

IX.—The *Sponsalia* of a *Classiarius*: a Reinterpretation of P. Mich. Inv. 4703

ROBERT O. FINK

RUSSELL SAGE COLLEGE

Because Roman soldiers were forbidden marriage until about A.D. 200, it is difficult to accept the original interpretation of P. Mich. Inv. 4703 as a soldier's marriage contract. Instead, it should probably be regarded as a contract of betrothal, in this case substituted for a marriage which had been annulled by the husband's enlistment. Thus the remarriage of the couple was to some degree insured; and meanwhile the wife's dowry was protected if the husband died in service. The legitimacy of the two sons born before the annulment was also documented by this means.

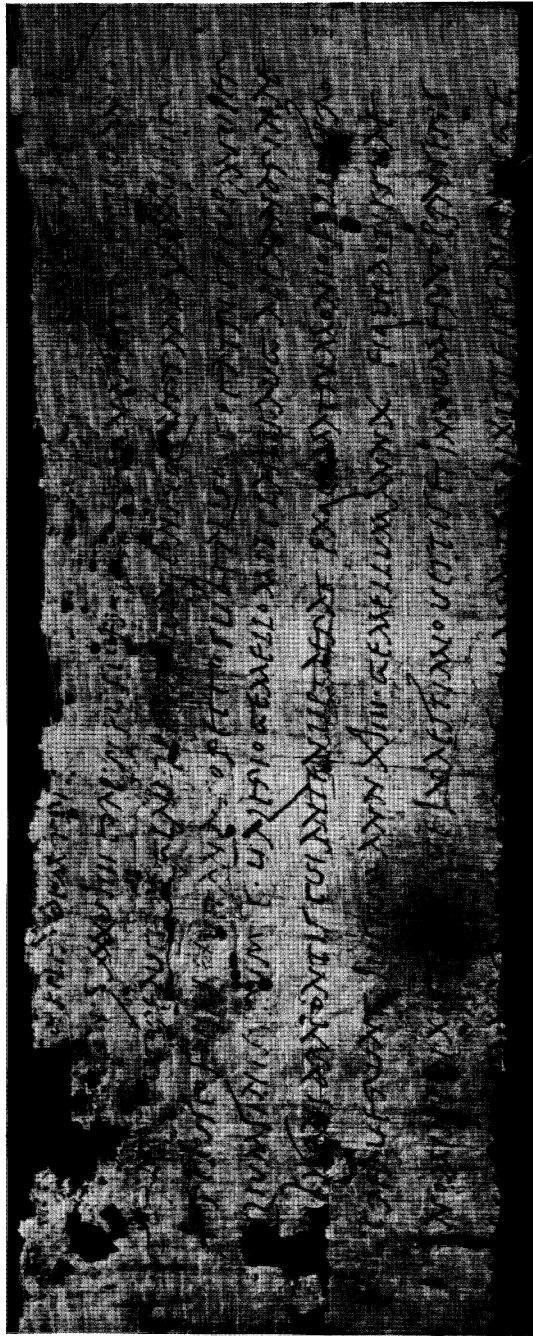
P. Mich. Inv. 4703 has already been published with reproductions by Professor Henry A. Sanders of the University of Michigan, to whose article the reader may refer for a detailed description.¹ It belongs in all probability to the middle or the third quarter of the second century of our era, since seventeen out of twenty of the dated papyri found with it belong to the reigns of Antoninus Pius and Marcus Aurelius. Careful study of this interesting document, however, has led the present writer to conclusions differing somewhat from those of the original publication in regard to both the text and the interpretation. Professor Sanders has also very kindly communicated to the writer new readings made after the present paper was announced.

The revised text runs:

[*Probably one line lost.*]

- 1) [.] .çī filia Demetriā [--- ca. 13 ---]ş
 . . . um coñşışt(ens) Çol(oniae)
- 2) [C]aę[sareae] añn(orum) xxxviii, corpore fusco,
 fa[c]ię [d]e[du]çta, naso recto, lętigo malo
- 3) d[e]xtrę, tütore auctöre Glaucippę Aññiani cons(istente)
 Çol(oniae) Çaesar(eae), añn(orum) xxxviii, cor-

¹ Henry A. Sanders, "A Soldier's Marriage Certificate in Diploma Form," *Proc. Amer. Philos. Soc.* 81 (1939) 581-590 and Plates I-II. The present writer was able to examine the papyrus itself in 1939, thanks to the hospitality of the Department of Classics of the University of Michigan during the meeting of the Philological Association at Ann Arbor. He wishes also to express his indebtedness to Professor Sanders for prompt assistance in obtaining a new photograph of the papyrus and for permission to reproduce it.



P. Mich. Inv. 4703

tion whether Caesarea in Mauretania (Cherchel) or Caesarea in Palestine is the one concerned.⁴ Both were colonies, the former from the time of Claudius, the latter since Vespasian;⁵ and both were used by Roman fleets. The present text, however, seems to point to Caesarea in Mauretania, for there is no doubt that the squadron stationed there was made up in part of ships from the *classis Augusta Alexandrina*,⁶ while Caesarea in Palestine, as Sanders indicated in commenting on P. Mich. 4301, belonged to the territory of the Syrian fleet.

