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## Babatha's Final Days: New Light from Papyrus Starcky

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Babatha, a Judean woman from the early second century CE, hid a satchel of thirty-five legal papyri in a cave in Wadi Hēver on the Dead Sea around 135 CE. This article argues that she brought two other papyri, in Nabatean Aramaic, into the cave (P.XHēv/Se Nab 1, also called “P.Starcky,” and P.XHēv/Se Nab 2), but culled her documents, hiding most in the satchel, while discarding these two. Initially, P.Starcky is analyzed as a title document relating to a date orchard in her hometown of Maoza in Arabia that passed by patrilineal succession to Judah, Babatha's second husband. I then explain the relevance of P.Starcky to Babatha in relation to her seizing that orchard after Judah's death, in spite of the claim of his orphaned nephews to the property. The nephews' close connection with an elite woman of Roman citizenship explains why, at the end of the Bar Kokhba revolt, it was Babatha and not the nephews who carried P.Starcky into the cave. I argue further that Babatha also brought P.XHēv/Se Nab 2 into the cave but discarded it as irrelevant to her legal situation.

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Toward the end of Bar Kokhba's revolt, around 135 CE, numerous Judeans hid from Roman soldiers in caves in Judea. Our knowledge of them comes mainly from archaeological discoveries.<sup>1</sup> The experience of the women in these caves has begun to attract the attention it deserves.<sup>2</sup> This article focuses on one of these women, Babatha, who took refuge in a cave in Wadi Hēver near 'Ein-Gedi. The fugitives in this cave, located high on the wall of the wadi and very difficult to access, mattered to the Romans, since they erected a camp on the escarpment above it. In a crevice in the cave's floor Babatha hid personal possessions (including a door key) and a

<sup>1</sup>See Roi Porat, Hanan Eshel, and Amos Frumkin, “The ‘Caves of the Spear’: Refuge Caves from the Bar Kokhba Revolt North of ‘En-gedi,” *IEJ* 59 (2009): 21–46; and Hanan Eshel and Boaz Zissu, *The Bar Kokhba Revolt: The Archaeological Evidence* (Jerusalem: Israel Exploration Society and Yad Izhak Ben-Zvi, 2020).

<sup>2</sup>See Joan Taylor, “Babatha's Sisters: Judean Women Refugees in the Cave of Letters and the Christmas Cave,” *Strata* 39 (2021): 35–68.

leather satchel containing thirty-five legal documents. These possessions and documents were discovered in 1961 by a team led by Yigael Yadin.<sup>3</sup> Some of these documents (the “Babatha archive”) were written in Aramaic (either Nabatean or Judean), but most in Greek.<sup>4</sup> The earliest, P.Yadin 1–4 in Nabatean Aramaic and dated 94–99, relate to the purchase of a date palm orchard in Maoza by Babatha’s father, Shim’on, in 99 CE, which he later gave her.<sup>5</sup> Maoza (a Greek transliteration of מִאֻזָּא, “the port”) was a town in Nabatea, on the southeastern shore of the Dead Sea. The other documents concern the legal affairs of Shim’on, Babatha, her two husbands, her son, and other people, related (by blood or marriage) or otherwise connected to her. Many concern the lawsuits in which she found herself from 124 to 132 CE. The papyri thus span three generations of Shim’on’s family in Maoza—from 94 CE, across the Roman takeover of Nabatea in 106 CE, to 132 CE.

Other papyri also are known or strongly suspected to have been left in that cave in 135 CE. Five Nabatean Aramaic papyri (now designated XHēv/Se Nab 1–5) were brought to the Rockefeller Museum in Jerusalem by bedouin in the early 1950s.<sup>6</sup> They were allegedly found in a cave in Wadi Seiyal.<sup>7</sup> The longest of them, XHēv/Se Nab 1 was published—with impressive celerity—by J. Starcky in 1954 and is usually referred to as “P.Starcky.”<sup>8</sup> Since it dates to 58–68 CE (see below), it is one or two generations earlier than P.Yadin 1–4. The subsequent discovery, however, of two fragments of P.Starcky in the cave in Wadi Hēver excavated by Yadin’s team has convinced scholars that this was its true find-site, and probably that of the other Nabatean documents as well.<sup>9</sup>

A remarkable aspect of P.Starcky is that, whereas it concerns the date palm

<sup>3</sup>Yigael Yadin, “The Expedition to the Judean Desert, 1960: Expedition D,” *IEJ* 11 (1961): 36–52; Yadin, “The Expedition to the Judean Desert, 1961: Expedition D—The Cave of the Letters,” *IEJ* 12 (1962): 227–57; and Yadin, *The Finds from the Bar Kokhba Period in the Cave of Letters*, JDS (Jerusalem: Israel Exploration Society, 1963).

<sup>4</sup>See Yigael Yadin et al., eds., *The Documents from the Bar Kokhba Period in the Cave of Letters: Hebrew, Aramaic and Nabatean-Aramaic Papyri*, JDS (Jerusalem: Israel Exploration Society, Institute of Archaeology, Hebrew University, and Shrine of the Book, Israel Museum, 2002); and Naphtali Lewis, Yigael Yadin, and Jonas C. Greenfield, eds., *The Documents from the Bar Kokhba Period in the Cave of Letters: Greek Papyri and Aramaic and Nabatean Signatures and Subscriptions*, JDS 2 (Jerusalem: Israel Exploration Society, Hebrew University of Jerusalem, and the Shrine of the Book, 1989).

<sup>5</sup>See the details in Philip F. Esler, *Babatha’s Orchard: The Yadin Papyri and an Ancient Jewish Family Tale Retold* (Oxford: Oxford University Press, 2017).

<sup>6</sup>Photographs of all five are included in Emanuel Tov, ed., *The Dead Sea Scrolls on Microfiche: A Comprehensive Facsimile Edition of the Texts from the Judean Desert* (Leiden: Brill; IDC, 1993).

<sup>7</sup>See Hannah Cotton and Ada Yardeni, *Aramaic, Hebrew, and Greek Documentary Texts from Nahal Hever and Other Sites, with an Appendix Containing Alleged Qumran Texts (The Seiyāl Collection II)*, DJD XXVII (Oxford: Clarendon, 1997), 1–3.

<sup>8</sup>J. Starcky, “Un contrat nabatéen sur papyrus,” *RB* 61 (1954): 161–81.

<sup>9</sup>See Yadin, “Expedition to the Judean Desert, 1961,” 227–57, here 228–29; and Ada Yardeni,

plantation in Maoza originally owned by a certain Nikarchos, a Γανναθ Νικαρχος (“the grove of Nikarchos”)—presumably the same plantation—in Maoza was later owned by Babatha’s second husband and seized by her after his death.<sup>10</sup> Here Γανναθ is the Greek transliteration of גנן, a construct form of גנה (“garden,” “grove,” “orchard”). Of the remaining four Nabatean documents, only one, XHev/Se Nab 2, has received any scholarly attention.<sup>11</sup>

Of numerous other documents initially thought to have originated from Wadi Seiyal,<sup>12</sup> one group needs noting. Yadin’s team discovered on the cave’s surface the marriage contract of Salome Komaïse daughter of Levi, in Greek and dated 7 August 131 CE. This suggested that six other documents (dated 125–131 CE) relating to her or her family (who also lived in Maoza) that had been brought to the Rockefeller Museum also came from the Wadi Hever cave but, unlike Babatha’s archive, were discovered by the bedouin before Yadin’s excavation.<sup>13</sup>

## I. THE QUESTIONS RAISED AND CURRENT DISCUSSION

Five questions bearing on Babatha’s experience in the cave are raised by these circumstances. (1) What were the nature and significance of P.Starcky? (2) What was the nature of any connection Babatha had with that document? (3) Who brought it into the cave? (4) Given the character of XHev/Se Nab 2, who conveyed it into the cave? (5) If it was Babatha who carried P.Starcky and XHev/Se Nab 2 into the cave, why did she not include them with the thirty-five documents in the satchel she hid in the cave’s floor?

These questions have attracted limited scholarly attention. G. W. Bowersock suggested that Babatha’s second husband was a descendant of the author of P.Starcky.<sup>14</sup> Hannah Cotton and Ada Yardeni opined that P.Starcky “may belong to the Babatha Archive” if it refers to the same date plantation as in P.Yadin 21 and

“The Decipherment and Restoration of Legal Texts from the Judaean Desert: A Reexamination of Papyrus Starcky (P. Yadin 36),” *SCI* 20 (2001): 121–37, here 121–22.

