

TYCHE

Beiträge zur Alten Geschichte Papyrologie und Epigraphik

Herausgegeben von

Gerhard Dobesch, Hermann Harrauer
Peter Siewert und Ekkehard Weber

Band 10, 1995

1995

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**Beiträge zur Alten Geschichte,
Papyrologie und Epigraphik**

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H O L Z H A U S E N

Herausgegeben von:

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Tafeln 1–18

Aurelius Neilammon alias Hiërax and Caecilius [Cons]ultius,
Prefect of Egypt, in a Case of Extortion (P.Strasb. VI 560)

(Tafel 17–18)

*For Hans Ankum**

P.Strasb. VI 560 is a papyrus, difficult to read, but interesting. It contains a reference to an otherwise not attested Prefect of Egypt, and to a person well known from other papyri. Its subject matter is a case of extortion. However, contrary to what has been suggested, no connexion between this and the subject of those other papyri can be made. Before discussing this I republish the text first to take account of the addenda and corrigenda published following its original edition, and a new reading of the photographs and the original¹. The text shows many crossing-outs, corrections and insertions. We may probably explain the text of the Verso by assuming, as already suggested by Schwartz, that after the draft had been made, the papyrus was folded several times (probably six). On the backside the lines 24–27 were written in the same hand, apparently after the draft had been completed.

P. gr. 1225

24 × 27,5 cm

post 27 October 324 p. C.

Col. I

- 1 Καικιλίῳ [Κωνσ]ουλτίῳ τῷ διασημ[ο]τάτῳ ἐπάρχῳ Αἰγύπτου
 2 Παρὰ Αὐρήλ[ι]ου [Ν]ειλάμμωνος τοῦ καὶ Ἴερακος καὶ ὡς χρη[ματίζει]. Ἀσκλη-
 3 πιάδης ἔχων
 4 περὶ ἑαυτῶν στρατιωτικὸν σχῆμα, {δη} λέγω δὴ τὸ τῶν κρατίστων, ἀνε-
 5 σκεύασεν πρᾶγμα ἀλογώτατον
 6 κατ' ἐμ[ο]ῦ ἀντὶ εὐ[π]οιείας καὶ μὴ φέρων [κατηναγκάσθην ὑπ' αὐτοῦ] '[παρ'
 7 αὐτὰ τὴν βα]' τὴν βα[κ]ναυσότητα τοῦ τοιοῦτου ἀνδρὸς
 8 ἴξα τῇ ἀπαιτήσι αὐτοῦ π[ρ]ὸς τὴν τότε μοι παροῦσαν ὥραν οὕτω γάρ με κατη-
 9 νάγκασεν βιαίως κατὰ τὴν ἑκκε-
 10 δεκάτην τοῦ παρελθ' ὄντος μηνὸς Θῶθ [πι] γράψασθαι αὐτῷ ἀδότων [ἀρ]γυ-
 11 ρίων ταλάν-
 12 των πέντε καὶ τριάκοντα. Ἐπὶ οὖν νόμος διαγορεύει τὰ τοιαῦτα ἄδοτα γραμ-
 13 μάτια
 14 ἀνίσχυρα εἶναι, διὰ τοῦτο δέομαι τῆς σῆς ἀρετῆς ὅπως κελεύσης πρῶτον μὲν
 15 κε[ρ]τῆσθαί μου τὰ βιβλία ἐν τῇ σῇ τοῦ ἐμοῦ δεσπότητος τάξει πρὸς ἀσφάλειαν τῆν
 16 ἡμετέραν, ἔπιτα

* With respect and affection on the occasion of his retirement from the Chair of History of Law and in particular of Roman Law, and of Juristic Papyrology.

¹ See for the addenda and corrigenda P.Strasb. VI 560 (already contributed by the original editor, J. Schwartz) and further BL VII 108. K. A. Worp and J. Gascou, to whom we are much obliged, kindly checked our readings and made valuable suggestions; the latter compared our readings with the original and pointed out that there were, at the bottom, two columns. The final textual choices are, of course, our responsibility.