Mention of a Colonia Caesarea as part of Glaucippus' identification in line 3 tempts one to look for the same phrase in the description at the end of line 1 and in 2. Sanders' belief is that Demetria was accompanied by a female companion (*comes*) to whom he would refer the description in 2; and since reading *dextro* (which is certainly right) in place of *pacta est* at the beginning of line 3, he would restore the missing verb after *demetria* in the first extant line. These proposals appear to be open to objection on the grounds of reading, of the formulae used in the document, and of interpretation. Sanders himself remarks that *cum* of his *cum comite* is doubtful because the foot of the supposed *c* turns to the left. *comite*, too, is difficult to reconcile with the traces on the papyrus. Finally, the last two syllables of the name *ticollouthos* which Sanders proposes for Demetria's *comes* ought to appear at the beginning of line 2; but *louthos* will not fit the remains of letters there. On the other hand, [c]æ[sareae] suits these traces perfectly; and there is room for the whole word before *ann* if the first six letters occupied the same space as the abbreviations *caesar* in line 3. *col* at the end of line 1 would then be read *col(oniae)*. Regarding the phrasing of the document, reading *col(oniae)* [c]æ[sareae] in lines 1-2 immediately before the statement of age would produce an exact parallel to the description of the *tutor* in lines 3-4: place of residence, age, and marks of identification; and unless it is assigned to Demetria she will be the only person named in the document without an adequate

⁴ Sanders ascribed P. Mich. Inv. 4301 to Caesarea in Mauretania, *MAAR* 9 (1931) 85-87. Wilcken preferred Caesarea in Palestine because *PSI* IX.1026 (A.D. 150), the petition of the veterans of the *leg. X Fretensis* who entered the legion from the fleet, is dated there (*APF* 10 [1932] 278), but his argument seems weak.

⁵ H. Dessau, *RE* s.v. "Caesarea" 1293 and 1295.

⁶ R. Cagnat, *L'Armée romaine d'Afrique* (Paris, 1913) 275-284. Cf. C. G. Starr, Jr., *The Roman Imperial Navy* (Corn. Stud. Class. Phil., Vol. 26, Ithaca, New York, 1941) 117ff.

identification, for Gemellus, as a soldier in service, is sufficiently identified by naming his fleet and ship. On the score of interpretation the difficulties in the way of accepting Sanders' text are even greater. If Demetria was accompanied by a *comes*, the functions of that *comes* ought to be sufficiently apparent to justify her being mentioned at such formal length in the document. No such function, however, is apparent. Consent to the proceedings is given by Demetria's *tutor*, Glaucippus; the seven witnesses who sign on the back of the papyrus are all men. Moreover, *cum comite* would most naturally mean that the *comes* participated with Demetria in whatever action the missing verb expressed; and since the whole tenor of the document shows that it somehow concerned marriage, in order to retain the *comes* one seemingly must be willing to believe that Gemellus was a professed bigamist. I confess that I can make nothing intelligible of line 1 between *demetria* and *conșîșt(ens)*; but for the reasons just stated I believe that Demetria appeared without a *comes* and that the description in line 2 belonged to Demetria herself. This would mean that she was thirty-nine years old; but there need be no difficulty in that, for she had a son of fourteen, and nothing is said of the age of her husband, Gemellus, or how long previously he had enlisted.⁷ I assume, therefore, that a line is lost at the beginning which contained the date of the document, the name of the place where it was drawn up, and the missing verb,⁸ while the lost portion of the present line 1 was occupied by a state-

⁷ If Gemellus enlisted shortly after the birth of his younger son, he need not have been more than thirty to have been older than his wife was at the time, though it is not necessary to suppose that he was. Instances of enlistments at the ages of twenty-three, twenty-four, and twenty-six are found in *CIL* 8.2103, 3148, 3174, and 3271 and in *POxy* 1022, and no doubt enlistments of even older recruits could be found.

⁸ This is the order in a number of civil documents from Dura which reveal a strong Roman influence although written in Greek. For example, both DP 74, a marriage contract of A.D. 232 (*Excavations at Dura-Europos, Sixth Season, 1932-33* [New Haven, Connecticut, 1936] 433-435) and DP 101, a purchase of land in A.D. 227 (C. Bradford Welles, "Dura Papyrus 101," *AHDO* 1 [1937] 261-284, *Exc. at Dura-Europos* 7-8 [1939] 433-438) are both dated only by consuls and show other traces too of Roman forms; in both the opening formula is (1) consuls, (2) day and month, (3) place, (4) verb, (5) subject. (Cf. also Dura parchments 21 and 22—C. Bradford Welles, "Die zivilen Archive in Dura," *Münchener Beiträge* 19 [1934] 379-399.) Consequently it seems fair to assume that the Michigan papyrus, which also displays a certain mixture of Roman and Greek elements, may have begun in the same way. A restoration using typical dates, e.g., *Commodo et Laterano cos. vii Kal. Aug. Coloniae Caesareae pacta est*, produces a line of average length containing all the required data, and variations in the length of the consuls' names could be accommodated by alterations in the abbreviations used.

ment that Demetria was a *civis Romana* or similar information, such as an alias or her *origo*.

