

In the World of *P.Yadin*

Naphtali Lewis

In a series of recent articles,¹ Hannah M. Cotton (hereafter HMC) extrapolated from sparse and indirect bits of information embedded in Babatha's documents some elements (with particular emphasis on the rights of daughters) of the inheritance customs and laws that prevailed among the Jewish population of the area in the early second century CE. In the latest of those papers she nuances her previous findings with other possible interpretations of the data. It is not my purpose here to review that paper *in toto*, nor is there any need to do so. Nor is it necessary to expatiate here on the *dramatis personae* of *P.Yadin*; their names and identities are well and widely known by now. The following pages are limited to two matters that figure prominently in HMC's presentation: 1. the disputed ownership of the date orchards of *P.Yadin* 21-25, and 2. the courtyard(s?) of *P.Yadin* 11, 19 and 20. These documents will henceforth be cited by their numbers alone, in bold face.

1. Those Disputed Date Orchards

Three papyri from Roman Egypt, the most important of which (for our present purpose), *P.Oxy.* LXV 4481 (179 CE), was published a few months after HMC's *SCI* article,² combine with **24** to clarify this matter. In so doing they shed new light on an important element in property relations between spouses.

Judah, Babatha's second husband, had a brother, Jesus, who predeceased him, leaving two or more children. (In *P.Yadin* these children appear only as 'the orphans of Jesus,' never individually named.) Judah had no son, only a daughter, Shelamzion. When Judah died, Besas, a guardian of the orphans, instituted a

¹ *ZPE* 104 (1994) 211-24; *Eretz Israel* 25 (1996) 410-15; *Akten 21. Papyrologenkongr. (APF Beiheft 3, 1997)*, 179-88; *SCI* 17 (1998) 115-23.

² Even so, HMC's reconstruction of the situation turns out to be right in its general orientation, though not in its specifics. For example (*inter alia*) Babatha did not 'claim to have the groves registered in her name as security for her *ketubba* money and the debt' (p. 120). Nor did 'Besas ... demand from Babatha that she produce proof (δικαίωμα) that the groves were registered in her name, as she maintained.' Besas began by stating that they were so registered; what he wanted in **24** was something more, as we shall see.

series of legal actions claiming that Judah's estate descended through the male line to his clients.

We do not know exactly when Judah died, but probably by 19 June (20) and certainly by 11 September (21-22) of 130 CE, the disputed orchards were in Babatha's possession. Possession being, as we say, 'nine [out of ten] points of the law,' Besas must sue to dispossess her. An expression occurring in scores of documents, ἐπ' ὀνόματος (or ἐν ὀνόματι) τοῦ δεῖνος, denotes that the person named in the genitive is the owner of the property so recorded. Logic and grammar assure this, legal scholars and philologists are agreed. But on 17 September 130 Besas writes (24.4-10): ἐπιδὴ ἀπεγράψατο Ἰούδας Ἐλεαζάρου [Χθουσίωνος] ἀπογενομένου σου ἀνὴρ ἐπ' ὀνόματός σου ἐν τῇ ἀπ[ο]γραφῇ κήπους φοινικῶνος, [I assert the right of the orphans to inherit (*aut sim*)] ἐξ ὀνό[ματο]ς Ἰησοῦ[ου] πατρὸς αὐτῶν, οἷ χάριν παραγγέλλω σοι ἀποδιξέ[μ]οι π[ο]ρί[ω] δικαιώματι διακ[ρ]ατῆς τὰ αὐτὰ εἶδη. After acknowledging, indeed asserting, that Babatha was registered as the owner in the census, an official archive, why does he go on to demand that she produce a legal document (δικαίωμα) proving her right to retain possession? It is notable, too, that Babatha herself does not claim ownership; in 22.9-10 (*sim.* 21.11-12) she declares that she is distraining the orchards until (or unless) she is paid back her dowry and the money she had lent Judah, κατέχω αὐτὰ ἀντὶ τῆς προικὸς μου καὶ ὀφιλῆς. How are we to explain this apparent inconcinnity regarding the ownership?

The combined evidence of 24 and *P. Oxy.* 4481 provides the answer to that question. In 4481, which, like so many of the *P. Yadin*, is drawn up as a double document written *transversa charta*, a man appeals to the δικαιοδοσία of the prefect of Egypt. He wants to get back the property with which his wife has absconded. During the years of their cohabitation he bought in her name (ἐν ὀνόματι ταύτης) jewelry, clothes and household effects, recording her ownership in deeds (βιβλία) that he executed in her favor. When she left she carried off 'everything'.³ He states the legal basis of his appeal as follows (lines 5-6) : σὺ ὁ κύριος ἐπίστασαι ὅτι ὅσα ἐὰν γυνὴ ἐν τῷ τοῦ ἀνδρὸς οἴκῳ οὔσα περικτήσῃται [ca. 14] ἀνδρός.⁴ The lacuna must have had something like

³ Unless we are to take it as referring only to the preceding τινα, [π]άντα is an emotional hyperbole, understandable in the circumstances. We are not to take it literally, and picture her as spiriting away the furniture in the dead of night.