- 10 [δὲ] διακοῦσαι ἐνταῦθα ἐν τῇ λαμπροτάτῃ πόλει τῶν Ἀλεξανδρέων ἐξ ἀν-
 11 [.....][] ρ [] ου, ἐὰν δὲ [θέλῃ] `κελεύσῃ` σου τὸ μεγαλίον, ἀποδοῦναι τὸ κ[ατ]ὰ
 12 [γεγραμμέν]ον γραμματί[ο]ν, ἕν ὧμην ἐ[ὐ]εργετημένος ὑπὸ τῆς [εὐεργ]ε[σ]ίας
 13]..... τάτας χά[ρι]τας ὁμολ[ογ]ήσω.
 14 Διευ[τύχ]ει.

Col. II

- 15 Traces
 16 Traces
 17 Traces
 18 Traces
 19
 20
 21
 22
 23

Col. III

- [.....] ἀνδρὸς
 [] ρ [] προς τῶν καὶ οὕτως
 [τ ν α ὕ] [] τη[] πρὸς τὴν τότε μοι
 18 παρ[οῦ]σαν ὥραν [] ημι γὰρ `καί` παρὰ
 19 τῇ σῆ̄ εἰλικρινίᾳ εἰ χρεία γείνοιτο
 20 καὶ δύο εὐγενεστάτους μάρτυρας
 21 εἰς τοῦτο [ευγενε] Φλά(ουίους) `Ἡρωνά τε τοῦ
 νομοῦ καὶ Ἀπολλώνιον ὄφφ(ικιάλιον) τῆς ἡγε-
 μο(νικῆς) τάξ(εως)` κατηνάγκασεν γάρ με
 22 ἀνόμως καὶ βιαίως κατὰ τὴν ἰξ τοῦ [π]αρελθ(όντος)
 23 μη(νός) Θῶθ [τῆς νυνὶ ὑπ(α)τεί[ας]]

Verso:

- 24 Ἔχει δὲ ὑν τὸ[γραμ-
 25 μάτιον τῶν (ταλάντων) λε
 26 τοῦ κρ()
 27 ἀπόδος ἐν τῇ ἐνταῦθα

2. In Ἰέρακος one half of the dihairesis is visible. 3. περὶ ἕ'αυτοῦ'ν' added in margine. 4. I. εὐποιίας; ἀνεσκεύασεν *ex corr.* ἀνασκεύαδεν. 5. ἰξα added in margine; ἰξα Pap. εἰξα, ἀπαιτήσει 6. *ex paronotos*. 7. Ἐπί = Ἐπει 9. τάξει 10. ἀναγκαιίας Pap. 11. [] ρ [] ου: τρίτον?, after πρῶτον and ἐπιτα. 13. τὰς ἐπιδητειοτάτας χά[ρι]τας? 19. I. χρεία 21. Οὐ νόμου? 22. The ζ very much looks like a γ. 24. οὖν, or perhaps νῦν? 26. κρ(ατίστου)? 27. ἐνταῦθα: *cf.* I. 10: ἐν τῇ ἐνταῦθα [τάξει? The papyrus is too damaged to see even remnants of letters.

„To Caecilius Consultius, most eminent Prefect of Egypt, from Aurelius Neilammon, alias Hierax and however he is styled. Asklepiades having a soldier's cloak on `him`, I mean that of the *egregii*, has done a most unlawful thing against me, in exchange for my generosity and not supporting [I was forced by him] `[[in addition to these the cu]` the cunning of the `such a` man, I gave in for that moment `then for me` `to his demand, because he constrained me (to do) so by force`, to write out in his name on the sixteenth of the past month of Toth, for thirty-five silver talents never paid out. As a constitution declares clearly that such acknowledgements of debts never paid out are inoperative, I therefore ask your Virtuousness that you will order in the first place that my petition will be deposited in your bureau, my lord, for our security; further that you will hear in a session here in the most magnificent city of the Alexandrians because of a necessary ... if your Highness [wishes] will order that the acknowledgement of the debt, written under constraint, is handed over to me ... `having profited from your mildness` ... and it (thus?) takes place for ever for you (... most appropriate?) thanks I shall sign. Greetings“.