The last two words in line 2 are also troublesome. Even though Sanders and I now both read *lentigo*, the *e* is unusual because the cross-stroke slants downward from left to right, though in all the other *e*'s it never drops below the horizontal and frequently slopes upward from left to right. *lentigo*, moreover, is a nominative instead of the ablative which is needed. The writer of the papyrus either considered it an *o*-stem or used the nominative on the analogy of the construction in Greek documents, e.g., with οὐλή. Similarly, if the next word means "cheek" it should be an *a*-stem; but the last letter, though it might be read as *a*, is like no other *a* in the document, all of which have a long first stroke descending below the line, and most resembles *o*. Perhaps one should assume the influence of the Greek μήλον.

On the basis of the foregoing text and discussion the papyrus may be translated as follows:

(date, place), Demetria, daughter of . . . , a resident of the colony of Caesarea, thirty-nine years old, of dark complexion, with a long face, straight nose, and a spot on her right cheek, . . . with the approval of her *tutor*, Glaucippus, son of Annianus, a resident of the colony of Caesarea, forty-eight years old, of dark complexion, with a long face, and straight nose, who is somewhat bald and has a scar over his left eyebrow, to Gaius Valerius Gemellus, a soldier of the Imperial Alexandrian Fleet on the *liburna* 'Dragon.' She was his wife previously; and from this marriage were born two sons: Justus, fourteen, and Gemellus, ten. She has assigned and delivered to him as her dowry clothing at a fixed valuation and a sum in ready money counted out, . . . and two drachmas. The said Valerius Gemellus acknowledges the receipt of this dowry. . . .

In this translation, as in the text, the verb is missing; but it can be guessed at only through a discussion of the document as a whole. Sanders interpreted it as a marriage contract made with the object of securing Roman citizenship for Demetria and the children after Gemellus' honorable discharge and to protect Demetria's dowry rights as well. Sanders himself, however, draws attention to the fact that such a document would be most unusual in the middle of the second century of our era; for as a matter of fact all the other evidence which exists on the subject points to the conclusion that marriage was forbidden to troops in the Roman military service until Septimius Severus relaxed this rule at the very end of the

second or the beginning of the third century.⁹ Consequently it seems necessary to exhaust every other possibility before accepting the Michigan papyrus as a marriage contract of the second century; and it is the purpose of this paper to suggest an interpretation which will accord more readily with the remaining evidence.

Before proceeding to a new interpretation, however, it should be pointed out that the basis for regarding the papyrus as a marriage contract is slight. Mention of the dowry, it is true, produces a certain resemblance in form to the *homologia* marriages of the Greek population of Egypt, for in them the essential part of the contract was an agreement concerning the dowry, to which stipulations defining the respective rights and duties of husband and wife might be added.¹⁰ None the less, the fact that the Michigan papyrus is in Latin and that Demetria and Gemellus may well have been Roman citizens tells against the possibility of connecting it with the *homologia* marriages; while on the other hand Sanders has already drawn attention to the omission from the Michigan papyrus of the two clauses which are the chief distinguishing marks of a Roman marriage contract: a reference to the *lex Iulia de maritandis ordinibus* and a statement that the marriage is entered upon *liberorum procreandorum causa*.¹¹ Moreover, until at least A.D. 152 all troops in the auxiliary services were given *conubium cum uxoribus quas tunc habuissent*¹² automatically with the *honesta missio*, but only then; and since there could in the very nature of the situation

⁹ This evidence includes the military diplomas, the Papyrus Cattaoui, Hdn. 3.8.5, an edict of Hadrian (see note 22), and various items in the *Digest*. Cf. also H. I. Bell, "A Latin Registration of Birth," *JRS* 27 (1937) 30-36, esp. 32-33. The best discussion of the marital status of soldiers is still J. Lesquier, *L'Armée romaine d'Égypte* (Cairo, 1918) 262-279, to which, however, should be added H. Nesselhauf, *CIL* 16, pp. 154-155 and 158-161. Note in particular the unqualified negations in *P. Cattaoui* (B. Grenfell, A. Hunt, and P. M. Meyer, "Papyrus Cattaoui," *APF* 3 [1903-06] 55-105, L. Mitteis and U. Wilcken, *Grundzüge und Chrestomathie der Papyrskunde* 2: Juristischer Teil [Leipzig-Berlin, 1912] 1, pp. 281-286; 2, no. 372), col. I. 11-12 (A.D. 117): οὐ γὰρ ἐξεστὶν στρατιώτην γαμεῖν: col. II. 1-2 (A.D. 134): ἀπηγορευ[ο]-μένου στρατιώταις ἐλθεῖν: 20-21: στρα[τι]ώ[ταις μὲν ἀπηγό]ρευται γυναῖκες ἐλ[θεῖν] . . . : col. III. 21-22 (A.D. 114): νόμιμον δὲ π[ε]ρὶ αὐτῶν ποιεῖν οὐ δύναμαι: col. IV. 13-14 (A.D. 115): οὐκ ἐδύνατο Μαρτιά[λιος] στρατευόμενος νόμιμον νύδ[ε]ν ἔχειν: col. V. 4-6 (A.D. 142): ἐξερχόμενον εἶτε ἐν τάξει εἶτε ἐν σπείρᾳ εἶτε [ἐ]ν εἰλῇ ὁ γεννηθεὶς οὐ δύναται εἶναι νόμιμος νύδ[ε]ς.