<sup>10</sup>See P.Yadin 21 and 22 in Lewis, Yadin, and Greenfield, *Documents from the Bar Kokhba Period: Greek Papyri*, 94–101.

<sup>11</sup>See Ada Yardeni, *Textbook of Aramaic, Hebrew and Nabataean Documentary Texts from the Judaean Desert and Related Material* [Hebrew], 2 vols. (Jerusalem: Hebrew University, Ben-Zion Dinur Center for Research in Jewish History, 2000). She provides a tracing of the papyrus and a transliteration in Hebrew letters (1:290–91) and an English translation (2:95), but no photographs. It was discussed by Hanan Eshel in “Another Document from the Archive of the Salome Komaïse Daughter of Levi,” *SCI* 21 (2002): 169–71.

<sup>12</sup>These are surveyed in Cotton and Yardeni, *DJD XXVII*, 3–4.

<sup>13</sup>Cotton and Yardeni, *DJD XXVII*, 3. The six documents are P.Hev 12, 60, 61, 62, 63, 64 and 65 (Salome Komaïse’s wedding contract).

<sup>14</sup>G. W. Bowersock, “The Babatha Papyri, Masada, and Rome,” *JRA* 4 (1991): 336–44, here 340.

22.<sup>15</sup> Kimberley Czajkowski observed in passing that “there may be reason to think it [P.Starcky] belonged with her other documents.”<sup>16</sup> However, Yardeni later reversed her earlier view by commenting that “there is no reason to believe that *P. Yadin 36* [P.Starcky] is part of the Babatha archive,” which was found “in a leather purse wrapped in sacking and tied up with twisted ropes.”<sup>17</sup> Additionally, Hanan Eshel argued that both P.Starcky and XHev/Se Nab 2, the latter being his focus, belonged to the Salome Komaise archive.<sup>18</sup> Jacobine Oudshoorn followed him in this view, but without detailed discussion.<sup>19</sup> There has, accordingly, been little scrutiny of the questions arising about Babatha and P.Starcky, while Eshel’s argument that Salome Komaise archive and XHev/Se 2 were connected (which finds his suggestion that P.Starcky has the same origin) has escaped critique. I will now address the five questions in succession, with the overall aim of arguing that Babatha brought at least two more documents into the cave but culled them from the rest of her documents that she hid under a rock and discarded them somewhere else in the cave because they were irrelevant to her legal position.

### A. *The Nature and Significance of Papyrus Starcky*

P.Starcky is drafted in the form of a statement by a person speaking in the first-person singular to another person, usually addressed as “you” but sometimes referred to as “he/him.” The speaker is Eleazar, son of Nikarchos, a Judean, and the addressee is Isimalik, son of ‘Abday, a Nabatean. The document itself, dated between 58 and 68 CE, records a legal transaction between these two men whereby Eleazar redeemed from Isimalik a date palm grove in Maḥoz ‘Eglatain (= a district of Maoza) that had previously belonged to his father, Nikarchos, and Banay (the brother of Nikarchos), both Judeans.<sup>20</sup> Close attention is paid in the document (see below) to how Isimalik acquired the grove in the month of Ṭebet, 43 CE, “the fourth year of king Maliku [but spelled מנכו], king of the Nabateans” (line 10), meaning Malichus II, who reigned from 40 to 70 CE.<sup>21</sup> It is noteworthy, as a preliminary

<sup>15</sup> Cotton and Yardeni, DJD XXVII, 3.

<sup>16</sup> Kimberley Czajkowski, *Localized Law: The Babatha and Salome Komaise Archives*, Oxford Studies in Roman Society and Law (Oxford: Oxford University Press, 2017), 7 n. 12.

<sup>17</sup> Yardeni, “Decipherment and Restoration,” 127–28.

<sup>18</sup> See Eshel, “Another Document.”

<sup>19</sup> Jacobine G. Oudshoorn, *The Relationship between Roman and Local Law in the Babatha and Salome Komaise Archives: General Analysis and Three Case Studies on the Law of Succession, Guardianship and Marriage*, STDJ 69 (Leiden: Brill, 2007), 13–14.

<sup>20</sup> They were the father and uncle, respectively, of a Judean, Eleazar.

<sup>21</sup> The document itself is dated “year twenty . . .” (שנת עשרי[ן])—where any single digit or none could have followed—of a particular Nabatean king, whose name does not survive in the dating clause. But this can only be Malichus II. Since the earlier events occurred in 43 CE, year four of his reign, and since the document itself was executed between sixteen and twenty-five years later, with Malichus II still on the throne, it must be dated between 58 and 68 CE.

guide to interpreting the document, that it was in Eleazar's interest that Isimalik was legally in possession of the grove, so that Isimalik could convey it to him.

Jacob Rabinowitz took a critical step in correctly interpreting the papyrus in 1955, when he showed that Starcky had misinterpreted the term שטר עדוּא, appearing six times in the document but otherwise unknown,<sup>22</sup> as *document de partage* ("deed of partition") when it actually means "writ of seizure," a concept known in talmudic law (b. B. Bat. 169a).<sup>23</sup> Although Rabinowitz offered no etymology for עדוּא, "the root appears to be ʿDʾ/Y, used in the hapʿel in Biblical Aramaic and Syriac to mean 'remove.'"<sup>24</sup> In 2001, Yardeni, utilizing the two additional pieces of the papyrus discovered by Yadin's team, published a new edition in which she rearranged the order of the fragments and adopted Rabinowitz's explanation of שטר עדוּא in interpreting its contents.<sup>25</sup> John Healey has discussed the text, and most of his vocalizations of the Judean and Nabatean names are adopted below.<sup>26</sup> In spite of its lacunas, the broad character of P.Starcky is reasonably clear.

To understand how and why P.Starcky was still of legal significance to Babatha's second husband and then, after his death in 130 CE, to her, it is necessary to investigate its provisions. The document embraces two legally significant interactions. The first occurred in 43 CE, when a Nabatean, Isimalik, seized property (including a date palm plantation) in Maoza owned by two Judean brothers in satisfaction of a large unpaid debt. The second occurred many years later, between 58 and 68 CE, when Eleazar son of Nikarchos redeemed the property by paying off the debt to Isimalik. It is necessary to examine each of these interactions in turn.

#### 43 CE: Nikarchos and Banay Lose Possession of Property for Unpaid Debt

After the dating formula in line 7 of the document (the beginning of the outer text), Yardeni notes that some lines are perhaps missing before her current line 8.<sup>27</sup> This line carries us straight back to 43 CE, to a claim by "Isimalik, son of 'Abday, against Nikarchos, my father, I, the said Eleazar, and against Banay, my (paternal) uncle, son of Nabima, in the sum of four hundred silver *sela's*" (אסמל[ך בר עבדי על] (ניקרחס אבי אנה אלעזר דנה ועל בני דד[י ב]ר נבימא] כסף סל[עין ארבע מאה

<sup>22</sup>John F. Healey, *Aramaic Inscriptions and Documents of the Roman Period*, vol. 4 of *Textbook of Syrian Semitic Inscriptions* (Oxford: Oxford University Press, 2009), 83.

<sup>23</sup>Jacob J. Rabinowitz, "A Clue to the Nabatean Contract from the Dead Sea Region," *BASOR* 139 (1955): 11–14, here 12.

<sup>24</sup>So Healey, *Aramaic Inscriptions*, 83, and the works there cited, including Michael Sokoloff, *A Dictionary of Judean Aramaic* (Ramat-Gan: Bar Ilan University Press, 2003), 69. The verb also appears in P.Yadin 7, line 2, a document in Judean Aramaic, with the sense of "be removed" or "pass away" (Yadin et al., *Documents from the Bar Kokhba Period: Hebrew, Aramaic and Nabatean-Aramaic Papyri*, 80–81).

<sup>25</sup>Yardeni, "Decipherment and Restoration." Her text is relied on here.

<sup>26</sup>Exceptions are Eleazar and 'Eglatain.

<sup>27</sup>Yardeni, "Decipherment and Restoration," 128.

increasing with interest (lines 8–9). This was a considerable sum, equivalent to 1,600 denarii.

