

## ArchPF 50 (2004)

## Half again More

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In 131 B.C. Apollonia, wife of the Dryton who is well known from the archive named after him,<sup>1</sup> lent one Apollonios and his wife Herais 35 artabas of wheat (P.Dryton 16 [P.Greif. I 18]). The husband and wife were to repay the loan in good order and on time or else be subject to a fine (lines 19-22): ἐὰν δὲ μὴ ἀποδοῖεν ἐν τῷ ὁρισμένῳ χρόνῳ ἀπορεστάσαν| παροχρήματα| ἡμιμόλιον τὴν ἐσομένην | ἐν τῇ ἀγορᾷ τιμῆν.<sup>2</sup> The editor translates (p. 152), “If they fail to return it within the stated time, they shall immediately return (the 35 artabas) increased by 50% (or) the current market price.”

This cannot be right. The verb ἀπορίνω indicates here payment of a penalty, not repayment of the debt; for that, this text tells us to expect ἀποδόωμι.<sup>3</sup> The direct object is not an elliptical 35 artabas but “the prevailing market price”. The same penalty clause and the same translation occur at P.Dryton I 25.14-19 and 30.6-8, and in neither case does the disjunctive “or” appear in the Greek.<sup>4</sup> Potential justification for the translation can be found in another text in the archive. P.Dryton 11.17-18: [ἀπορεστά]σαν οἱ περὶ τὸν Δρύωνα τὰς ἑκατὸν | [ἀπρά- βας] ἡμιμόλιος ἢ τὴν ἐσομένην ἐν τῇ ἀγορᾷ τιμῆν|. Here the editor accepts Berger’s restoration and translates (p. 122), “Dryton and his companion(s) shall return the 100 artabas increased by 50% or the market price valid at the time.”<sup>5</sup>

Berger did not invent this piece of law. A similar stipulation did bind defaulters to repay such loans in cash, at some fixed price per unit or else at the highest price

in the local market,<sup>6</sup> but that is not our formula. Exact parallels for the formula at issue are few but have long been known.<sup>7</sup> The boiler-plate was this: ἐὰν δὲ μὴ ἀποδοῖ ἐν τῷ ὁρισμένῳ χρόνῳ ἀπορεστάσ ἡμιμόλιον ἢ τὴν ἐσομένην ἐν τῇ ἀγορᾷ τιμῆν. Now, on the interpretation advanced by Berger and followed in P.Dryton and elsewhere<sup>8</sup> the sense of the stipulation would be, “if the debtor does not repay the debt in time, he shall owe the amount of the debt plus half, or else the prevailing market price.” The logic of this putative law is curious. The editor understands the penalty as (p. 118 *ad* 1.15-18), “(1) the amount borrowed ... with a surplus of 50% or (2) the valid market price (if higher than the amount borrowed increased by 50%)”

A host of reasons suggest that this interpretation wants modification. First, for “the amount borrowed” we should understand “the amount due, principal and interest”, otherwise there would have been no penalty, assuming the standard interest at fifty percent.<sup>9</sup> Second, this interpretation assumes that fifty-percent