¹⁰ Hans Julius Wolff, *Written and Unwritten Marriages in Hellenistic and Post-classical Roman Law* (Amer. Phil. Ass. Monograph 9, Haverford, Pennsylvania, 1939) 18-31.

¹¹ "A Soldier's Marriage Certificate," 583; and cf. *idem*, "A Latin Marriage Contract," *TAPhA* 69 (1938) 104-116 and Plates I-II.

¹² *CIL* 16, *passim*.

have been no forms prescribed for the irregular and technically forbidden unions which the discharge converted into lawful marriages, a marriage contract drawn up in advance of the soldier's discharge would have been completely pointless, for after his discharge it was not needed, and before the discharge it was not valid. The futility of such a procedure, especially in case the soldier did not live to receive his discharge, or if he and his consort separated earlier, and the steadfast consistency with which Roman authorities in Egypt refused to admit the possibility of a soldier's contracting a legal marriage during his enlistment, are well illustrated by the Papyrus Cattaoui, which will be discussed below.

If one could be sure, then, that the Michigan papyrus was earlier than 152, further comment on this point would be unnecessary; but since there is a considerable possibility of its being later, another aspect of the situation must also be explored. Gemellus was a *miles classis*; and between A.D. 152 and 166 troops in the naval service began to form a separate category in respect to official recognition of the quasi-marriages which they might contract during their service. This is shown by a difference in the formulae by which the grant of *conubium* is expressed in the diplomas of the *classiarii* and those of veterans of the army. As late as A.D. 152 the formula was the same for both and ran *conubium cum uxoribus quas tunc habuissent*; but a diploma of a *classiarius* dated A.D. 166 grants citizenship only to sons *quos susceperint ex mulieribus quas secum concessa consuetudine vixisse probaverint* and *conubium cum isdem*; and this wording is regularly employed thereafter for *classiarii*, while the diplomas of veterans of the army remain the same as before.¹³ This change in the diplomas has usually been interpreted as a relaxation of discipline for the *classiarii*;¹⁴ but the present writer finds difficulty in accepting it as such. Even if one allows that *concessa consuetudo* means official recognition of some kind of quasi-marital status, a new restriction is apparent in that the veteran is now required to furnish proof that the woman with whom he seeks *conubium* has lived with him and is the mother of the sons who are to receive citizenship. This requirement would naturally tend to produce efforts at documentation of such relation-

¹³ H. Nesselhauf, *CIL* 16, p. 155, col. 2, and diplomas 100 (A.D. 152) and 122 (A.D. 166).

¹⁴ E.g., H. Nesselhauf, *CIL* 16, p. 155, col. 2, and most recently, C. G. Starr, *op. cit.* (see note 6) 91f.

ships; but the grant of *conubium* which remains a feature of even the later diplomas of the *classarii* is enough to show that the *concessa consuetudo* was not itself marriage, but at most a concubinage tolerated by the government.¹⁵

Ought the Michigan papyrus then to be explained as a document intended to meet the requirements of the new rule? It is obvious that one cannot arbitrarily dismiss the chance that it may be such a document; but I believe that its own terms indicate that it is not. It has been noted that the *concessa consuetudo* was probably not marriage but concubinage; and an agreement regarding concubinage may in all likelihood be ruled out in the case of the Michigan papyrus because of its explicit mention of a dowry, for a dowry could exist only in connection with *matrimonium*.¹⁶ Furthermore, pains are taken to state that Demetria and Gemellus were formerly married, though such an item would be without importance in a document intended merely to furnish the proof that Demetria was Gemellus' consort and that the boys were their sons which was required under the new rules for the grant of citizenship to the sons and *conubium* to Demetria and Gemellus.

