

Revocation of Wills in Roman Egypt

Naphtali Lewis

The above subject was treated at length by A.H.S. el-Mosallamy in *Aegyptus* 50 (1970) 59-73, a natural outgrowth of his edition of *P. Oxy.* XXXVI 2759, published that same year. The only addition to the scanty documentation then available is the brief fragment *P. Wash. Univ.* I 13, hardly enough to warrant reopening the subject. I do so because in el-Mosallamy's treatment single documents, or two or three, blossom into generalisations; the *agoranomeion*, *mnemoneion* and *bibliotheke enkteseon* are posited in unlikely, even impossible relationships; so that the effect is often one of confusion rather than clarification.

The subject of wills — their making, contents, authentication, registration — in Ptolemaic and Roman Egypt has generated an extensive literature. In contrast, the withdrawal of a will from the public archive for purposes of revision, suppression or nullification is a little attested, hence little discussed, legal formality. The disparity is tellingly reflected in the literature: Taubenschlag's *Law*², for example, devotes fifteen pages to wills and a single paragraph of seven lines to their revocation.

For the Roman period the *fons et origo* of almost any discussion must be §7 of the *Gnomon of the Idios Logos*: δι[ι]αθῆκαι ὄσαι μὴ κατὰ δημοσίους χρηματισμοὺς γείνωνται ἄκυροί εἰσι.¹ What that must have meant in practical terms with particular reference to the privileged class of *metropolitae*,² is that a testator³ would *ab initio* place a will under the aegis of the nome *agoranomeion* (or other official registry?), where the document would be written, witnessed and deposited for safekeeping. There it would remain until the testator's death or prior removal by the testator for revision or cancellation.

On the revocation of wills the available sources are scanty, a mere handful of papyri from second-century Oxyrhynchus. These documents are of three types, viz.:

A. This is what we today call an 'in-house memorandum', intended for the office files. For the record a ὑπηρέτης in the *agoranomeion* addresses to the *agoranomoi* (who are not named, this being a form letter) a statement that, at the testator's request pursuant

¹ *BGU V* 1210, 33-34

² See the recent treatment of wills by U. Yiftach, 'Deeds of Last Will in Graeco-Roman Egypt: A Case Study in Regionalism', *BASP* 39 (2002) 149-164. 'We now possess' he writes (149 n. 3), '42 Greek *diathekai* dating to the period between 31 B.C.E. and 212 C.E.'. Except for one of unknown provenance, they all come from the Arsinoite and Oxyrhynchite nomes. Pages 155-60 present the evidence supporting the view 'that the *diatheke* was a distinctly *metropolite* institution' (157).

³ To avoid having to repeat the clumsy 'testator/-trix' expression each time, the form testator should be understood as applying to both sexes.

to an order from the *strategos*, he has handed back to the testator his will of such-and-such date.

B. In documents of this type, also intended for the files of the *agoranomeion*, the testator addresses the γραμματεὺς of the *agoranomeion*, acknowledging receipt of his will of such-and-such date.

C. This is an affidavit in which the testator, on the point of writing a new will, attests that and why he cannot obtain the old will for invalidation. Should the old will surface at some future time, this affidavit in the *agoranomeion* files would protect the testator — and the *agoranomeion* — against possible fraudulent claims.

Let us analyze these types *seriatim*.

Type A: *P. Oxy.* I 106 = *M. Chr.* 308 = *Sel. Pap.* 424, III 601 = *P. Cairo Preis.* 32, XXXVI 2759.

Formula: τοῖς ἀγορανόμοις ὁ δεῖνα¹ ὑπηρέτης· ἀπήγγειλα ὑμῖν συντεταχέναι τὸν τοῦ νομοῦ στρατηγὸν⁴ ἀναδοῦναι τῷ δεῖνα ἀπ' Ὁξυρύγχων πόλεως ἦν ἔθετο δι' ὑμῶν τῷ year month διαθήκην τοῦτο ἀξιῶσαντος τοῦ δεῖνα². 2nd h. ὁ δεῖνα² ἀνέλαβον τὴν προκειμένην διαθήκην. (Sometimes the *hyperetes* adds that the applicant 'received the aforesaid will from me'.)

The two infinitives expressing the *strategos*'s order are translated by the editors of *P. Oxy.* 105 and 2759 as 'instructed me to give back (or 'give up') to so-and-so'. The word 'me', while not in the Greek, is easily understood; but should it be? The question relates not to Greek grammar, but to Roman provincial government. An affirmative reply must imply that the *strategos*'s office kept an up-to-date list not only of *nome* functionaries and liturgists, which it almost certainly did, but also of assistants and occasional employees in the several offices, which almost certainly exceeded its needs. In the instant situation the *strategos*'s order, if addressed to anyone by name or title, would be addressed to the *agoranomoi*; or it may have been couched rather like our 'To Whom It May Concern' missives.

At the end of the type A document a second hand, of or for the testator, acknowledges receipt of the will. This, it seems, did not take the place of the type B acknowledgement of receipt.