<sup>6</sup> E.g. PSI IX 1028.14-16 (Tebynis, AD 15): ἐὰν δὲ μὴ ἀποδοῖεν | κτῆθὰ γέγραπται ἐν τῷ ὁρισμένῳ χρόνῳ ἀπορεστάσαν [οἱ] | ὄξος[ν] | ἐν τῷ ἑσόμενῳ ἐν τῇ κώμῃ κτήσιον τιμῆν | ἐκδόσης ἀπράβης ἀγρο[π]ίου | ὁραχμάς ἐν τῇ τῇ ἐσομένην ἐν τῇ κώμῃ κτήσιον τιμῆν. P.Tebt. I 110.8-12 (92/59 B.C.): ἀν δέ[ι] μὴ ἀποδοῖ σοι ἐκτόσ σοι(1) | παροχρήματα | τιμῆν ἐκδόσης ἀπράβη[ι] | αἵς χαλκῶδ ὁραχμάς | ἐπικρίλας ἢ τὴν ἐσομένην κτήσιον τιμῆν κτῆ | ἐπίστῃσ ἀγορῆσ ἐπισήμου δραχμάς | ἐπ[ί]κ[ί]κοντα. P.Mert. I 6.22-26 (Asinote, 77 B.C.): ἢς δ’ ἀν[ι] ἀπράβης μὴ ἀποδοῖ κτῆθ[ι] γέγραπται ἀπορεστάσαν τιμῆν ἐκδόσης ἀπράβης χαλκῶδ ὁραχμάς ἐπισήμας ἢ τὴν ἐσομένην τούτων κτήσιον τιμῆν. For these and similar penalties see K. Marešch, *Bronze und Silber: Papyrologische Beiträge zur Geschichte der Währung im ptolemäischen und römischen Ägypten bis zum 2. Jahrhundert n. Chr.* [Pap. Colon. XXV] (Opladen 1966), 184-186 under “Strafpreise für Weizen (pro Arabe)”. Cf. also the similar phrase in a lease: PSI X 1098.26-29 (Tebynis, 51 B.C.): ἢς δ’ ἀν ἀπράβης μὴ ἀποδοῖεν κτῆθὰ | γέγραπται, [ἐ]κδορεστάσαν αὐτοῖ οἱ προγεγραμμένοι Ἀπρίωνι ἐκδότις ἀπ[ί]κ[ί]βης χαλκῶδ ὁραχμάς ἐπισήμας ἢ τὴν ἐσομένην κτήσιον | τούτου [τιμῆν] ἐν τῇ (τήσ) αὐτῆσ κώμῃσ (read αὐτῆσ κώμῃσ) ἀγορῆ.

<sup>7</sup> BGU VI 1281.6-8 (?), II B.C.): ἐὰν | δὲ μὴ ἀποδοῖεν ἐν τῷ ὁρισμένῳ χρόνῳ, ἀπορεστάσαν παροχρήματα | ἡμιμόλιον ἢ τὴν ἐσομένην ἐν ἀγορᾷ τιμῆν|. P.Adl. G 15.16-20 (Paltynis, 100 B.C.): ἐὰν δὲ μὴ ἀποδοῖεν (read ἀποδοῖ) ἐν τῷ ὁρισμένῳ χρόνῳ ἢ μὴ κολώσεν (read κοτῆ) κτῆθὰ γέγραπται ἀπ[ί]κ[ί]βησ ἐκτόσ ἐν τῷ ἑσόμενῳ μῆν[ι] παροχρήματα | ἡμιμόλιον ἢ τὴν ἐσομένην ἐν τῇ ἀγορᾷ | τιμῆν.

<sup>8</sup> H.-A. Rupprecht, *Untersuchungen zum Darlehen im Recht der graeco-ägyptischen Papyri der Ptolemäerzeit* [Münch. Beitr. 51] (Munich 1965), 99-100 with citations: “Eine Erhöhung des Darlehens in natura um 1/2 – δάεινον ἡμιμόλιον – kommt erstmals im Jahre 116 a.C. vor. Zahlreicher sind die Belege für die seit dem Jahre 124 a.C. bekannte Festsatzung des andertalbfachen zukünftigen Marktpreises. Zuweilen wird auch eine Wahlmöglichkeit zwischen dem zukünftigen Marktpreis und der Erhöhung um 1/2 in natura eröffnet, ebenso zwischen dem höchsten Marktpreis und dem Festpreis.”

<sup>9</sup> Cf. SB VI 9366.2-14 (Paltynis, 124 B.C.): ἐδάειονεν Ἡρα(κλῆσις) Θεοδοῦρου Μακεδῶν | τῶν κατοίκων ἱπρέων Πατρι Κάλου | Πέρονι τῆσ ἐπρυονῆσ (πυρῶν) ἀπ[ί]κ[ί]βας | ἄς καὶ χαλκῶδ (τῶν ἀκρον) αἱ ἄτοκον – τὸ δὲ δάεινον τούτο ἀποδοῖ | ὁ δάεινοσταμῆνος Ἡρακλῆδαι ἐν μῆν[ι] Φαρινοῦθι | τῷ μ[ε]λ | (τῶν) νέον καθ[α]π[ί]κ[ί]βησ ἐκτόσ ἀποκ[α]θεσταμένον εἰς ὄκον πρὸς αὐτὸν τοῖς | ἰδίους ἀνηλθάσαι. ἐὰν δὲ μὴ ἀποδοῖ | ἐν τῷ ὁρισμένῳ χρόνῳ ἀπορεστάσαν παροχρήματα ἡμιμόλιον τὸν μῆν πυρῶν τὴν ἐσομένην ἐν τῇ ἀγορᾷ τιμῆν, τὸν δὲ χαλκῶν | τοῦ ὑπερσῶντος χρόνου τοῦς κατά | τὸ διάγραμμα ὁδοχρήματος τόκουσ. The kind portion of the

<sup>1</sup> See now P.Dryton.