Nevertheless, the papyrus obviously must concern marital relationships in some way or other; and both the participation of the tutor, which shows that Demetria is not under the legal authority of either a father or a husband, and the certification of the payment of the dowry exclude the possibility that it is a divorce agreement. Moreover, Sanders has pointed out that the *que* of *eique* in line 7 and the dative *C. Valerio Gemello* in line 5 both require a verb to be supplied in the first part of the text, and one capable of governing the dative. Consequently, since both divorce and actual marriage must seemingly be ruled out, one arrives by a process of elimination at the explanation that the papyrus is a contract of betrothal—in

¹⁵ In addition to the arguments offered above in the text, one should note that *concessa consuetudo* need not mean any sort of official permission to *classarii* in active service to take consorts, but only that there was no active policy of official interference with such unions. This was merely to state a simple matter of fact, for I know of no evidence for official intervention in such relationships at any period of the empire; the disapproval of the government was expressed by its refusal to grant or enforce in such cases any of the normal legal consequences of a valid marriage.

¹⁶ Ulp. in *Dig.* 23.3.3: *Dotis appellatio non refertur ad ea matrimonia quae consistere non possunt; neque enim dos sine matrimonio esse potest. Ubi cumque igitur matrimonii nomen non est, nec dos est.* Conversely, the P. Cattaoui shows that in the irregular unions formed by soldiers in active service contributions from their consorts of a type which would normally constitute dowries are disguised as deposits with the soldier or loans to him. See pp. 117–119 below.

Latin, *sponsalia*. The verb in that case could be either *sponsa est* or *pacta est*.

Why an agreement of this nature should have been made between a couple who had already been married, and why it should take this form rather than any other can best be understood by referring to the Papyrus Cattaoui,¹⁷ which contains a series of legal decisions on matters involving the marital status of soldiers in active service. All the decisions were given between A.D. 114 and 142 and are therefore approximately contemporary with the Michigan papyrus. This document is so pertinent to the present discussion that a résumé of the six decisions which are completely preserved is worth presenting.

The first concerns the effort of a woman to recover an alleged deposit (*παρακαταθήκη*) from the estate of a soldier who had died in active service. Her claim is rejected on the ground that the deposit was a disguised dowry covering an illegal marriage. The second decision is in a suit by a woman to collect two sums of money lent to a soldier. His defense is that the loans are a disguised dowry and therefore illegal and not recoverable. The judge upholds this argument as regards one of the loans. In the third suit a veteran who is a *civis Romanus* asks for the legitimation of two sons born to him by a *civis Romana* during his enlistment. The decision is that the boys are Roman citizens because their mother is, that they may inherit by testament from their father, but that they remain illegitimate. The fourth suit is particularly important for our purposes. Chrotis is the widow of a certain Isidorus who entered the army, like Gemellus in the Michigan papyrus, after being married, and who died in service. He left his son, who was born after he enlisted, his heir by testament; and Chrotis petitions that the son be relieved from paying an inheritance tax, apparently relying on the rule that very near relatives were not subject to the *vicesima hereditatum*. The decision is that the son may legally inherit by his father's will, but is illegitimate. This is important as showing that Isidorus' enlistment terminated the existing marriage with Chrotis. The fifth case is the suit of a *civis Alexandrinus* in active service to have his eldest son enrolled likewise as a citizen of Alexandria. The decision is that all children born during the father's military service are illegitimate and therefore none of the man's sons is eligible to be a citizen of Alexandria.

¹⁷ See also note 9 above.

The sixth case involves the widow of a veteran who died intestate. She is denounced by two professional informers as the possessor of seven slaves which properly belong to the *fiscus*, since they were made over to her by the veteran during his lifetime, and gifts between husband and wife (*donationes inter virum et uxorem*) were forbidden by law and consequently void.¹⁸ She produces bills of sale for the slaves; but the alleged purchases are treated as fictitious and the transactions regarded throughout as disguised gifts. The decision is that the transfers made during the veteran's active service are valid, while those made after his discharge are not. The basis of this ruling is obviously the view that only concubinage, in which *donationes* between the two parties were legal,¹⁹ was possible to the defendant and her consort during his enlistment, but that his discharge automatically converted their union into a full marriage. Following this decision the widow attempts to recover a deposit from the veteran's estate. Her claim is rejected on the same grounds as in the first and second cases quoted above, that the document produced to attest the deposit is in fact a marriage contract "of the sort which soldiers make."²⁰

From the foregoing it is readily apparent that the chief concerns of the soldiers and their consorts in these irregular unions were the same as those of any husband and wife in a legally recognized *matrimonium*, that is to say, to protect both the woman and the children financially, and to secure for them the best possible personal status before the law. Even the imperial government took cognizance of these aims by giving all veterans of the auxiliary services, along with the honorable discharge, *conubium cum uxoris quas tunc habuissent* and, up to A.D. 140, citizenship to their children. Even after 140 citizenship was still given to children of veteran *classiarii*.²¹ Such grants, however, left much to be desired. Soldiers in the auxiliary corps of the army were required to serve at least twenty-five years, and those in the fleet twenty-six; and if a

¹⁸ P. E. Corbett, *The Roman Law of Marriage* (Oxford, 1930) 114-117.

¹⁹ J. Plassard, *Le concubinat romain sous le Haut Empire* (Toulouse-Paris, 1921) 36-37.