L. 17: „... for the moment then for me ... because also for your Sincerity, if the necessity would arise, and two well-born witnesses for this [well-born] Flavius `Heron of the law and Apollonios, *officialis* of the bureau of the Prefect', because he has constrained me and with force on the 16th of the past month of Toth [of the present consulate] ...“.

Verso: „He has ... the [docu]ment of the 35 (talents) of the κρ(.). Deliver in the (bureau? of the Prefect) in this town“.

The author of the petition, in any case the person who ordered the draft, Aurelius Neilammon alias Hiërax, is well-known from Hermupolis for the years 289–326². It is not known who wrote the draft, but it could well have been Aur. Neilammon himself, since he was in 326 magistrate, *syndicus* and *bouleutes* and must have had sufficient legal knowledge³. The petition itself must have been copied from it. The lines 24–26 on the Verso, must have been afterthoughts. At that moment Asklepiades still had the *grammaton*: perhaps the draftsman thought it necessary to insert in the petition this fact, in order to explain why he requested delivery from him, and thus added lines 24–26. Line 27 contains an order to deliver somewhere „here“, namely in Alexandria. It might be a scribe's office, but in view of τῆ it is more probable that the bureau of the Prefect is meant.

The abbreviation κρ in line 26 must refer to Aur. Neilammon rather than to Asklepiades, and therefore the resolution of the abbreviation κρ(ατίστων) is not certain, unless Aur. Neilammon had acquired by that time this dignity, if this was still possible at that time⁴.

Aur. Neilammon submits a petition with the Prefect of Egypt. He complains that Asklepiades has forced him to write out an acknowledgement of debt (*cheirographon*), although there was no debt, and although he had done Asklepiades a favour⁵. He asks the Prefect to have this acknowledgement returned to him. He mentions in another part of the draft two witnesses of the act. The procedure is conducted by a *libellus* (*biblia*). It is not the *libellus*-procedure since this is not known before the fifth century, but the *cognitio*-procedure⁶. The petition is dealt with by the bureau (*taxis*) of the Prefect.

Aur. Neilammon asks the Prefect to summon Asklepiades before him and order him to comply with Aur. Neilammon's request, that the acknowledgement written under constraint will be returned to him. Such documents written and handed over under constraint were declared invalid in a rescript of the emperors Diocletian and Maximinus of the year 293 (CJ II 19, 7). The person concerned could address himself to the provincial governor for an official statement that it was invalid. The rescript was included in the Codex Gregorianus, and if the author did not know of the rescript in another way, he must have learned it from this Code. It is possible

² P.Strasb. VI 555 (289); 556 (a little after 289); 672 (289–290); 539 (290–291); 557 (291); 560 (291); 576 (ca. 300, but here we find only a Hiërax and no Aurelius Neilammon); 619 (after 303, on basis of the *logistes*; the editor mentions 325, but this is based on 560, which is under discussion); 296 (326, see the re-edition in ZPE 69 [1987] 147ff. = SB XVIII 14056; here he is a magistrate, *syndicus* and *bouleutes*).

³ SB XVIII 14056, see note 2.

⁴ See J.-M. Carrié, *Bryonianus Lollianus de Sidé ou les avatars de l'ordre équestre*, ZPE 35 (1979) 222.

⁵ On such extortion, with which deal for example CJ IV 56, 35 (Just.; about soldiers who as *conductores* threaten the farmers on their lands with arms) and CTh VII 7, 5 (415, East = CJ XI 61, 3, *pr.*, about soldiers who let their cattle graze on public meadows and thus trouble the persons entitled), see R. Bagnall, *Official and Private Violence in Roman Egypt*, BASP 26 (1989) 201–216.

⁶ See M. Kaser, *Das römische Zivilprozeßrecht*, München 1966, 456ff.; also J. Lallemand, *L'administration civile d'Égypte de l'avènement de Dioclétien à la création du diocèse*, Bruxelles 1964, 153, and H. Hübner, *Der Praefectus Aegypti von Diokletian bis zum Ende der römischen Herrschaft*, München 1952, 61–62.

that a bureau as important as the bureau of the Prefect of Egypt had a copy of this Code, and that Aur. Neilammon had consulted it there. In any case it is possible that Aur. Neilammon, acquainted with the law since he was in 326 a *syndicus*, had learned of this rescript in some other way.