<sup>2</sup> On *hemiolios* and related terms and expression see still N. Lewis, “The Meaning of σὺν ἡμιόλιῳ and Kindred Expressions in Loan Contracts”, TAPA 76 (1945), 126-139, repr. in *On Government and Law in Roman Egypt: Collected Papers of Naphthai Lewis* [Am. Stud. Pap. 33] (Atlanta 1995), 17-30.

<sup>3</sup> P.Dryton 16.13-14: τὸ δάεινον | τούτο ἀποδοῖσαν οἱ δάεινεμένοι: 19-20: ἐὰν δὲ μὴ ἀποδοῖεν ἐν τῷ ὁρισμένῳ χρόνῳ.

<sup>4</sup> P.Dryton 25.14-19 [P.Greif. I 23]: ἐὰν δὲ μὴ | ἀποδοῖ ἐν τῷ ὁρισμένῳ | χρόνῳ, ἀπορεστάσ παροχρήματα ἡμιμόλιον τὴν | ἐσομένην ἐν τῇ ἀγορᾷ | τιμῆν. 30.6-8 [SB XVI 12986] (131-113 B.C.): ἐὰν δὲ μὴ ἀπ[ί]κ[ί]βησ ἐν τῷ ὁρισμένῳ | χρόνῳ, ἀπορεστάσαν παροχρήματα | ἡμιμόλιον τὴν ἐσομένην ἐν τῇ ἀγορᾷ τιμῆν|.

<sup>5</sup> A. Berger, *Die Strafklauseln in den Papyriusurkunden: Ein Beitrag zum grieco-ägyptischen Obligationenrecht* (1911; 2nd ed. Aalen 1965), 108 n. 4; BL 1178, under P.Greif. I 10.

price-inflation over the duration of loans in kind was the norm, for this stipulation would have protected creditors from taking a loss in those cases in which the market price rose by more than half. But so many of these loans in kind were contracted in order to tide the borrower over till harvest, when supply would climb and prices fall, so that this seems implausible. Third, in no case does the formula state outright that the penalty was to be the higher of the two figures. The Greek, on this interpretation, simply requires one or the other, without further qualification. Thus, the defaulting debtor was either required (or else free to choose?) to pay the debt and fine in kind, in which case the penalty would have been fifty percent, or else to pay in cash, in which case he would simply have paid the prevailing market price. The latter was no penalty at all, except inasmuch as it might have been harder to raise capital than goods, and unless massive short-term inflation was routine. Finally, the penalty clause without the  $\eta$ , but with no apparent difference in meaning, is the more common variant.<sup>10</sup> It hardly seems probable that the „or“, which on the prevailing interpretation carried the full force of the possible legal outcomes, was reduced to an optional part of the legal formula. A plausible alternative to the stipulation of one sort of fine „or“ another would be welcome.