²⁰ *P. Catt.* col. VI. 21-22: τοῦτο εἶναι τὸ γαμικὸν συμβόλαιον, τοῦ <ς> γὰρ στρατευομένου οὕτω συμβάλλει[ν]. *BGU* 729, dated October A.D. 144, is probably just such a contract, for it concerns a deposit by a woman with a soldier of ἱμάτια γυν[αι]κεῖα συντετειμημένα ἀργυρίου δραχμῶν τριακοσίων καὶ χρυσᾶ κοσμήρια ἐν εἵδει ἐπὶ τὸ αὐτὸ τετάρτων τριάκοντα δύο.

²¹ H. Nesselhauf, *CIL* 16, pp. 158-161.

soldier died before his discharge, as in the second and fourth instances cited above, consort and children had no legal basis for recovering any quasi-dowry that had been given him or securing the inheritance of his estate unless he chanced to have made a will.²² Hence the wide-spread custom of disguising dowries as deposits or loans so that they might be recoverable in case of the soldier's death—a subterfuge too commonly practised, however, and too transparent to be successful.²³

Furthermore, as regards questions of personal status, although the union of the soldier and his consort was converted into a *matrimonium iustum* on his discharge, and although his children, at least before A.D. 140, were made Roman citizens, neither act made children born during his service legitimate; and in this matter, too, the death of a soldier prior to his *missio* deprived his consort and children of even these benefits.

With these considerations in mind one is prepared to understand the Michigan papyrus as an unusually clever effort to circumvent the difficulties created by the peculiar status of soldiers in regard to marriage. First of all, the document cannot attest a marriage but probably does attest a betrothal. The prohibition against the marriages of soldiers, as many modern authorities have pointed out,²⁴ did not rest on a law, but merely on a disciplinary regulation as old as the Roman republic which forbade women in the camp. So long as the army was a militia whose members returned home at the end of every campaign, this regulation could have no consequences in private law; but with Augustus' creation of a standing army in which service was continuous from year's end to year's end a different set of conditions was created, and so new legal conse-

²² Soldiers were legally empowered to leave anyone they chose as their heirs by testament; but of course they often neglected to make wills. A certain degree of relief for the children of soldiers and veterans who died intestate was afforded by an edict of Hadrian published in A.D. 119 (*BGU* 140; L. Mitteis, *Grundz. u. Chrest. d. Papyr.* 2.2. no. 373); but even by this edict they are admitted to inheritance only among the cognati. See L. Mitteis, *Grundz. u. Chrest. d. Papyr.* 2.1.286. The pertinent section of the text reads: *ὅνπερ τοιγαροῦν τ[ρόπ]ον οὐκ εἰσιν νόμιμοι κληρο[νό]μοι τῶν ἑαυτῶν πατέρων οἱ τῷ [τ]ῆς στρατε[ί]ας χρόνῳ ἀναλ[η]μφθέντες, ὅμως κατ[ο]χ[ή]ν[υ] ὑ[πα]ρχόντων ἐξ ἑκείνου τοῦ μέ[ρ]ους τοῦ διατάγματος οἱ καὶ τοῖς πρὸς [γ]ένους συγγενέσι δίδονται αἰτεῖσθαι δύνασθαι καὶ αὐτοὺς κρε[ί]ν[ω].*

²³ Note the comment of the Prefect of Egypt in *P. Coll.* col. I. 9–13: *νοοῦμεν ὅτι αἱ παρακαταθήκαι προίκες εἰσιν. ἐκ τῶν τοιοῦτων αἰτίων κριτὴν οὐ δίδωμαι. οὐ γὰρ ἔξεστιν στρατιώτην γαμεῖν. εἰ δὲ προίκα ἀπαιτεῖς, κριτὴν δίδωμι, δόξω πεπεῖσθαι νόμιμον εἶναι τὸν γάμον;* and cf. *P. Coll.* col. VI. 18–22.

²⁴ E.g., L. Mitteis, *Grundz. u. Chrest. d. Papyr.* 2.1.282–283.

quences were likewise deduced and enforced.²⁵ But since marriage was not prohibited as a thing objectionable in itself, there could be no logical reason for the government to oppose an engagement looking toward a marriage at the end of a soldier's enlistment. There is no indication in the Michigan papyrus as to the length of time which Gemellus still has to serve; but the jurist Gaius declares that for "just and necessary causes" engagements may be prolonged for three or four years or more,²⁶ so that so long as both parties remained of the same mind there seems to have been no reason why such a tie could not last indefinitely.