Dealing with the problem in this way would have saved Aur. Neilammon a lot of trouble. If summoned by Asklepiades to pay the sum, he might have replied, if the *grammation* mentioned a loan as cause of the debt, with the *querela non numeratae pecuniae*, which would have burdened Asklepiades with the proof that there had been a loan indeed. If the acknowledgement did not mention this cause, and this was probably the case, then the burden of the proof would have lain with Aur. Neilammon. He would have to prove then that there had been no cause⁷.

It is assumed that the injured party could litigate against anyone, including the person who had exercised the force, with the *actio quod metu causa* to effectuate the surrender of whatever was handed over by force⁸.

Here Asklepiades was the defendant, which means that Asklepiades had a domicile in Alexandria or its immediate surroundings as far as these were under the (exclusive) jurisdiction of the Prefect⁹. As a rule the plaintiff had to submit his petition to the judge in the town where the defendant was domiciled¹⁰. The fact that, as far as we know, Aur. Neilammon was domiciled in Hermupolis is of no importance whatsoever¹¹. He had to go to Alexandria, if not already present there, to plead his case there, or send a representative¹².

It would be different, of course, if one could prove that Asklepiades was a resident of Hermupolis. Then Aur. Neilammon would have deviated from the expected course of procedure and it would have been an argument either for a concurrence of jurisdiction between the Prefect of

⁷ M. Kaser, *Das römische Privatrecht* II, München 1975, 380.

⁸ See M. Kaser, *Das römische Privatrecht* I, München 1971, 243–245 and his *Privatrecht* II (note 7) 89–90.

⁹ Since the Prefect judged the case and Asklepiades was the defendant, but although this is the obvious thing to assume, doubts have been raised as to whether the jurisdiction of the Prefect had indeed been so restricted in territory; see below.

¹⁰ Kaser, *Zivilprozeß* (note 6) 381. There are exceptions to this rule but they do not apply here.

¹¹ Even if Aur. Neilammon himself was living in Alexandria at that time and returned later on to Hermupolis, it would not matter.

¹² This has been discussed within the context of the creation of the provinces of *Aegyptus Jovia* and *Herculia*. These provinces existed between 312 and 322, but whether they existed in 297–312 and 322–341, is unclear. J. Lallemand and H. Hübner (note 6) assume they did not. One of the arguments used is the jurisdiction of the Prefect of Egypt. He exercised this, apparently, in Oxyrhynchus and the Arsinoë as a judge of the first instance in the said two discussed periods, and Lallemand has extensively discussed whether this was a jurisdiction identical to that of a provincial governor, or whether his jurisdiction covered different cases. Excluding the possibility that he was judge of appeal (that was the *vicarius Orientis*), she concludes that there was no difference; and Hübner concludes the same. If one now assumes that a concurrence of jurisdictions was possible, then these provinces may have existed and been judged by their provincial governors; if not, then they did not exist in those periods, and this is Lallemand's opinion (see J. Lallemand, *La création des provinces d'Égypte Jovia et d'Égypte Herculia*, Bull. Classe des Lettres et des Sciences Morales et Politiques, 5^e série, Tome XXXVI, Bruxelles 1950, 386–395; Lallemand, *L'administration* [note 6] 140–143, Hübner [note 6] 61–62). Of course the Prefect had sole jurisdiction in Alexandria and the surrounding lands under its administration. Perhaps this question needs a new proof of the texts examined by Lallemand, but this is not the place to enter into this point. However, it is in any case clear that this text cannot serve as proof for such a concurrence. If Aur. Neilammon, who lived in the Thebaid (where a concurrent jurisdiction of the Prefect, if existing, would have been exercised as well), had approached the Prefect because of such a concurrent jurisdiction, Asklepiades might have lived anywhere in Egypt; but if that had not been the case, Asklepiades still could be a resident of Alexandria or of any province directly administered by the Prefect.

