

Sale in Demotic Documents: an Overview

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PRELIMINARIES

Demotic is a stage of the ancient Egyptian script and the ancient Egyptian language. The script is attested between the 7th century BC and the 5th century AD. The range for the language stage is roughly the same. The script developed when the Lower-Egyptian (Delta) variants of hieratic, another cursive script, became more and more cursive, so much that they started to form a separate script. Initially in Upper Egypt (the South) another cursive variant was used, somewhat unhappily called abnormal hieratic. This gradually disappeared in favour of the Northern variant when the 26th Dynasty from Sais (in the Delta) consolidated its power in the entire Nile Valley. Abnormal hieratic died out around the middle of the 6th century BC.

There are currently over 15,000 Demotic texts in the database *Demotic and Abnormal Hieratic Texts* [DAHT], which is part of the Trismegistos project.¹ Most of these are not immediately relevant to the subject of this meeting, sale,

¹ See www.trismegistos.org/daht: 15,465 records (20 November 2013). The abbreviation TM followed by a number refers to the id's in this database, leading to more information e.g. www.trismegistos.org/text/47179.

but nevertheless a substantial minority is. The most important for our purposes are the numerous legal documents that attest the transaction itself. Also valuable are legal manuals which discuss specific details of the procedure to be followed, obviously fewer in number. And finally an occasional narrative literary text, the odd funerary stela, or a detailed trial report, contain unexpected but all the more welcome information.

SALE DOCUMENTS: TYPES OF PROPERTY AND TYPES OF TRANSFER

Sale documents are among the most common Demotic documentary papyri published. This is partially no doubt because the contracts, sometimes written on impressive pieces of papyrus, have received much more attention than some other, at first sight rather uninspiring types such as lists or accounts. But sales also figure rather prominently among the various types of legal declarations in Demotic that are commonly called ‘contracts’, ‘deeds’ or ‘agreements’.

It is always problematic to develop a typology of documents. In my *Companion to Demotic Studies* I integrated one which closely followed that of Seidl’s *Rechtsgeschichte*, and that found in Lippert’s relatively recent publication *Einführung in die altägyptische Rechtsgeschichte* is similar.² Although I have started to integrate this in the DAHT database, I found that individual contracts often resist ‘correct’ classification, even within a single language and script, and there is still much work left to be done. The figures 1 and 2 must therefore be tentative only. Nevertheless I thought it worthwhile to give you at least a rough idea of numbers of contract types and subjects, based on the current data in DAHT.

Of the 1611 Demotic documents currently (18 September 2012) identified as ‘contracts’, for about 361 for various reasons (unpublished, too fragmentary, deficient data in the database) not enough information is available to determine the precise nature of the transaction documented. Of the 1250 remaining documents, 347 are labeled as ‘sale’. In fact the percentage of property transfers lies even higher, since many of the contracts labeled as ‘cession’ (126), ‘division’ (54), ‘donation’ (40), and ‘exchange’ (10) equally concern transfer of property. This brings the total proportion of these types to 46% (577 exx.). If the 151 examples of marriage settlements are also included, since marriage is really also about property transfer, this brings the total to well over 50%.

The nature of the objects that change owner varies quite substantially. The following provides a rough survey of the 307 cases where the object of the

² DEPAUW 1997, p. 123-152; SEIDL 1962, p. 49-68; LIPPERT 2008, p. 136-178.

sale document is known in the database. I should stress here that even more than for the classification of contract type, standardization is problematic and thus the figures are again merely indicative.

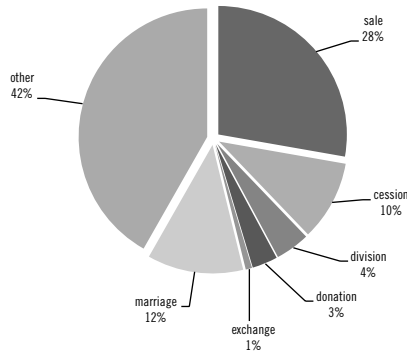


Figure 1 – Type of contract

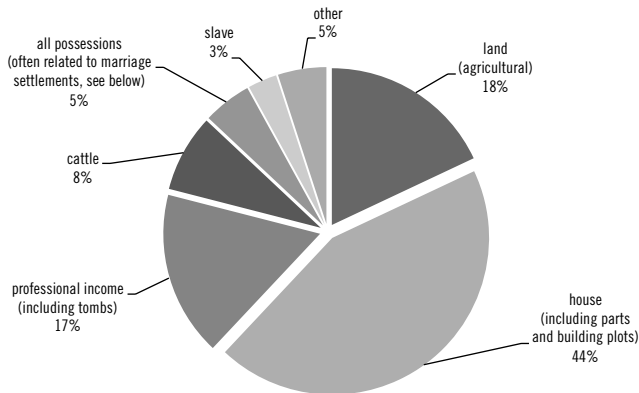


Figure 2 – Object sold

The category ‘other’ includes sales of wheat, of tools and objects (e.g. a loom, a winery, a set of ushabtis, thread/yarn, or resin), garden land and water rights.

There are some remarkable evolutions in the object of sales. Thus from the 6th and 5th century BC there are 9 cattle sales and only 4 sales of houses (n=16) are preserved. For the 4th to 1st century, the ratio is very different, with 11 sales

of cattle and almost 145 sales of houses and real estate (n = 254). The reasons for this are unclear.³

‘SALE’ DOCUMENTS IN DEMOTIC: SALE AND CESSION

In the above I have mentioned sales, cessions, donations, and divisions, but also marriage settlements as related ‘genres’. Some ‘legal’ background is necessary to distinguish them.