At the date of the Michigan papyrus failure to keep the agreement to marry which was inherent in the *sponsalia* had for centuries been no longer actionable at law, as it once was; but the betrothal did none the less have legal effects. Among those enumerated by Corbett are the following:²⁷

1. Two simultaneous engagements, or marriage with a third person in violation of an engagement, entailed *infamia*.²⁸

2. Engagement established an affinity which rendered impossible the subsequent marriage of either party with a parent or child of the other.²⁹

3. A *sponsus* could not be compelled to give evidence against his fiancée's father, nor he against the *sponsus*.³⁰

²⁵ The exact basis of the rule (presumably established by Augustus) forbidding the marriage of soldiers is disputed. L. Mitteis (*Grundz. u. Chrest. d. Papyr.* 2.1.282) considers it the result of the army's being permanently quartered in barracks in the camps, so that for a soldier and his consort to live together and maintain a joint household in any proper sense of the terms was rendered impossible. Cf. H. J. Wolff, *Written and Unwritten Marriages* 93-97, where he shows that the best legal opinion of the Roman Empire took into consideration more than mere consent (*nudus consensus*) in determining whether or not any given union was a marriage. Against this view E. Levy ("Verschollenheit und Ehe in antiken Rechten," *Gedächtnisschrift für Emil Seckel* [Berlin, 1927] 148) appeals to the obvious fact that soldiers commonly entered into *de facto* unions, thereby demonstrating their possibility. He explains the prohibition against the marriage of soldiers as based on purely disciplinary grounds.

²⁶ *Dig.* 23.1.17: *Saepe iustae et necessariae causae . . . triennium et quadriennium et ulterius trahunt sponsalia, veluti valetudo sponsi sponsaeve . . . aut longiores peregrinationes quae ex necessitate fiunt.* It might very plausibly be claimed that military service was covered by the last clause.

²⁷ On the whole subject of the *sponsalia*, see P. E. Corbett, *Roman Law of Marriage*, chap. 1.

²⁸ *Dig.* 3.2.1 (Iulianus); 3.2.13.1-4 (Ulpian).

²⁹ *Dig.* 23.2.12.1-2 (Ulpian); 23.2.14.4 (Paulus).

³⁰ *Dig.* 22.5.5 (Gaius).

4. Murder of a *sponsus* or *sponsa*, or of the parent or child or either, was regarded as parricide.³¹

5. Gifts between the betrothed couple were exempted from the limitations as to amount imposed by the *lex Cincia*.³²

6. A rescript of Septimius Severus and Caracalla provided that a *sponsus* could prosecute his fiancée for infidelity.³³

To these may be added that an *actio iniuriarum* was open to the *sponsus* for an insult to his fiancée,³⁴ and that an engagement could not be broken off by a girl's *tutores* without her consent.³⁵ Some of these citations of course belong to a later period than the Michigan papyrus; but they serve at least to illustrate what sort of thing *sponsalia* meant. Finally, Paulus' express statement that the agreement did not need to be written is proof that *sponsalia* were in fact often reduced to writing.³⁶

The next point requiring discussion is the statement that Demetria was formerly married to Gemellus (*cui ante nuptia erat*); for this raises the question whether their previous marriage had terminated in divorce. Sanders makes it clear that a divorce need not be assumed, because in the ordinary civil law of Egypt a couple living in a γάμος ἀγραφος might at any time convert it into a marriage with a written contract.³⁷ Nevertheless the evidence of the Papyrus Cattaoui seems to support the view that the marriage had been broken off, and that this break was the direct result of Gemellus' enlistment. In the fourth of the decisions mentioned above Isidorus and Chrotis, both *astoi* and therefore citizens of one of the Greek *poleis* of Egypt, were married before Isidorus entered the army; but for all that their son who was born during his father's service was declared illegitimate.³⁸ Moreover, Gaius (interpreted by Hermo-

³¹ *Dig.* 48.9.3-4 (Marcianus).

³² *Frag. Vat.* (ed. Mommsen, Berlin, 1890) no. 302.

³³ *Dig.* 48.5.14 (13).3 and 8.

³⁴ *Dig.* 47.10.15.24 (Ulpian; Labeo).

³⁵ *Dig.* 23.1.6 (Ulpian).

³⁶ *Dig.* 23.1.7.

³⁷ "A Soldier's Marriage Certificate" 584. See also H. J. Wolff, *Written and Unwritten Marriages* 57-60.

³⁸ Some difficulty may be occasioned here by the possibility that Isidorus received Roman citizenship at the time of his enlistment and that his marriage with Chrotis, who of course remained a *peregrina*, was annulled for that reason. No ground is apparent, however, for granting citizenship to Isidorus on enlistment in an auxiliary cohort (*coh. I Thebaiorum*); and the whole case for it rests on the two facts that he received a Roman name (Iulius Martialis) and that Chrotis is suing for exemption from

genianus) lists military service among the valid causes of divorce.³⁹ It seems, therefore, that entrance into the army automatically broke off a marriage previously contracted;⁴⁰ and it may be questioned whether such a marriage was *ipso facto* reconstituted on the soldier's discharge. In the analogous case, adduced by Sanders, of a marriage terminated by the captivity of one party, a new consent was required after the return of the captive;⁴¹ and the soldiers' diplomas speak of a grant of *conubium* merely with the women *quas tunc habuissent*, not with those to whom they may formerly have been married.