Nikarchos and Banay were unable to repay the debt, so Isimalik proceeded to enforcement, by moving against the assets they had offered as security for the loan. Thus, the next line in P.Starcky notes that, on the twentieth of Tebet in the fourth year of Malichus's reign (43 CE), "the said writ was issued" (ש[ט]רא הו כתיב), meaning a writ of seizure (שטר עדוא), noted above. Line 11 specifies that, for part of the pledges (משכנוי) of (meaning "specified in") the said writ of seizure (הו שטר עדוא הו), Nikarchos and Banay had pledged (משכנוי) property they owned in Maḥoz 'Eglatain. In particular, there were two stores (חנותא) in the marketplace of Maḥoz 'Eglatain (בשוק מחוז עגלתין), line 12), and a date palm grove (גנת תמריא), line 14), together with its irrigation ditches (שקיא), line 15). The document insists that everything was done according to the law in relation to this writ, so care is taken to state that these assets were specified therein. More importantly, in line 15 the document specifically confirms that the date palm grove was included: "just as the said grove and its boundaries are specified in the said writ of seizure" (כדי גנתא הי ותחומיה) (כתיבין בשטר עדוא הו). It is unclear, however, what the issuance of the writ of seizure entailed. No court or any public proceeding is mentioned.

Yet before he could obtain possession of the date palm grove, Isimalik needed to obtain another writ, one of "proclamation." Lines 15–16 state, "And after the time of the said writ of seizure, the said grove was proclaimed and a writ of proclamation ..." (ומן באתר<sup>28</sup> זמן שטר עדוא הו כריזת גנתא ה[י] וכ[ת]ב כרוז). Then, after two indecipherable words, it is stated in lines 16–17: "of the writ of proclamation and (it) was issued in the name of A[f]taḥ, son of Taymallahi" (די כתב כרוזא פנפק<sup>29</sup> בשם) (א[פ]תח בר תימאלהי). This must have occurred in accordance with Nabatean law, since Eleazar depended on Isimalik to have done everything properly. Mentioning Aftaḥ, a Nabatean,<sup>30</sup> and a third party presumably independent of Isimalik, as authorizing the deed of proclamation must also reflect Eleazar's insistence that the law was followed. "The precise role of Aftaḥ is unclear. He may have been a local official or scribe."<sup>31</sup> Perhaps he was equivalent to the Greek ἀγορανόμος, the official who regulated the operation of the market. To similar effect is the assertion of the writ's formal regularity: "and it was written ... in accordance with every document

<sup>28</sup>Starcky noted ("Un contrat nabatéen," 168) that this curious way of expressing "after" (which is literally "from the place") occurred in a tomb inscription at Hegra and also appeared in the targum in the contracted form מבתר ("Un contrat nabatéen," 168). Healey notes its presence in an early Syriac inscription from 165 CE (*Aramaic Inscriptions*, 86, 230–31).

<sup>29</sup>Starcky noted that the פ at the start of פנפק instead of ו was a known feature of Nabatean ("Un contrat nabatéen," 169). Healey observes that this *pe*, "a coordinating conjunction which introduces a subsequent action in a series," is an Arabism (*Aramaic Inscriptions*, 62).

<sup>30</sup>See Avraham Negev, *Personal Names in the Nabatean Realm*, Qedem 32 (Jerusalem: Institute of Archaeology, Hebrew University of Jerusalem, 1991), 103.

<sup>31</sup>Healey, *Aramaic Inscriptions*, 86.

of proclamation” (אסמלך בר עבדי כרוז גנתא הי ופרע דמי כרוזא הו) (lines 17–18): “Isimalik, son of ‘Abday, proclaimed the said grove and paid the price of the said proclamation” (וכתיב] [ככול כתב כרוזא) (line 17). Lastly, there appears the state-

ment (lines 17–18): “Isimalik, son of ‘Abday, proclaimed the said grove and paid the price of the said proclamation” (אסמלך בר עבדי כרוז גנתא הי ופרע דמי כרוזא הו). Yardeni interprets what happened as follows:

Following the seizure, the grove was proclaimed (= put up for auction?) by ‘Ismilik in a writ of proclamation. Presumably he was in need of cash and wanted to realize the value of the seized property; but later on he paid off its price and won it back.<sup>32</sup>

Healey offers a different interpretation: “The creditor, Isimalik, had issued a writ of seizure and he had also sold off part of the complicated property.”<sup>33</sup> Thus, for both Yardeni and Healey, the purpose of the proclamation was to announce the sale of the property. Yet if by sale is meant the indefeasible transfer of what in modern law we call “title” and “possession” of property from one person to another for valuable consideration (which is what sale normally does mean), that did not happen here, as we will see.

Rabinowitz, on the other hand, explained the talmudic approach as permitting a creditor to occupy a property to obtain satisfaction of the debt, with the debtor, “whose property was so transferred,” nevertheless having “the right to redeem the property from the creditor by paying him the amount of the debt for which it was seized.”<sup>34</sup> In this latter case, there is no transfer of title but only a temporary transfer of possession while the creditor seeks to recoup the debt. Legal analysis of lines 15–19, to which we now proceed, suggests a course of events that generally accords with the view of Rabinowitz, especially since Isimalik acted in the way he suggests and obtained possession of the date palm grove. The nature of the proclamation proves to be the critical element in understanding what transpired practically and legally.

Lacking direct evidence of Nabatean practice concerning these writs of proclamation, we must infer their character from this deed. Such writs cannot have declared that someone like Isimalik was claiming the right to become the owner of the property, that is, that both title and possession would pass to him, and that he was announcing such a conveyance was imminent. It is clear from later in the document that title remained with the heirs of Nikarchos and Banay and that possession would revert in such an heir upon repayment of the outstanding debt to Isimalik. Accordingly, the likely point of the proclamation was to announce an intention to seize possession of the property, probably to sell its annual harvests to

<sup>32</sup> Yardeni, “Decipherment and Restoration,” 127.

<sup>33</sup> Healey, *Aramaic Inscriptions*, 82–83. That Healey understood the proclamation as involving sale is confirmed in his translation of lines 17–18: “Isimalik son of ‘Abday proclaimed the said grove (for sale) ...”

<sup>34</sup> See Rabinowitz, “Clue to the Nabatean Contract,” 12, and the talmudic passages he cites.



repay the debt, in case there were other creditors whose interests needed to be accommodated.

Roman law featured a somewhat similar procedure, the *Missio in possessionem rei servandae causa*, introduced by the praetor Publius Rutilius no later than 118 BCE. By this action one creditor was allowed access to the debtor's property for a very limited period (not given possession, as Isimalik was) to preserve its assets for the general body of creditors, so the goods in question could be seized, advertised, and sold.<sup>35</sup> This remedy allowed the creditor only a limited power of management and did not involve taking over agricultural land for possibly a long time,<sup>36</sup> as in the Nabatean action. The Roman remedy was also harsher on the debtor, who does not appear to have had a right of redemption of the property and who also incurred *infamia* as a result of the action. The remedy involved initial authorization by the praetor, but no further administration by the court.<sup>37</sup>

In consequence, in 43 CE Isimalik became the lawful possessor (not "owner") of the date palm grove because he had a valid writ of seizure and had ratified his right in some publicly announced fashion (hence a "writ of proclamation"). Thereafter, Isimalik continued for many years in possession of the grove of Nikarchos, no doubt benefiting from the sale of its annual date harvests. As we will see, however, he did not acquire title to it.

#### 58–68 CE: Eleazar Redeems the Debt and Acquires the Grove of Nikarchos

Between sixteen and twenty-five years later (that is, sometime between 58 and 68 CE), Eleazar arrived on the scene. In lines 19–20 he recounts that, after the events previously described, "Nikarchos my father died, and Banay my (paternal) uncle, son of Nabima, died." He then states, in a manner indicative of patrilinear succession, that he is the heir of his father Nikarchos and also of his paternal uncle, who had died without heir or issue (lines 20–21). He makes this claim because under Nabatean law he was entitled, as the late owners' heir, to redeem the property upon payment of the debt. In other words, Isimalik's possessory interest in the date palm grove was defeasible; that is, it was subject to annulment upon the performance of a condition subsequent—in this case, the appearance of the heir of the original owners of the grove and his payment of their debt. Thus, Isimalik had possession of, but not title to, the grove.

The deed recites that Eleazar exercised his right of redemption as follows. On the date the deed was executed, in his capacity as the heir of his father and paternal uncle, he approached Isimalik (lines 21–22) and said,

<sup>35</sup>R. W. Lee, *The Elements of Roman Law, with a Translation of the Institutes of Justinian*, 4th ed. (London: Sweet & Maxwell, 1956), 454.

<sup>36</sup>Lee, *Elements of Roman Law*, 454–55.