Egypt an the provincial governor, or (quite unlikely) for the subjection of the Thebaid, in which Hermupolis lay, to the jurisdiction of the Prefect in 324 or later. Indeed J. Schwartz suggested that Asklepiades was the *logistes* from Hermupolis we meet in P.Strasb. III 138 (325) and in SB VI 9558 (presumably 325). This suggestion, and its implications, however, cannot hold, since it raises various unnecessary problems¹³. It would first mean that Aur. Neilammon for some reason did not file his summons with his provincial governor. Then there would be the problem of a civil administrator having usurped military garb (which N. Lewis indeed assumes, apparently parting from J. Schwartz's suggestion, but which is rejected by J.-M. Carrié). The name itself is far from uncommon. Asklepiades was, to all appearances, a military man of the rank or with the title of *egregius*, or someone who had usurped this title¹⁴. He might for example have met Aur. Neilammon during a visit of the latter in Alexandria, and there is a good argument to assume that the extortion actually took place there. The document is drawn up in Alexandria, and Aur. Neilammon mentions two witnesses: Flavius Heron and Apollonios. Because a reference to the domicile of these two persons is lacking, this strongly suggests that they were domiciled there; in any case Apollonios, an official of the bureau of the Prefect, as good as certainly did¹⁵.

Without other indications we have therefore to restrict ourselves to the conclusion that the identity in names is a coincidence and, parting from the obvious, that Asklepiades was a soldier of some rank who resided in Alexandria and had met Aur. Neilammon there. Aur. Neilammon addressed the Prefect, probably at once, and got the extorted document back¹⁶.

The impossibility of connecting P.Strasb. VI 560 with P.Strasb. III 138 and SB VI 9558 has another consequence as well: namely, for the dating of the Prefect Caecilius [Cons]ultius. R. Coles assumes that those two other papyri could be connected¹⁷. He suggests that the present petition of Aur. Neilammon, dating from 28 September – 27 October inclusive, led to Asklepiades being summoned before the governor of the Thebaid in December 325 (SB VI 9558), and he assumes that this December follows immediately on those months. Since Tib. Flavius Magnus was in office at least in January/February 325 and 2 October 325, and Laetus in office on 2 February 326, the result would be that Caecilius [Cons]ultius would have been Prefect in 325 for a very short timespan. Were there at least a year between P.Strasb. VI 560 and SB VI 9558, then Caecilius [Cons]ultius could have been Prefect before Magnus. If there had been a moratorium in the prefecture, his tenure could still have been short.

On the other hand, R. Coles does not rule out that the Asklepiades of SB VI 9558 might have been back in office as *logistes* in 326, and that the petition dates from after this. Caecilius [Cons]ultius' tenure would then be restricted to 2 February 326 – October/November 327 at the most. Yet, as he observes, a problem then is the supposed abolition of the rank of *egregius* soon after 324 (this date — if right — being of the last known constitution in which the digni-

¹³ This suggestion implied another problem, namely that Neilammon submitted a petition in Alexandria, although the plaintiff was domiciled in Hermupolis, and not in Hermupolis or wherever his own provincial governor resided.

¹⁴ See N. Lewis, *Notationes legitis*, BASP 13 (1976) 5–6; Carrié, *Bryonianus* (note 4) 222 n. 30, who refers to CTH VI 22, 1 with the date of 324 as proposed by O. Seeck; see on this title and its devaluation, for example, A. H. M. Jones, *The Later Roman Empire*, Oxford 1964, 525–526.

¹⁵ Theoretically the bureau could have been attached to a provincial governor, since the expression τῆς ἡγεμο(νικῆς) applies to both the Prefect and a governor, but we could expect, in view of τῆς, a specification of the province if it had referred to the latter. Moreover, since the text is drawn up in Alexandria, it is obvious that τῆς ἡγεμο(νικῆς) τάξι(εως) refers to the Prefect.

¹⁶ R. S. Bagnall, *Egypt in Late Antiquity*, Princeton 1993, 227 mentions the case, but attributes to Aur. Neilammon the qualities of *logistes* and *vir egregius*.