In view of these circumstances, accordingly, it appears likely that the marriage of Demetria and Gemellus had been terminated simply by the fact of his enlistment, which made it impossible for the marriage to continue, and that the Michigan papyrus was both an agreement to resume the marriage when circumstances permitted and a substitute for it which would to some extent protect their interests in each other during the interim. Among other things, a

the ἀπαρχή for her son. The Roman name of course proves nothing; but P. M. Meyer (*APF* 3 [1903–06] 81–82) believes that ἀπαρχή in this instance means the *vicesima hereditatum* and that Chrotis must be assuming Isidorus' possession of Roman citizenship because Alexandrian citizens were not exempt from the ἀπαρχή of Alexandria. But the only evidence he cites for this non-exemption dates from the time of Euergetes II (145–116 B.C.) and is therefore not conclusive for the time of the P. Cattaoui. N. Hohlwein (*L'Égypte romaine: Recueil des termes techniques relatifs aux institutions politiques et administratives de l'Égypte romaine* [MAB, *Classe des Lettres et des Sciences morales et politiques*, 2^{me} serie, 8.2 (1912)] 101) says, without citing evidence, that citizens of Alexandria and Romans were exempt from the ἀπαρχή; and it may also be noted that even if Meyer is right about the Alexandrian law it is not certain that Isidorus and Chrotis were Alexandrians and subject to it. They may have been citizens of Ptolemais or Naucratis. Finally, the prefect in his decision makes no mention of any discrepancy in status between Isidorus and Chrotis as a ground for declaring their son illegitimate, but speaks as if Isidorus' being a soldier was all that made the difference (*P. Catt.* col. IV. 13–14): οὐκ ἔδυνάτο Μαρτιά[λιος] στρατεύμενος νόμιμον νόον ἔχειν.

³⁹ *Dig.* 24.1.60 (Hermog.): Saepe enim evenit uti propter sacerdotium vel etiam sterilitatem, (61, Gaius) vel senectutem aut valetudinem aut militiam satis commode retineri matrimonium non possit (62, Hermog.), et ideo bona gratia matrimonium dissolvitur.

⁴⁰ L. Mitteis, *Grundz. u. Chrest. d. Papyr.* 2.1.282–283 (but change reference from *BGU* 140 to *P. Catt.* col. IV. 1–15 ?), supported by E. Levy, "Verschollenheit" 148. J. Kromayer and G. Veith, *Heerwesen und Kriegführung d. Griechen u. Römer* (Müller's *Handbuch* 4.3, part 2; Munich, 1928) 532, of course go too far in declaring that even children born before the father's enlistment were regarded as illegitimate after his entrance into the army. No evidence justifies such a deduction, and the Michigan papyrus goes far toward directly refuting it.

⁴¹ See also P. E. Corbett, *The Roman Law of Marriage* 212–215.

betrothal would tend to prevent Gemellus or Demetria from marrying anyone else; and it permitted calling the dowry by its right name instead of attempting to cloak it as a loan or deposit, for as long as Demetria and Gemellus were legally only betrothed, the dowry was not an actual dowry in an illegal marriage, as in the other cases reviewed above, but simply an advance payment in anticipation of a marriage which would not take place until marriage was legally possible. Under these circumstances the dowry was immediately recoverable by Demetria at any time until the actual marriage took place; while after the marriage she would of course enjoy the protection accorded any Roman wife in such matters.⁴²

The following clause, *ex quo matrimonio filios procreaverunt, Iustum ann(orum) xiiii, Gemellum ann(orum) x*, protects the two sons by providing documentary evidence of their legitimacy in the statement that they were born of the former marriage of Demetria and Gemellus. Without this, since the marriage had been annulled by Gemellus' enlistment, doubts might later have been raised whether the boys were born before their father's enlistment or afterward; and these doubts, with all the consequent disabilities of illegitimacy, would not have been removed even if Gemellus lived to finish his entire term of service and receive his *honesta missio*. For this reason it seems likely that the document was drawn up shortly after Gemellus entered the army. The tenth year of his service is the latest possible date, because his younger son, who was ten years old at the time of the contract of betrothal, is stated to have been born during Gemellus' marriage and hence before his enlistment. But in order to be convincing evidence that the boy actually was born before his father entered the army, the document in which this fact was stated needed to be composed as soon as possible after his father's enlistment. Consequently it seems preferable to date the Michigan papyrus early in Gemellus' twenty-six year term of service rather than toward the middle of it. At all events, to speak of it as coming at the end, when the time of his discharge was approaching, is impossible.

If the foregoing interpretation is correct, then the Michigan papyrus is an even more unusual document than it was previously thought to be. So far as my knowledge goes, it is the only extant example of a contract of betrothal; and it was obviously drawn up

⁴² P. E. Corbett, *The Roman Law of Marriage* 170-202.

by some one with a considerable practical knowledge of Roman law and a shrewd eye to the best means of meeting the exigencies of the special circumstances in which Gemellus and Demetria were placed. One may surmise that in all probability they continued to regard each other as husband and wife, and that their *de facto* relationships were no different from those of other irregular unions formed by soldiers of the Roman army during their active service; but *de jure* they had provided themselves with a protection which must have been nearly unassailable.