<sup>37</sup>Francis de Zulueta, *The Institutes of Gaius*, part 2, *Commentary* (Oxford: Clarendon, 1953), 133.

22. And I asked from you that you would produce to me the writ  
 23. of seizure aforesaid and I would pay whatever I owe you<sup>38</sup> by way of correct  
 payment and you would include my houses in the payment

ובעית מנך די שטר עדואי הו ואקרר מה די לך עמי מן<sup>39</sup> פרעון חקק ותחשב בתי  
 בפרעונא.

A provision of fundamental importance follows (lines 23–24): “and I would redeem from you the said writ of seizure” (ואפרק מנך שטר עדואי הו).

The next provisions concern how Eleazar and Isimalik determined the amount of the debt owing. While interest continued to accrue, Isimalik would have earned money from the sale of dates and, as we will see, from the lease of the two shops in the marketplace of Maḥoz ‘Eglatain mentioned earlier in the deed. Lines 24–25 make clear that Isimalik has kept accounts of his income from the grove and the shops, either because the writ of proclamation required it, or because heirs might subsequently appear to repay the remaining debt and reclaim the property.<sup>40</sup>

24. And you produced the said writ of seizure and it was read (aloud) and  
 you rendered an account and you assessed the value of my houses and you  
 accounted to me in the said payment  
 25. for everything which you had received.

ואנפקת שטר עדואי ה[ו] ואתקרי וערפת<sup>41</sup> וחשבת<sup>42</sup> בתי ומנית לי בפרעונא הו כל די  
 קבלת

What transpired at the meeting between Eleazar and Isimalik is thus revealed. Isimalik began with the debt stated in the deed of seizure and then itemized the income he had received from the property he had seized, chiefly perhaps from the sale of the grove’s annual date harvests. In spite of these credits on the loan account, however, interest was no doubt still accruing, so the final balance could have been greater or less than the debt in 43 CE. Whatever the balance owing, Eleazar intended

<sup>38</sup>The (common) Aramaic idiom for “whatever I owe you” appearing here is “whatever is for you with me.”

<sup>39</sup>In *פרעון חקק* the *מן* is an explicative, meaning “consisting of” and *חקק* is best explained on the basis of the Arabic *ḥaqq* (“truth, correctness, legitimacy”), hence “correct” or “rightful” (payment) (Healey, *Aramaic Inscriptions*, 87–88).

<sup>40</sup>The latter option was suggested to me by Kimberley Czajkowski of the University of Edinburgh (personal communication of 8 April 2021).

<sup>41</sup>“You rendered an account” translates *ערפת*, as suggested by both Starcky (“Un contrat nabatéen,” 174) and Healey (*Aramaic Inscriptions*, 83) on the basis of Palmyrene and Syriac words meaning “change money,” hence “produce an account.” This suits the immediate context in a way that Yardeni’s suggestion (“Decipherment and Restoration,” 131) of “approved” or “acknowledged” (probably from the Arabic *‘arafa*) does not.

<sup>42</sup>The word *חשב* in the *pael* means “to reckon,” “to calculate” (Michael Sokoloff, *A Dictionary of Jewish Palestinian Aramaic of the Byzantine Period* [Ramat-Gan: Bar Ilan University Press, 1990], 216). But Syriac knows the more specific meaning “reckon the value of” (J. Payne Smith, *A Compendious Syriac Dictionary* [Oxford: Clarendon, 1903], 160) and that is the meaning here.

making payment by transfer of houses to Isimalik, but that necessitated Isimalik's assessment of their value (in monetary terms).

The next feature, starting with the following words in lines 25–26, has proven difficult to interpret: “Abday your father . . . . . rented [אגר] . . . . . the two shops [תרתי חנותא].” The word אגר, in the *peal* form, refers to someone renting something from someone else.<sup>43</sup> Yardeni proposed, “Perhaps in order to redeem the property, Eleazar had to let the shops to Isimalik's father, and to use the future rent to pay off his debt.”<sup>44</sup> But this view is probably ruled out by the unlikelihood of Isimalik relinquishing possession before he had been paid in full, especially when lines 28–36 indicate that a complete settlement has been reached between the parties. Healey, more conservatively, comments on line 25: “An additional detail about the shops follows, though it is not clear what is meant.”<sup>45</sup> The answer lies in the immediate context of the settling of accounts, which continues beyond this detail (as we will see below). Here the deed conveys that Isimalik's father has rented the two shops from his son, and the rental that the latter has received must be credited against the loan.

The next legible words (line 26) are: וסלק בלא נחשב ביני לביניך. Yardeni suggests that סלק means “paid off” or “discharged.”<sup>46</sup> Healey finds the meaning of סלק “obscure,” noting that, while the verb means “go up,” “a noun would fit better here, perhaps ‘increase’ or ‘removal.’”<sup>47</sup> Although סלק is probably a noun, the preferable meaning is “amount,” or “result,” in an arithmetic sense, which (in verbal form admittedly) occurs in Aramaic and Syriac texts.<sup>48</sup> Accordingly, the clause means: “and the total amount of everything we are reckoning between me and you.”<sup>49</sup> These crucial words indicate that they had reached a final accounting of the debt, as confirmed by the following words: “and you have released to me” (ושבקת לי). With the balance of the debt agreed and discharged, it remained for Isimalik to restore possession of the grove and shops to Eleazar. The words לי ושבקת suggest that this had happened. In general terms, therefore, P.Starcky records that Eleazar has paid off the debt of his father and paternal uncle to Isimalik and the latter has released to Eleazar the assets he seized in 43 CE. They have also warranted that they no longer have any claims against one another (in the fragmentary lines 27–39).

<sup>43</sup> Sokoloff, *Dictionary of Jewish Palestinian Aramaic*, 35; and Payne Smith, *Compendious Syriac Dictionary*, 3. The *aphel* is used of a person renting out something to someone else.

<sup>44</sup> Yardeni, “Decipherment and Restoration,” 127.

<sup>45</sup> Healey, *Aramaic Inscriptions*, 88.

<sup>46</sup> Yardeni, “Decipherment and Restoration,” 133.

<sup>47</sup> Healey, *Aramaic Inscriptions*, 88.

<sup>48</sup> Sokoloff, *Dictionary of Jewish Palestinian Aramaic*, 380; and Payne Smith, *Compendious Syriac Dictionary*, 379.

<sup>49</sup> The words ביני לביניך (lit., “between me and to between you”) represent an Aramaic idiom (Healey, *Aramaic Inscriptions*, 88).

Why was this document legally significant for Eleazar? Above all, it provided him with unimpeachable proof of title to the Nikarchos orchard. It acknowledged that he was the true owner and eliminated the risk that Isimalik, or his heirs or assignees, would claim that some or all of the original debt was unpaid and attempt to seize the property, just as Isimalik had done. For Eleazar's descendants, it continued in this dual role. More specifically, it provided them with what modern lawyers call "a good root of title," meaning a document indicating that at a particular date in the past the title to a particular property was scrutinized and had no defects. On the other hand, if someone purchased the grove from Eleazar, the deed was largely irrelevant, since the purchaser would not be indebted to Isimalik and any heirs of Eleazar claiming title to the grove would be defeated by the deed of sale. Nevertheless, a subsequent purchaser from Eleazar or his heirs might conceivably have retained the deed out of abundant caution in safeguarding their interests.<sup>50</sup> Yet the story of P.Starcky does not end with Eleazar's redemption of the family property, for Babatha also has a role to play.

### B. Babatha's Connection with P.Starcky

To understand the link between P.Starcky and Babatha, some of her biographical details need stating. Sometime between the death of her first husband in late 123 or early 124 CE and before 21 February 128, Babatha married again,<sup>51</sup> to a Judean with connections both to Maoza and to 'Ein-Gedi. He was Judah, son of Eleazar Khthousion, where "Khthousion" is a nickname, probably deriving from the Aramaic word כּתשׁ, meaning "to pound," or "to crush."<sup>52</sup> Judah already had another wife, Miriam, who lived in 'Ein-Gedi. Importantly, Judah owned at least three date palm plantations in Maoza,<sup>53</sup> one called the "the grove of Nikarchos" (γανναθ Νικαρχος). It is generally accepted that the "grove of Nikarchos" is to be identified with the "date palm grove" (גנת תמר׳א) in Maḥoz 'Eglatain that Eleazar, son of Nikarchos, redeemed in the period 58–68 CE, as recorded in P.Starcky.