¹⁷ R. Coles, *Caecilius [Cons]ultius, Praefectus Aegypti*, BASP 22 (1985) 25–27.

ty of *egregius* is mentioned)¹⁸. Since we may not identify this Asklepiades with the Asklepiades of SB VI 9558, the dating of the papyrus to 325 is not compelling anymore, nor, consequently, the eventual dating of Caecilius [Cons]ultius' prefecture to this indeed very short tenure. Coles' objection to 2 February 326 – October/November 327 remains in force, of course; but there is no argument anymore from SB VI 9558 for 325.

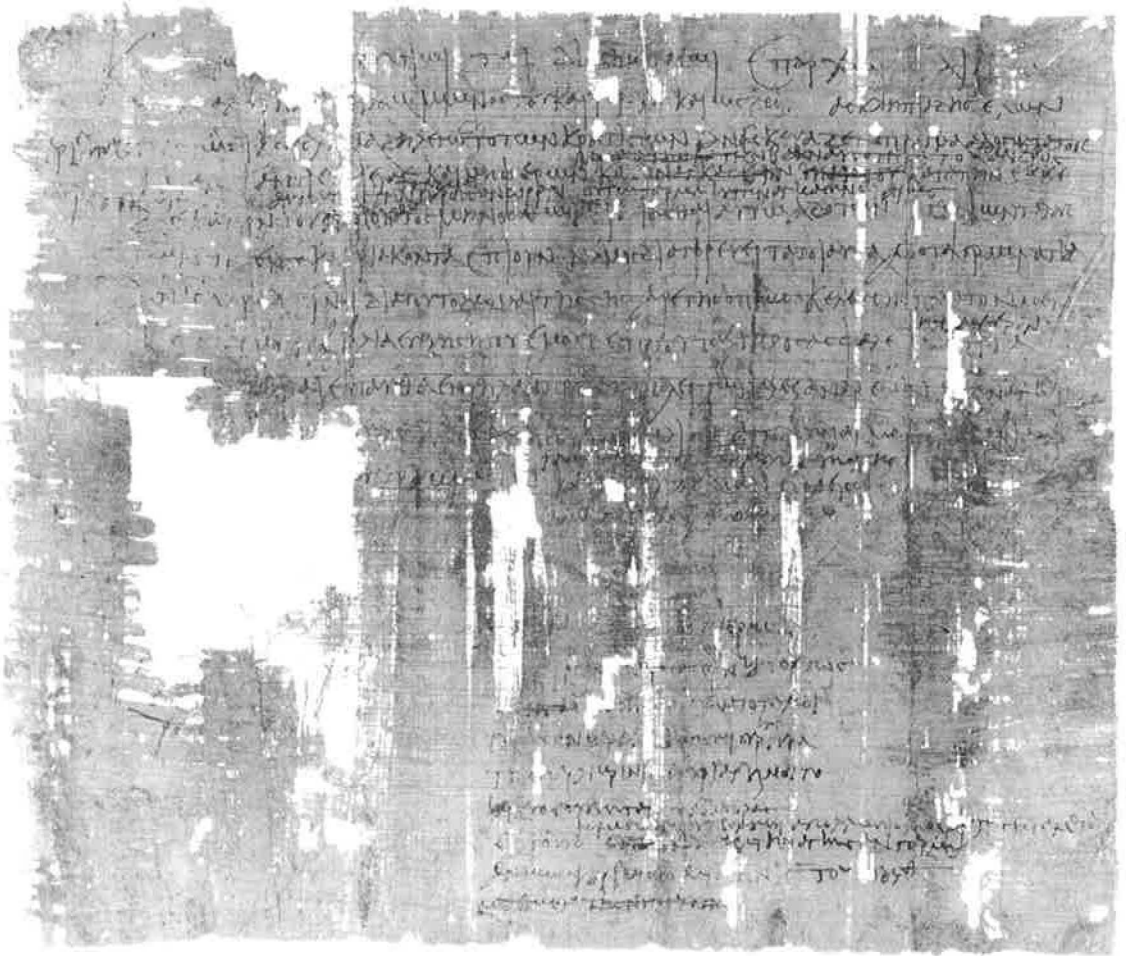
If Flavius in Flavius Heron is an addition, assumed after Constantine defeated Licinius on 18 September 324¹⁹, the terminus post quem of the papyrus is in any case 18 September 324, and because of the reference to the month of Toth, 27 October. However, is it impossible that Caecilius [Cons]ultius was Prefect until January/February 325, when Flavius Magnus is attested? Coles does not rule out the year 324, but thinks it unlikely if we assume a moratorium and finds it a tight-squeezed tenure. It would, however, still be longer than in 325; and why should the moratorium after Julius Julianus (Prefect ca. 314) — if there existed ever such a moratorium (it may well be attributed to a coincidental lack of data) — have been for ten years and not shorter? Is it not possible to think of a Prefect, created by Licinius in for example 324 or the beginning of 325 (or even before) and deposed by Constantine in the last months of 324?