Grammar provides. *Hemilius* was, as LSJ knew, implicitly comparative: so Cyrus promised that he would give the ten thousand „one and a half times what they were previously accustomed to have“ (Xen. An. I 3.21):  $\acute{o}$   $\delta\acute{\epsilon}$   $K\acute{\omicron}\nu\omicron\sigma$   $\iota\alpha\tau\omicron\gamma\epsilon\iota\tau\alpha$   $\eta\mu\acute{\iota}\omega\lambda\omicron\nu$   $\pi\acute{\alpha}\sigma\iota$   $\delta\acute{\omega}\sigma\epsilon\iota\nu$   $\acute{\alpha}\lambda\lambda$   $\pi\rho\acute{o}\tau\epsilon\rho\omicron\nu$   $\acute{\epsilon}\varphi\epsilon\rho\omicron\nu$ ,  $\acute{\alpha}\nu\tau\iota$   $\delta\alpha\pi\epsilon\iota\kappa\omicron\upsilon$   $\tau\rho\iota\alpha$   $\eta\mu\acute{\iota}\omega\delta\alpha\pi\epsilon\iota\kappa\acute{\alpha}$   $\tau\omicron\upsilon$   $\mu\eta\nu\acute{o}\varsigma$   $\tau\omicron\upsilon$   $\sigma\tau\iota\sigma\tau\iota\omega\tau\eta\iota$ ; so Scipio selected healthy prisoners from New Carthage, commingling them with the existing corps and „making the total number of sailors one and a half times what it was previously“ (Pib. X 17.11-12):  $\acute{\epsilon}\lambda\acute{\alpha}\xi\acute{\alpha}\varsigma$   $\tau\omicron\upsilon\varsigma$   $\epsilon\upsilon$  $\theta$  $\rho$  $\omega$  $\sigma$  $\tau$  $\omicron$  $\tau$  $\alpha$  $\tau$  $\omicron$  $\upsilon\varsigma$   $\kappa\alpha\iota$   $\tau\omicron\iota\varsigma$   $\epsilon\iota\delta$  $\omicron$  $\tau$  $\epsilon$   $\kappa\alpha\iota$   $\tau\alpha\iota\varsigma$   $\eta\lambda\acute{\alpha}\kappa\tau\iota\acute{\alpha}\varsigma$   $\acute{\alpha}\kappa\mu\alpha\iota\omicron\tau\alpha\tau\omicron\upsilon\varsigma$   $\pi\rho\acute{o}\sigma\epsilon\mu\iota\gamma\epsilon$   $\tau\omicron\iota\varsigma$   $\acute{\alpha}\nu\tau\omicron\upsilon$   $\pi\lambda\eta\rho\acute{\omega}\mu\alpha\sigma\iota$ ,  $\kappa\alpha\iota$   $\tau\omicron\upsilon$  $\eta$  $\sigma$  $\tau$  $\omicron\varsigma$   $\eta\mu\acute{\iota}\omega\lambda\acute{\omega}\nu$   $\tau\omicron\upsilon\varsigma$   $\pi\acute{\alpha}\nu\tau\alpha\varsigma$   $\nu\acute{\alpha}\nu\tau\alpha\varsigma$   $\eta$   $\pi\rho\acute{o}\sigma\theta$  $\epsilon$  $\nu$   $\sigma\omicron\nu\nu\epsilon\pi\lambda\acute{\eta}\theta\omega\sigma\epsilon$   $\kappa\alpha\iota$   $\tau\acute{\alpha}\varsigma$   $\alpha\iota\chi\mu\acute{\alpha}\lambda\acute{\alpha}\delta\tau\omicron\upsilon\varsigma$   $\nu\eta\acute{\omicron}\varsigma$ . In the one case comparison is indicated by the genitive and in the other by  $\eta$ .

I suggest that the penalty clauses in the papyri exhibit the same grammar. Defaulting debtors were required to pay one and a half times the prevailing market price of the total debt, including interest, plain and simple. The penalty enjoined payment of a fine of „half again more than the prevailing market price“. In those instances in which  $\eta$  was suppressed, the more common formula, the debtor was bound to „pay a fine in the amount of the prevailing market value, with half again more“,  $\eta\mu\acute{\iota}\omega\lambda\acute{\omega}\nu$  being syntactically adverbial. There was one rule and no options. Not disjunctions but comparison; not „or“ but „than“. Berger had the right formula but the wrong  $\eta$ .

loan was 36 artabas *atokos*, which is to say 24 artabas plus 12 in „interest“. Failure to pay in time resulted in a fine of one and a half times the loan, or 54 artabas (36 + 18): see also Lewis, TAPA 76 (1945), 138-139 (Am. Stud. Pap. 33, pp. 29-30).

<sup>10</sup> E.g. P.Dryton 16.20-22; 25.16-19; 30.7-8; P.Adl. G 6.13-16 (Pabynis, 106/5 B.C.); P.Amh. II 46.8-11 (Pabynis, 113 B.C.); 47.11-14 (Pabynis, 113 B.C.); P.Lond. II 218.8-11 (Thebaïd?, 111 B.C.); SB VI 9366.9-14 (124 B.C.).