Babatha became involved with the grove of Nikarchos because Judah died owing her money. In their wedding contract (P.Yadin 10),<sup>54</sup> Babatha's dowry was specified as 400 denarii (lines 6, 8). At some stage, Judah borrowed Babatha's dowry

<sup>50</sup>This is a suggestion made to me by Kimberley Czajkowski (personal communication of 8 April 2021).

<sup>51</sup>P.Yadin 17 (lines 4, 22, and 40), of 21 February 128, contains the first reference to Babatha as Judah's wife.

<sup>52</sup>As suggested to the author by Richard Bauckham in a personal communication of 23 March 2021.

<sup>53</sup>As made clear in P.Yadin 21 and 22 (Lewis, Yadin, and Greenfield, *Documents from the Bar Kokhba Period: Greek Papyri*, 94–101).

<sup>54</sup>Yadin et al., *Documents from the Bar Kokhba Period: Hebrew, Aramaic and Nabatean-Aramaic Papyri*, 118–41, probably to be dated to 124–125 CE.

from her. By a deed of loan dated 21 February 128 (P.Yadin 17),<sup>55</sup> Judah borrowed a further 300 denarii from Babatha. Then, in the period January–June 130 CE, Judah died, still owing her the 700 denarii. She probably possessed some assets, such as the four date palm plantations she declared in the Roman census of 127 CE.<sup>56</sup>

But real estate was one thing and ready cash quite another. Babatha was not without rights in this situation. Pursuant both to her marriage contract (lines 17–18)<sup>57</sup> and the deed of loan (lines 35–36), Babatha had the right of execution against all Judah's property if he defaulted in repaying the loans. These provisions probably provided legal justification for the step she took to protect her position.<sup>58</sup> Sometime before 11 September 130, that is, just before the date harvest started, she seized Judah's three date palm plantations in Maoza, including "the grove of Nikarchos."

How Judah acquired this grove is debated. In 1991, Bowersock observed,

A Jew by the name of Eleazar records a claim to property, and Eleazar's father bears the hellenic name of Nicarchus. These details for so small a place as Maoza and the likelihood that the text was abstracted from Babatha's cave make it certain that Nicarchus and his son Eleazar are related to Babatha's second husband. He was himself the son of an Eleazar, and his date orchard, which passed to Babatha after his death, is explicitly named for Nicarchus in documents 21 and 22 of A. D. 130. It is called the *γανναθ Νικαρκος*.<sup>59</sup>

In 2001, Yardeni, however, while agreeing that the "garden of Nikarchos" in P.Starcky was to be identified with that referred to in P.Yadin 21 and 22, criticized Bowersock's view since there was "no information about the way in which the grove came into Yehudah's possession"; Judah "need not have inherited the palm grove; he could have bought it."<sup>60</sup> Yet, whether Judah inherited the grove of Nikarchos or had purchased it is irrelevant to the function of P.Starcky as a document of title

<sup>55</sup> Lewis, Yadin, and Greenfield, *Documents from the Bar Kokhba Period: Greek Papyri*, 71–75.

<sup>56</sup> P.Yadin 16 is her census declaration (Lewis, Yadin, and Greenfield, *Documents from the Bar Kokhba Period: Greek Papyri*, 65–70).

<sup>57</sup> Although the document is largely lacunae at this point, the provision of security for a wife's dowry was a standard clause in wedding contracts.

<sup>58</sup> Some doubts attended the viability of her rights, especially whether she had executed them properly. See Michael L. Satlow, "Marriage Payments and Succession Strategies in the Documents from the Judaean Desert," in *Law in the Documents of the Judaean Desert*, ed. Ranon Katzoff and David Schaps, JSJSup 96 (Leiden: Brill, 2005), 51–65, here 63–64. There is no sign of Babatha's employing the two-writ procedure used by Ismalik when he seized the grove of Nikarchos in the previous century.

<sup>59</sup> Bowersock, "Babatha Papyri," 340.

<sup>60</sup> Yardeni, "Decipherment and Restoration," 127–28.

relating to the grove initially held by Judah that Babatha would have wanted to hold onto after his death. Nevertheless, it is far more likely that Judah inherited it.

As noted above, P.Starcky initially represented a crucial document of Eleazar's title to the grove that had been pledged by his father and uncle, largely because it not only acknowledged his being their heir and the lawful owner of the grove but also barred any descendant or assignee of Isimalik from claiming that the debt was unpaid. Both issues would have been of concern to his descendants,<sup>61</sup> perhaps lessening somewhat with the years as the risk of anyone who claimed Isimalik's rights under the debt making an appearance became increasingly small and title was solidified by continued possession and payment of taxes on the harvest. For a subsequent purchaser of the property, the debt to Isimalik was far less significant, since the debt would not be acquired with the purchase, even though (as noted above) an ultra-cautious buyer might have wanted to cling to P.Starcky. Accordingly, Judah would have had greater cause to retain P.Starcky if he was the descendant of Eleazar, the son of Nikarchos, albeit some, though very much smaller, cause to retain it if he had purchased the grove of Nikarchos. This conclusion supports Bowersock's suggestion that Nikarchos and his son Eleazar were "related" to Judah.

Consideration of the generations involved in Judah's patriline and the names of his ancestors further strengthens the case for a connection between Judah and Nikarchos. As a preliminary to charting the relationship between Nikarchos and Judah (and as relevant to the discussion of P.XHēv/Se Nab 2 below), the issue of life expectancies in the ancient world requires brief consideration. We need to begin by distinguishing "life span," the maximum number of years people lived in that setting, from "life expectancy," the average number of years a person being born might be expected to live. In Israel, life span was regarded as seventy or, in rare cases, eighty years (Ps 90:10), but few people lived to seventy.<sup>62</sup> When Roger Bagnall and Bruce Frier analyzed three hundred census returns from Roman Egypt, their data correlated quite closely with model life tables from modern, preindustrial societies. Although infant mortality was high, merely surviving the first five years did not guarantee longevity. They found that life expectancy at age five was 40.6 years for males and 38.2 years for females.<sup>63</sup> While Egypt was not Judea or Nabatea, it is unlikely that life expectancy was radically different in the latter. Indeed, the

<sup>61</sup>The children of a deceased person probably inherited liabilities as well as assets under Nabatean law pursuant to the ancient legal principle of universal succession (Esler, *Babatha's Orchard*, 143–49).

<sup>62</sup>Though David is reported to have reached this age (2 Sam 5:4).

<sup>63</sup>Roger S. Bagnall and Bruce W. Frier, *The Demography of Roman Egypt*, Cambridge Studies in Population, Economy, and Society in Past Time 23 (Cambridge: Cambridge University Press, 1994), 102. For the model life tables, see 32–38. By contrast, as of 4 March 2022 a male aged five in the UK had an average life expectancy of 87 years and a female of 90 years (<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/articles/lifeexpectancycalculator/2019-06-07>).

data from a burial cave from Meiron in the upper Galilee that contained 197 skeletons from one family from the first to fourth centuries CE—where the age at death could be determined for 191 of them—indicated that around 50 percent died before reaching 18, and someone (male or female) who attained 18 years had only a 25 percent chance of reaching 40.<sup>64</sup> Among skeletons from Qumran, most people died between the years 30 and 45.<sup>65</sup>

When Eleazar son of Nikarchos redeemed the grove in the period 58–68 CE, he could hardly have been less than twenty years old and was probably somewhat older, say thirty, to have acquired the houses needed for the redemption. Thus, if Eleazar was thirty when he redeemed the grove, he was born in the period 28–38 CE. Given the markedly lower life expectancies for adults in this setting than in the modern period, it seems less likely that he redeemed the grove after he was forty years old, suggesting an earliest date for his birth in the years 18–28 CE. If, adopting this baseline, we assume that he and his male descendants had sons when they were twenty-five years old, we can view Judah as the third generation after Eleazar son of Nikarchos. This would make Nikarchos Judah's great, great grandfather.

Corroboration for this comes if we return to the other end of the temporal sequence and move backward in time. One document, P.Yadin 20 (in lines 8 and 28), from 130 CE, fortunately records the name of Eleazar Khthousion's father as Judah. This Eleazar Khthousion, in turn the father of Babatha's second husband, Judah, was alive in 124 CE.<sup>66</sup> Judah himself died in 130 CE, having owned (and leased out) agricultural property in Maoza in 119 CE (P.Yadin 6) and having seen his daughter married in 128 CE (P.Yadin 18). Judah had a brother (called Jesus, who also died in around 130 CE, leaving young sons), but Judah is likely to have been the elder son (since he acquired the Nikarchos date palm grove). Accordingly, Judah was probably thirty-five to forty when he died in 130. This suggests that he was born in the period 90–95 CE, his father in the period 70–75, and Judah his grandfather in the period 50–55. If at this point we insert the Eleazar who redeemed the grove into the series, we have his birthdate in the period 30–35 CE. This correlates closely with the likely dates (see above) if he redeemed the grove when he was thirty, and there is very little room to insert another generation.