Type B: *P. Oxy.* I 107 and 178 = *SB VIII* 9766.

Formula: ἀνέλαβον παρά σου εἰς ἀκύρωσιν ἦν ἐθέμην διὰ τοῦ αὐτοῦ ἀγορανομείου ἐπὶ σφραγίδων⁵ διαθήκην year month τοῦτο ἐμοῦ ἀξιῶσαντος.

The statement of a purpose (εἰς ἀκύρωσιν) for withdrawing the will, presumably a requirement of the application, is still another indication of the close supervision that the government exercised with a view to preventing, or at least minimizing, fraud.⁶

⁴ *P. Oxy.* I 106 (cf. *P. Oxy.* LI, p. xiii) has στρ(ατηγῆσαντα), which raises a totally other question that does not affect the matter of the present paper. As for the following word, Revel Coles informs me, after autopsy, that the verb in 2759, 4-5 is the same as in 106, ἀναδοῦναι, not ἀπο-. Both 106 and 2759, Nikolaos Gonis informs me, were found in the first season of Grenfell and Hunt's excavations at Behneseh. They were presumably found in the debris of the town's *agoranomeion*.

⁵ Similarly, in type A documents the testator sometimes wrote ἀνέλαβον τὴν προκειμένην μου διαθήκην ἐπὶ τῶν σφραγίδων.

Type C: *P. Wash. U. I 13, SB X 10562* (revision of 10280)

Formula: οὐκ ἠδυνάσθην διὰ lost εἰς ἀκύρωσιν ἢν πρότερον ἐθέμην διαθήκην.

Both papyri are fragmentary, but enough remains to give the general sense and purpose. Where both texts break off, δια, it seems, introduced a statement of the reason why the prior will was unobtainable. For example, if it were possible to read πε[λο]υσίου in *SB 10562, 13*, that might be the remnant of a statement that the earlier will of some 20-25 years ago had been executed and deposited in the *agoranomeion* at Pelusium, hundreds of miles from Oxyrhynchus, the locus of the present transaction.

Two revisions should be made in the text of *SB 10562, 11*: the photograph clearly shows the correct reading to be ἠδυνάσθην, not -ήθην, and at the beginning of the line the restored infinitive should be θέσθαι, since this expression regularly employed the middle voice.

In sum, the revocation of a will was a process of several steps, with a fee to be paid, no doubt, at each step of the way. The testator first made application at the office of the *strategos*, where he obtained an order upon the *agoranomeion*. There, pursuant to the order, a clerk retrieved the will from the depository and presented it to the applicant for inspection, to verify that it was the desired will and that the seals were intact: that the will, in short, was in its pristine state, showing no signs of tampering. The testator then signed an acknowledgement of receipt (type B above), and the will was handed over to him. If for any reason the testator was unable to obtain the original will, he signed an affidavit to that effect (type C), perhaps in two copies, one for himself, the other for the files of the *agoranomeion*. As a final step in the process, the clerk of the *agoranomeion* who had handed over the will to the applicant prepared a statement to that effect (type A) for the *agoranomeion* records.

Appendix

P. Oxy. III 601 = P. Cairo Preis. 32

In the light of the comparable texts the unique opening of this document probably read something like τοῖς ἀγορανόμοις) ὁ δεῖνα ὑπηρέτ(ης) βιβλ(ιοθήκης) ἐγκτήσ(εων) <καὶ> δημ(οσίω)ν λόγ(ων) Ὀχυ(ρύγχων) πόλ(εως)· ἀπήγγειλα ὑμῖν συντεταχέναι κτλ.

Is it possible to explain the involvement of three offices here? Or, more to the point, why do we find a *hyperetes* of the *bibliothekes egkteseon* performing a function relating to the *agoranomeion*? In *P. Oxy. 2759*, dated a few months earlier in the same year, the same function was performed in the normal way by a *hyperetes* of the *agoranomeion*. Was the *agoranomeion* temporarily clerkless a few months later? Perhaps. But a more likely scenario suggests itself to me, to wit:

⁶ As we learn from *SB XII 10929*, an edict of M. Petronius Mamertinus (Prefect 133-137 C.E.) lists cases 'concerning annulled wills' — along with murder, kidnapping, armed violence, forgery and other such — among those reserved for the personal cognizance of the Prefect sitting as court of first instance. This surely tells us something about the frequency of fraud surrounding the annulment of wills as well as the serious view that the Roman government took of that crime.

Each *nome metropolis* had a 'government centre' where the chief nome offices were located more or less cheek by jowl. In the case of *P. Cairo Preis. 32* we may envisage the testator arriving with his order from the *strategos* and, the personnel of the *agoranomeion* being fully busy, a clerk at the next door or the next desk substituting to help out. This in turn might imply that the liturgists, who headed these offices and paid the expenses out of their own pockets, reduced their overhead by sharing their employees' services — a very sensible and understandable arrangement under the circumstances.

The City University of New York