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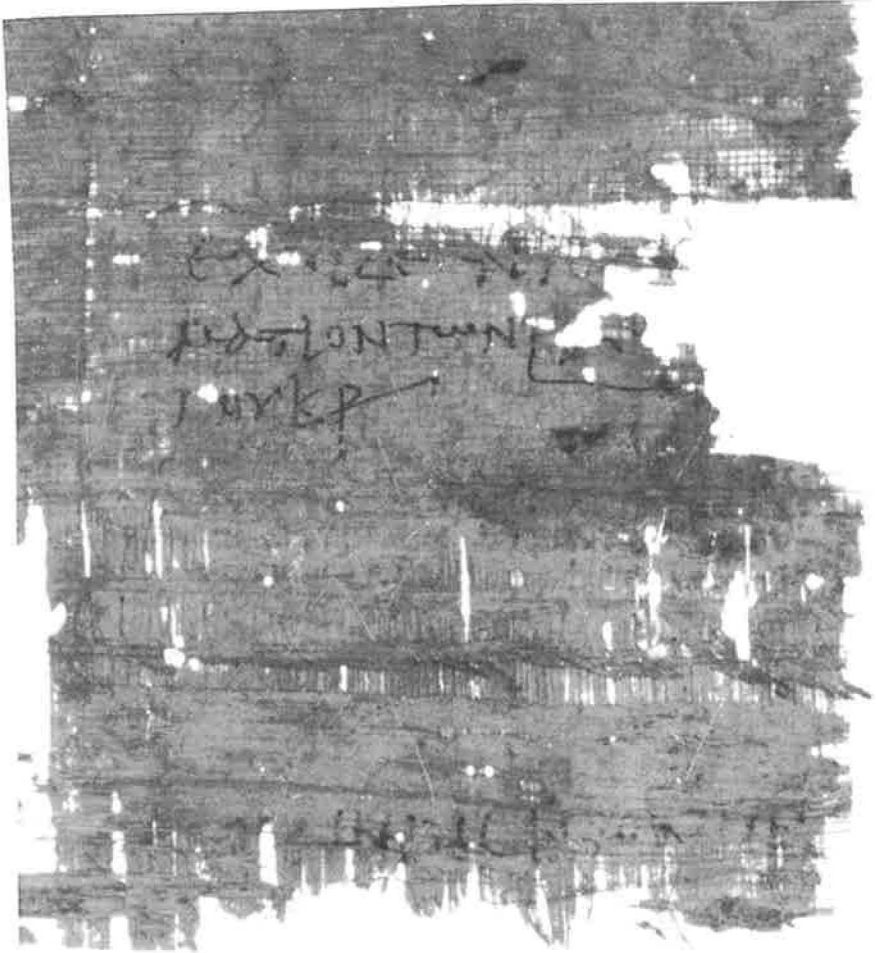
A. J. Boudewijn Sirks

¹⁸ O. Seeck proposed this date instead of 321 as the subscribed consulate suggests. But Th. Mommsen even allows for 325/326.

¹⁹ Theoretically it could be a real *gentilicium*, but is is not likely here.



zu Sirks, S. 179ff.



zu Sirks, S. 179ff.