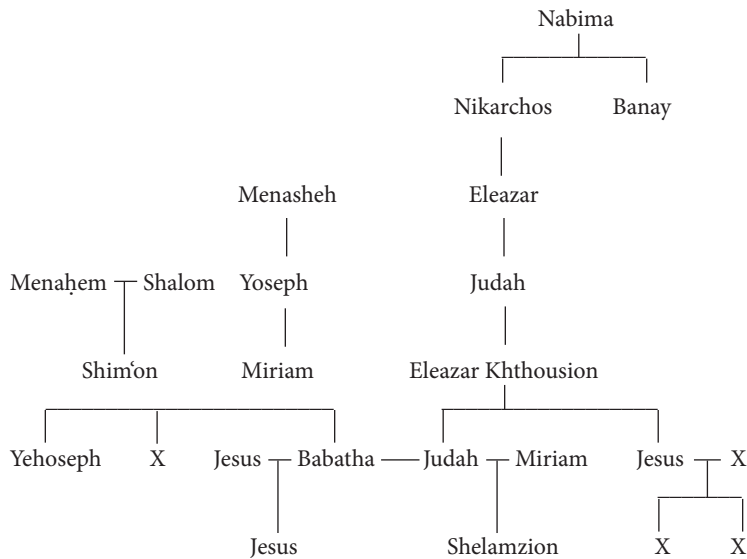
<sup>64</sup>Eric M. Meyers, James F. Strange, and Carol L. Meyers, *Excavations at Ancient Meiron, Upper Galilee, Israel, 1971–72, 1974–75, 1977*, Meiron Excavation Project 3 (Cambridge: American Schools of Oriental Research, 1981), 107–20.

<sup>65</sup>Susan Guise Sheridan, Jaime Ullinger, and Jeremy Ramp, "Anthropological Analysis of the Human Remains from Khirbet Qumran: The French Collection," in *Khirbet Qumrân et Aïn Feshkha*, vol. 2 of *Fouilles de Khirbet Qumrân et de Aïn Feshkha*, ed. J.-B. Humbert, OP, and J. Gunneweg, NTOA 3 (Fribourg: Academic Press; Göttingen: Vandenhoeck & Ruprecht, 2003), 133–73.

<sup>66</sup>This emerges in P.Yadin 11, where Judah borrows money on the security of a property in 'Ein-Gedi which he claims belongs to his father Eleazar Khthousion (Lewis, Yadin, and Greenfield, *Documents from the Bar Kokhba Period: Greek Papyri*, 44).

We thus have the following patriline: Nikarchos > Eleazar > Judah > Eleazar > Judah, with the significant pattern (after Nikarchos) of naming the firstborn after his grandfather. Tal Ilan has noted that the practice of naming a son after a grandfather (“pronymy”) was “one of the most common naming procedures of the time.”<sup>67</sup> Judah thus probably represented the fourth generation in his family, across a period of some seventy years, to possess P.Starcky (see the figure below).

FIGURE 1. Genealogies of Babatha and Judah, Her Second Husband



### C. Who Brought P.Starcky into the Cave?

We now return to Babatha. There is no direct evidence she possessed P.Starcky, but the case for her having done so is very strong. As noted above, sometime before 11 September 130 she seized three date palm orchards that had belonged to Judah, including the grove of Nikarchos. Before doing so, it would have made good sense legally for her to gain possession of documentation proving her husband’s title to these properties, especially as Judah died leaving young nephews.<sup>68</sup> Since their father (Jesus, Judah’s brother) was dead, in this patrilineal culture they stood to inherit the property. As Babatha and Judah were married no later than 21 February

<sup>67</sup>Tal Ilan, *Lexicon of Jewish Names in Late Antiquity*, part 1, *Palestine 330 BCE–200 CE*, TSAJ 91 (Tübingen: Mohr Siebeck, 2002), 32.

<sup>68</sup>They are mentioned in P.Yadin 23, 24, and 25 (Lewis, Yadin, and Greenfield, *Documents from the Bar Kokhba Period: Greek Papyri*, 102–12), discussed below.



128,<sup>69</sup> and lived in Maoza, she would have had easy access to his papers after his death, whereas Besas son of Jesus, the initial guardian (ἐπίτροπος) of Judah's orphaned nephews, was from 'Ein-Gedi and living in Mazraa,<sup>70</sup> thirty kilometers north of the likely location of Maoza.<sup>71</sup> Babatha would thus have been able to secure the documents, including P.Starcky, that she needed to support her claim in debt against his estate. In seizing Judah's three groves to distrain and sell the date harvest pursuant to the provisions in her wedding contract and the deed of loan, which gave her security over Judah's property, she needed evidence that they were indeed his.

Both P.Yadin 21 and 22 (dated 11 September 130)—respectively the buyer's and seller's contracts for the dates on the three properties that Babatha took over—use the word κατέχειν in relation to her act of seizure,<sup>72</sup> here in the recognized legal meaning of “take possession of” or “sequester.”<sup>73</sup> Yet, as early as 17 November 130, Besas, acting as the nephews' guardian, began litigation against Babatha by summons (P.Yadin 23) complaining of her holding by force a date orchard (presumably a collective expression for all three) that had (allegedly) devolved to the nephews. In the deposition (P.Yadin 24), Besas requested that Babatha show him “by what right you have sequestered the said entities” (ποῖω δικαίωματι διακρατῖς τὰ αὐτὰ εἶδη).<sup>74</sup> The likely answer to this was the provisions in both her dowry and the deed of loan giving her security over Judah's property in the event of default.

In mid-131 CE, however, Babatha encountered someone whose involvement in the litigation with Judah's nephews renders it highly unlikely that the nephews ended up with her in the cave in Wadi Hever at the end of Bar Kokhba's revolt. This was a formidable adversary in the shape of Julia Crispina, daughter of Bernicianus, who, due to Besas's being sick, had taken over as the nephews' supervisor (ἐπίσκοπος) and issued a summons against Babatha challenging her seizure of the three groves.<sup>75</sup> She and Besas had represented the nephews in another legal matter a year earlier, in June 130, which settled their dispute with Shelamzion, daughter of Judah (and his other wife, Miriam), in Shelamzion's favor.<sup>76</sup>

<sup>69</sup> She is described as his wife in lines 4, 22, and 40 of P.Yadin 17 (Lewis, Yadin, and Greenfield, *Documents from the Bar Kokhba Period: Greek Papyri*, 71–75).

<sup>70</sup> P.Yadin 20, line 4 (Lewis, Yadin, and Greenfield, *Documents from the Bar Kokhba Period: Greek Papyri*, 90).

<sup>71</sup> Esler, *Babatha's Orchard*, 66–67.

<sup>72</sup> In P.Yadin 21, line 11, and P.Yadin 22, line 9 (Lewis, Yadin, and Greenfield, *Documents from the Bar Kokhba Period: Greek Papyri*, 94–101).

<sup>73</sup> See LSJ, s.v. “κατέχω,” citing P.Lille 3.16.

<sup>74</sup> P.Yadin 24, frag. a, lines 9–10 (Lewis, Yadin, and Greenfield, *Documents from the Bar Kokhba Period: Greek Papyri*, 105).

<sup>75</sup> P.Yadin 25 (Lewis, Yadin, and Greenfield, *Documents from the Bar Kokhba Period: Greek Papyri*, 108–12).

<sup>76</sup> P.Yadin 20 (Lewis, Yadin, and Greenfield, *Documents from the Bar Kokhba Period: Greek Papyri*, 88–93).