⁴ ὅσα... περικτήσῃται is also rhetorical hyperbole. The husband's contingent claim was limited to property that he gave or bought for her; property that the wife acquired otherwise was hers alone. On women as property owners in Roman Egypt see the studies of Deborah Hobson, notably 'Women as Property Owners in Roman Egypt', *Trans. Amer. Phil. Assn.* 113 (1983) 311-21; 'The Role of Women in the Economic Life of Roman Egypt', *Echos du Monde Classique/Classical Views* 28 (1984) 373-90; 'House and Household in Roman

πάντα (or ταῦτά) ἐστὶ τοῦ.⁵ This is dictated by the sense, and is confirmed by comparison with **24**.

Where does this leave us? The conclusion is inescapable: ἐπ' ὀνόματος (ἐν ὀνόματι) denotes ownership, but a wife's ownership of property that she received from her husband was not absolute. The husband retained a contingent ownership, whereby possession reverted to him if she left his bed and board (*P.Oxy.* 4481), or to his estate upon his death (**24**) — in other words, when the marriage is dissolved with no culpability or volition on his part. That explains why, in *P.Oxy.* XXVII 2474 and *PSI XI Congr.* 5, a testator wills to his wife property that he had purchased ἐπ' ὀνόματος (τῆς) αὐτῆς. That was the only way to assure that she would retain the property after his death; absent such a written provision, the property would revert to the husband's estate upon his death, as Besas claims.⁶

Before we turn next to the question of the courtyard(s?) it is worth noting the following. In **11**, on 6 May 124 CE, Judah declares that the courtyard belongs to his father, Eleazar Khthousion, who (old and infirm?) has given him the ἐπιτροπή of it. In **19**, dated four years later (Eleazar had presumably died in the interim, but that is immaterial here), Judah gives the courtyard, half now the other half *post mortem*, to his daughter Shelamzion. After Judah's death, when Besas concedes Shelamzion's ownership of the courtyard (**20**, 19 June 130) he (having, obviously, an expert legal adviser) carefully describes the courtyard as being ἐξ ὑπαρχόντων Ἐλεαζάρου ... πάπου σου thus avoiding any appearance of giving up a claim to the estate of Judah.

2. One Courtyard or Two?

The issue here is: one courtyard, as I think, or more than one, as HMC prefers? Her preference forms the basis of part of her argument.

HMC writes (page 121) '... the identification of the courtyard in *P.Yadin* **20** with the one ... in *P.Yadin* **19** is far from certain. The neighbours are not the same, nor is the original owner: the courtyard in *P.Yadin* **20** formerly belonged to Shelamzion's grandfather, Eleazar Khthousion, not to her father.' Note 35

Egypt', *Yale Class. Stud.* 28 (1985) 211-29; 'Agricultural Land and Economic Life in Soknopaiou Nesos', *BASP* 21 (1985) 89-110. See also G. Häge, *Ehegüterrechtliche Verhältnisse in den griechischen Papyri Ägyptens bis Diokletian* (Cologne and Graz, 1968), esp. p. 156.

⁵ In a long note to line 7 Thomas sifts through the pros and cons of including οὐκ in the restoration. He concludes by weighing in on the side of an affirmative statement, which is what the sense requires.

⁶ Cf. *P.Oxy.* VI 907, in which a man bequeaths to his wife a piece of land that he had previously mortgaged to her πρὸς τὴν προσενεχθεῖσάν μοι ἐπ' αὐτῇ τ[... φερνήν.

adds, 'Three out of four abutters changed between 16 April 128 and 19 June 130.' However, a longer look (124-130 CE) at the vicissitudes of the courtyard provides a better perspective on the owners and abutters. Here, in schematic form, are the essential data.

Abutters

Papyrus	<i>P. Yadin</i> 11	<i>P. Yadin</i> 19	<i>P. Yadin</i> 20
Date	6 May 124	16 Apr. 128	19 June 130
Owner	Eleazar Khthousion; Judah has ἐπιτροπή	Judah	Shelamzion
East	σκηναί + Jesus son of Mandron	Jesus son of Mad- daronas + empty ground	ἀγορά
West	σκηναί + Eleazar (Khthousion)	Judah	Matthew son of Zabbaïos
South	ἀγορά + Simon son of Matthew	ἀγορά	ἀγορά
North	ὄδος + <i>praesidium</i>	ὄδος	ἀμφόδιον

From the chart the following picture emerges:

1. *Ownership*. The courtyard passed from Eleazar Khthousion to his son Judah, and from Judah by deed to his daughter Shelamzion. These are successions within the same family, not instances of the alienation that we normally associate with the kind of change of ownership that HMC's argument requires.

2. *Abutters*. Overall, there is more continuity than change. Thus:

— *East*. Between 124 and 128 CE this military encampment, together with the one to the west and the headquarters on the north, was removed, leaving an unoccupied space.⁷ Jesus son of Mandaron/Maddaronas continued as an abutter. By 130 the empty space had been made into a marketplace (becoming, no doubt, an extension of the market on the south side).

— *West*. Like the courtyard itself, the private property on this side passed from Eleazar Khthousion to Judah. By 130 it had passed to an out-of-the-family owner.

— *South*. The market continued on this side through all six years.

⁷ It is a pity that we cannot know whether the transfer of the camp was in some way connected with the reorganization of the neighboring province of Arabia in 127 that seems to have led (*inter alia*) to its designation as *νέα ἐπαρχία*.

— *North*. The street, or lane, was there in 124 and was still there in 130.

The conclusion is inescapable: The three documents relate to one and the same courtyard, a property attested as continuing in the same family in three generations.

The City University of New York