is an open question; did Pesouris take precautions, in case he himself might die during the term the baby was nursed by Saraeus?⁵

At the same time, the editor's translation of *P.Munch.* III 84.33 may seem a little ambiguous. Instead of translating Ταῆσις διὰ Ἡρωνᾶτος] τοῦ πατρὸς γέγονε εἰς [με ἢ πρᾶσις ὡς πρόκειται as "Auf mich, Taesis, vertreten durch meinen Vater Heronas, ist der Kaufvertrag ausgestellt wie oben angegeben," a translation "Taesis, vertreten durch meinen Vater Heronas: der Kaufvertrag, wie es oben festgesetzt worden ist, ist in meinen Besitz gelangt" seems more in accordance with the rendering of the γέγονε εἰς με... phrase as found in the usual papyrological dictionaries.

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"no other receipt being produced for the same payment" clause that sometimes occurs.

⁵ In order, however, to save van Minnen's approach, one might wish to assume that Pesouris presented the foundling as a gift to his son, who was still a child, and that a nursing contract was made between Saraeus and Theon who, still being a minor, was represented by his father as a guardian. The guardian might have subscribed, then, for his minor son the same way as Gaion, son of Hipparchos, signed for his pupil Herieus in *P.Lond. inv.* 1976.