That Julia Crispina, acting as ἐπίσκοπος (“supervisor”) though not ἐπίτροπος (“guardian”) of the nephews, had issued a summons on their behalf is most unusual. Under Judean law of this period, “a woman could serve as a guardian, if appointed by her husband in his lifetime . . . of his orphans.”<sup>77</sup> Under Roman law, women could not be guardians of children.<sup>78</sup> So Julia Crispina could not be an ἐπίτροπος to the orphaned nephews under either Judean or Roman law. Accordingly, her being allowed to circumvent these rules by acting as an ἐπίσκοπος instead probably indicates her elite status. Her name confirms this, on either of the identifications offered by Bowersock and Tal Ilan.<sup>79</sup> Both agree that she was a probably a Roman citizen<sup>80</sup> and the same Julia Crispina who owned properties in the Arsinoite nome of Egypt between 131 and 133 CE. They diverge, however, on her precise identification. Bowersock regards her as the daughter of C. Iulius Alexander Berenicianus, consul suffect in 116 CE, while Ilan argues that she was a Herodian princess. On either view, however, she was a Roman citizen, a member of the imperial elite, and certain to take Rome’s side in the Bar Kokhba revolt.

The connection of Julia Crispina with ‘Ein-Gedi could have been occasioned by ownership of balsam groves there, received as a gift from Rome to loyal Herodian allies.<sup>81</sup> Whatever her business in ‘Ein-Gedi, presumably related to agricultural production, Julia Crispina probably relied on local Judeans to assist her. In such a context she probably developed a relationship with the family of Jesus, son of Eleazar Khthousion, including his sons, and with Besas son of Jesus, so that she became the boys’ supervisor in litigation.

From this discussion it follows that, in 131 CE (absent the infinitesimally small chance of a descendant of Isimalik appearing with a claim for unpaid debt), the only people alive with any interest whatever in P.Starcky were Babatha and her second husband’s nephews. On the other hand, P.Starcky had no connection with anyone in the Salome Komaise documents. Accordingly, it can only have been Babatha, or the orphans, who took that document from Maoza into the cave in Wadi Hēver, a distance (by land) of approximately seventy kilometers.

Yet, with an elite Roman citizen acting as their supervisor in July 131, the chances of the nephews being caught up in Bar Kokhba’s revolt that broke out the next year,<sup>82</sup> let alone their also appreciating the legal significance of P.Starcky and

<sup>77</sup>Hannah M. Cotton, “The Guardianship of Jesus Son of Babatha: Roman and Local Law in the Province of Arabia,” *JRS* 83 (1993): 94–108, here 99.

<sup>78</sup>Barry Nicholas, *An Introduction to Roman Law*, Clarendon Law Series (Oxford: Clarendon, 1962), 91; also note Dig. 26.1.18: *Feminae tutores dari non possunt*.

<sup>79</sup>See Bowersock, “Babatha Papyri,” 341; and Tal Ilan, “Julia Crispina Daughter of Berenicianus, a Herodian Princess in the Babatha Archive: A Case Study in Historical Identification,” *JQT* 82 (1992): 361–81.

<sup>80</sup>Bowersock, “Babatha Papyri,” 341; Ilan, “Julia Crispina,” 370, 374.

<sup>81</sup>Ilan (“Julia Crispina,” 372–73) cites Pliny the Elder, writing in 75 CE, to the effect that the balsam plantations in ‘Ein-Gedi were at that time owned by the Roman state (*Nat.* 12.118).

<sup>82</sup>For recent discussion of this revolt, see Peter Schäfer, ed., *The Bar Kokhba War Reconsidered*:

carrying it to the cave in Wadi Hever, seem remote in the extreme. Ilan plausibly suggests that Julia Crispina withdrew to her Egyptian holdings to await the outcome of the revolt;<sup>83</sup> perhaps she took the nephews with her. Accordingly, *it was Babatha who brought P.Starcky to the cave*. Yet this conclusion prompts a further question. Was P.Starcky the only document Babatha carried with her but discarded in the cave? There is reason to believe it was not.

#### **D. Given the Nature of P.XHev/Se Nab, Who Brought It into the Cave?**

Thus, we return to P.XHev/Se Nab 2. While the date formula for this document has not survived, the mention of “king” in line 22 means that it cannot be dated after 106 CE (when Rome took over Nabatea). Yardeni dates it “ca. 100 CE,” but without saying why.<sup>84</sup> It is a contract for the sale of real estate, no doubt agricultural land, in Maḥoz ‘Eglatain, at a price of 75 *selā*’s. The vendor is a woman called Shalom. The purchaser was a male Nabatean. The name Menaḥem appears in line 7.

Eshel assigned P.XHev/Se Nab 2 to the documents of Salome Komaiṣe. He argued that the Shalom (Salome being the Greek form) mentioned was Salome Grapte, mother of Salome Komaiṣe: “Yardeni reads the name Menaḥem in line 7. We recall that Salome Grapte’s father in P.Hever 63 (line 3) and P.Hever 64 (line 4) is called Menaḥem.”<sup>85</sup> He then boldly concluded,

The seller can be no other than Salome Grapte, Salome Komaiṣe’s mother. XHev Se 2 is the earliest document which belongs to the archive, which now looks more likely to be a family archive than that of the daughter alone.<sup>86</sup>

Eshel’s position was based on two factors: first, that the two names, Salome and Menaḥem, appear in both P.XHev/Se Nab 2 and documents from the Salome Komaiṣe archive; and, second, that they were found in the same cave. As to the first factor, if these two names were uncommon in this period, there might have been some strength in the alleged connection. In fact, however, Salome was the second most popular female name in the period and Menaḥem the tenth most popular male name.<sup>87</sup> Eshel also wrongly assumed that Menaḥem was the father of the Shalom selling the property. But the part of the document likely to state the vendor’s patronymic, line 2, has not survived, while the name “Menaḥem” appears in the section describing the boundaries of the property, meaning he was one of the

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*New Perspectives on the Second Jewish Revolt against Rome*, TSAJ 100 (Tübingen: Mohr Siebeck, 2003).

<sup>83</sup> Ilan, “Julia Crispina,” 379.

<sup>84</sup> Yardeni, *Textbook of Aramaic, Hebrew and Nabataean Documentary Texts*, 2:95.

<sup>85</sup> Eshel, “Another Document,” 169–71.

<sup>86</sup> Eshel, “Another Document,” 171.

<sup>87</sup> Ilan, *Lexicon of Jewish Names*, 56–57.

abutters. As to the second factor, although P.Starcky was found in the cave, it has nothing to do with Salome Komaïse.

A chronological issue also weighs against Eshel's view. In November 129 CE—by which time her first husband (Levi father of Salome Komaïse) had died and she had remarried—Salome Grapte gave property in Maoza to her daughter, Salome Komaïse.<sup>88</sup> This situation is readily explicable if Salome the mother was 30 to 40 years in age and her daughter 15 to 25 years. But for Salome Grapte to be selling property in 100 CE she could hardly have been younger than 20 at that time and an older age seems more credible. Accordingly, in 129 CE Salome Grapte would have been 50 or more, which sits awkwardly with life expectancies in this period, and Salome Komaïse 35 or more, which would make her older than her first husband, who was 30 years old in December 127.<sup>89</sup> Thus, it is improbable (even if possible) that Salome Grapte was the female vendor in 100 CE.

Additionally, were Eshel correct, we would have one document in the Salome Komaïse archive from 100 CE, with the others dating from 29 January 125 to 7 August 131. Not only is a twenty-five year gap rather odd, but there is no evidence that anyone mentioned in this archive was even living in Maoza around 100 CE.

Yet, while there is thus no connection between P.XHēv/Se Nab 2 and Salome Komaïse's documents, there is a remarkably direct one with Babatha's. This is that the scribe (Azur son of 'Awatu) who dealt with Shim'on's purchase of a date palm orchard in 99 CE, that is, the scribe who drafted P.Yadin 2, 3, and 4,<sup>90</sup> also drafted P.XHēv/Se Nab 2! This can be confirmed if one compares, for example, the handwriting (and content) from the start of line 13 of P.X/Ĥev/Se Nab 2 (ולמנחל ולמנתן) and to bequeath, and to grant as a gift and to do with these purchases everything which ...) with the identical words in P.Yadin 3, lines 33–34. Yardeni must have been aware that the same scribe drafted the four documents, since she had produced tracings of all of them and there was no other reason for her to date P.XHēv/Se Nab 2 as ca. 100 CE. But, unfortunately, she failed to include this detail (perhaps as being outside the genre of a textbook), so that Eshel was unaware of it, as was everyone else who has been influenced by his mistaken linking of P.XHēv/Se Nab 2 to Salome Grapte.

The scribe 'Azur represents a highly significant connection. Shim'on must have been satisfied with his documentation in 99 CE, given the high standard of legal skill he deployed in that transaction,<sup>91</sup> and would probably have used, or recommended, him for other work. This consideration prompts a plausible explanation for P.XHēv/Se Nab 2. For here we have a woman, Shalom, selling a property for 75 *sela*'s (equivalent to 300 denarii) and a certain Shim'on (who was still alive

<sup>88</sup> The deed of gift is XHēv/Se 64 (see Cotton and Yardeni, DJD XXVII, 203–23).

<sup>89</sup> See XHēv/Se 61, line 13 (Cotton and Yardeni, DJD XXVII, 186).

<sup>90</sup> See Yadin et al., *Documents*, 205 (P.Yadin 2), 233 (P.Yadin 3), and 247 (P.Yadin 4).

<sup>91</sup> This was especially the case in relation to P.Yadin 4 (Esler, *Babatha's Orchard*, 176–20).

in 120 CE)<sup>92</sup> buying a property in the same area for 168 *sela's* (equivalent to 672 denarii), with the same scribe instructed on both transactions.<sup>93</sup> The first amount is 45 percent of the second. It is hard to avoid the conclusion that Shalom sold her property to help Shim'on fund his purchase, probably because she was his mother. A further, more specific consideration supports this view. The plantation Shim'on acquired for 168 *sela's* on 2 Tebet 99 CE had been purchased by a Nabatean one month earlier, on 3 Kislev, for 112 *sela's*, but that sale was rescinded. The increased price was mainly due to the vendor agreeing, in mid to late Kislev, to add an additional plot to the plantation she was selling to Shim'on. One can readily imagine his mother selling a property for 75 *sela's* to raise the extra 56 *sela's* needed to capitalize on this unexpected opportunity. P.XHēv/Se Nab 2 is thus to be dated shortly before 2 Tebet 99 CE, when Shim'on purchased the date plantation.

Although Shim'on's mother is not named in the other documents of the Babatha archive, as noted above Shalom (of which Salome was the Greek equivalent) was the second most popular Judean female name during this period. The name "Menaḥem" is also relevant to Babatha, since this was the name of Shim'on's father.<sup>94</sup> As noted, this name appears in P.XHēv/Se Nab 2, but in the section on abutters, so not too much should be made of it. Nevertheless, it is possible that a husband and wife, Menaḥem and Shalom, owned adjoining properties (see fig. 1 for Babatha's genealogy).

I conclude, therefore, that XHēv/Se Nab 2 was a document of her grandmother's that Babatha brought into the cave. It was closely linked with P.Yadin 1–4, although since it recorded only how her father had come by nearly half the purchase price of the orchard purchased pursuant to P.Yadin 3 that he later gave her, unlike those four documents it had no possible bearing on her legal position.

### *E. Babatha in the Cave in Wadi Hever*

We turn now to Babatha's final days in the cave in Wadi Hever. We have no evidence for what happened to her except that she never returned to collect her possessions, including the archive and her key. Most likely she was either killed or enslaved by the Romans, and the presence of arrowheads found by Yadin's team at the mouth of the cave<sup>95</sup> points to the former alternative. We also have no direct evidence of her experience in the cave. Yet the argument mounted above renders probable certain aspects of that experience. First, it is likely that Babatha brought at least two more documents into that cave than she included in the archive that

<sup>92</sup>This is the date of P.Yadin 7, in which he gives property to his wife.

<sup>93</sup>Shim'on's purchase is P.Yadin 3 (Yadin et al., *Documents from the Bar Kokhba Period: Hebrew, Aramaic and Nabatean-Aramaic Papyri*, 233–46). This purchase is the subject of Esler, *Babatha's Orchard*.

<sup>94</sup>See, e.g., P.Yadin 7, line 3.

<sup>95</sup>Yadin, "Expedition to the Judean Desert, 1961," 228.

she hid in a crevice in its floor. These were P.Starcky<sup>96</sup> and P.XHēv/Se. Nab 2. She must have either left them loose on the surface of the cave, or placed them somewhere else separate from her hidden archive, where the bedouin discovered them. How are we to explain this?

Joan Taylor has suggested that perhaps Babatha had other documents in another bag that she was using when the Romans entered the cave, at which point they were scattered over the cave floor.<sup>97</sup> Although this is an intriguing possibility, it requires the coincidence of her having a bag unconcealed on the cave floor at the very moment of Roman entry. It would also suggest that she had more immediate need of P.Starcky and P.XHēv/Se. Nab 2 than the thirty-five she had so carefully hidden. Yet it is difficult to see what further use Babatha could make of P.Starcky, since the likelihood of her husband's nephews succeeding in their claim to the grove of Nikarchos, especially with Julia Crispina assisting them, was notably higher than that of a Judean rebel like her. P.XHēv/Se. Nab 2, moreover, had no legal relevance to her.

Czajkowski has made another suggestion—in relation to P.Starcky—to the effect that Babatha could simply have dropped it.<sup>98</sup> Once again, while this is certainly possible, two factors count against it. First, the evidence suggests that Babatha was very careful with her documents. Yadin noted that Babatha's documents

had been laid in the case in a very neat and orderly manner, properly rolled and folded and tied up in separate batches, according to their subject matter, with a special band and strings or with a strip of cloth. Some of them, though dealing with a common topic, were found without a string, but placed beside each other in such a way as to suggest that they too had originally been tied together and their retaining strip of cloth or string had subsequently been eaten away.

One of these batches ("C") dealt with "5 claims made by members of the family against Babatha in connection with the property of which she obtained possession after the death of her second husband."<sup>99</sup> Second, Babatha took great pains to hide her possessions very carefully. She was extremely meticulous in the safekeeping of her property. When these factors are taken into account, it is most unlikely that Babatha would have dropped two of her documents accidentally on the cave floor, especially when P.Starcky had some relevance to batch C.

These considerations make it likely that Babatha deliberately discarded P.Starcky and P.XHēv/Se. Nab 2 in the cave. That she carefully stored and hid some of her documents in a leather satchel under the cave's floor and jettisoned others means that, during her time in the cave, she conducted a cull of the papyri she had

<sup>96</sup>Czajkowski is also inclined to the view that Babatha brought it into the cave (*Localized Law*, 7 n. 12).

<sup>97</sup>Joan Taylor, personal communication to me of 21 April 2021.

<sup>98</sup>Kimberley Czajkowski, personal communication to me of 8 April 2021.

<sup>99</sup>Yadin, "Expedition to the Judean Desert, 1961," 235.

carried with her from Maoza. She must have sat down and gone through them, deciding which were important for her legal affairs and which were not, which needed to be carefully hidden with her other personal possessions and which did not.

It is poignant to reflect on the significance of such a process. It can have been motivated only by the hope that she would escape the Romans and one day return to collect her property so that she could resume her previous existence, turning that key in its lock to open her life to a brighter future. She would have required help with this since she was illiterate. In P.Yadin 15, her deposition in proceedings against her son's guardians from October 125 CE, a certain Eleazar son of Eleazar, writing in Greek separately from the scribe, stated (line 35) that he had written her confirmation of the deposition "because of her being illiterate" (διὰ τὸ αὐτῆς μὴ εἰδέναι γράμματα).<sup>100</sup> So at least one literate person sat with her in the cave, probably during the daytime as close to the mouth of the cave as the nearby presence of the Romans would allow so that there was sufficient light to scrutinize the papyri. The whole process is a testament to her fortitude and presence of mind. At this moment, P.Starcky was superfluous to her needs. Most likely she had lost the litigation concerning the seizure of the orchard, or she had ceded possession to her second husband's nephews for some other reason. She also had no need of P.XHēv/Se. Nab 2. So she discarded both of them.

## II. CONCLUSION

Babatha was never to retrieve her legal documents and other property from the cave in Wadi Hēver, presumably because she was killed or enslaved by the Romans. Nevertheless, it was her decision to have a cull of her documents at the cave mouth and leave the unwanted ones on its floor, where they were among those found eighteen hundred years later by the bedouin. This prompted the archaeological expedition that led to the discovery of the documents that really mattered to her. These documents have yielded an unparalleled wealth of information about herself, her family, and her world. Thus, one incident in her experience as a fugitive that embodied a decision she took in hope for her future, while failing in its immediate objective, yet had the effect of ensuring that her story would eventually emerge as an invaluable historical resource and a remarkable enrichment of the collective memory of her people. For of all the Judean women in antiquity, Babatha is the one we know best.

<sup>100</sup>Lewis, Yadin, and Greenfield, *Documents from the Bar Kokhba Period: Greek Papyri*, 60. Her illiteracy seems to have embraced Aramaic, too, since she did not sign for herself in the Aramaic subscriptions to this document.