What is commonly called ‘sale’ among demotists and egyptologists is a document in which after a date, the vendor (‘party A’) and the buyer (‘party B’) are identified in an objectively styled statement: ‘What A has said to B’. This is followed by subjective declarations by the vendor in the first person, saying: ‘You have satisfied me (‘my heart’) with the silver (money) for’ to introduce the object of the sale. The vendor goes on to state that he has given it to the buyer, that he has received the price, that he guarantees to intervene against anyone else who will claim to have rights, and that he will swear an oath in court if needed. This can be followed by similar subjective declarations, again introduced by an objective identification clause, by interested third parties such as close family members with possible claims to the property. A signature of the notary closes the document.⁴

Many of these sale documents, however, are accompanied by a second document on the same papyrus, written on the same day by the same parties and the same notary, concerning the same object. In this document, traditionally called ‘cession’, the vendor declares to the buyer that he is far from him concerning his (i.e. the buyer’s) property, and clauses similar to those of the ‘sale’ follow (but not that referring to transfer of silver (money)!). Often a reference to the sale document follows at the end, so that the cession is clearly secondary.

The traditional designation ‘cession’ suggests that only this document really cedes rights to the property, and this is echoed in Revillout’s and Pestman’s long-held interpretation that sales would only transfer the legal right to *use* the property, while cessions would actually transfer the *ownership*.⁵ A historical study of the sales and cessions and a close reading of the documents suggests, however, that cessions do not transfer anything but are merely a confirmation on the part of the declarant that he no longer has any rights whatsoever vis-à-vis the object of the sale.

³ See MANNING 1995, p. 237-268.

⁴ For a survey of the clauses in Demotic sales (and cessions), see ZAUZICH 1968. Compare also the brief survey in LIPPERT 2008, p. 148-149.

⁵ REVILLOUT 1880, p. 3 n. 3; PESTMAN 1969, p. 62.

Evidence for this secondary role of cessions in comparison with sales is plenty.⁶ Cessions themselves often refer to the sales they accompany, while the opposite is never the case.⁷ In some sets of sale and cession documents, the cession has fewer witnesses or fewer witness-copies than the sale or even completely lacks copies.⁸ There are examples of Greek translations of Demotic documents with sale and cession which meticulously render every element of the original, including the autograph subscriptions, but suffice with a simple reference to the cession at the end.⁹ Finally, cessions are often absent in the sense that a sale of a house is the only document preserved of a specific transaction. Such an argument *e silentio* can be very dangerous because so much evidence is lost, but in some closed finds it seems highly unlikely that the cessions would have been discarded while the sales were carefully preserved.¹⁰ If therefore the vendor in the sale states ‘I have given you my house; it is yours’, while he states in the related cession ‘I am far from your house’, this makes clear that the house was already owned by the second party when the cession was drawn up. An existing situation is confirmed rather than a new one created, which is nicely illustrated by the use of the qualitative form of the verb *wy* ‘to be far’ (referring to the resulting state) rather than the infinitive ‘to remove’.¹¹

The ‘cession’, ‘quitclaim’, or even better ‘document-of-no-rights’, thus confirms that the declarant is content with an already existing, albeit often recently changed situation. The oldest examples do not accompany sale documents, but are used in other contexts. Perhaps the most popular one is after a verdict in a trial, when the losing party can be forced to make a document in which he refrains from further actions on the object of litigation, the so-called withdrawals after judgement (‘Streitverzichterklärung’).¹² A cession could also be drawn up to confirm that an obligation had been fulfilled, for example when the document stipulating the obligation could not be given back for some reason.¹³ Another typical use is when ownership changed at the occasion of an inheritance and the heirs and new owners wrote cessions to confirm that

⁶ This paragraph strongly relies on my contribution ‘Cessions’ in the forthcoming volume KEENAN – MANNING – YIFTACH-FIRANKO 2014.

⁷ See ZAUZICH 1968, p. 151 nos. 67-70.

⁸ See DEPAUW 1999, p. 67-105, esp. 96-97.

⁹ E.g. CPR XV 2 (TM 9904).

¹⁰ DEPAUW 2000, p. 4-7.

¹¹ The qualitative is a grammatical form indicating a state resulting from the action expressed by the infinitive of the verb: see JOHNSON 1976, p. 21-27.

¹² ALLAM 1994, p. 19-28.

¹³ P.Tsenhor 15 (TM 47179).

they had no claims on the portions of other parties.¹⁴ In all these cases, like in the cessions accompanying sales, party A acknowledges an existing, albeit often recently changed situation, to remove all doubts concerning the validity of party B's claims.

It is thus not unlikely that through the addition of a cession to a sale, the vendor anticipates on a potential (lost) trial concerning ownership. Sale and cession are often combined on the same papyrus sheet, although in many cases this is difficult to determine with certainty because the large papyri (up to 5 metres!) have often been cut in two in collections when they were framed. The earliest example of the combination seems to date to 304 BC.¹⁵

'SALE' DOCUMENTS IN DEMOTIC: 'CONDITIONAL' SALES

On the other hand it should be emphasized that sale documents without accompanying cession could also be used as security for the fulfilment of obligations. This is especially attested for two situations: mortgages and marriage settlements (perhaps better 'financial unity agreements').

The first are the so-called mortgages, 'hybrid' loan-sale documents from Ptolemaic Upper Egypt in which party A declares to have received a specific sum of money from party B, and to be satisfied with the money for his property, usually a house, if the debt is not paid back by a specific date. In case of default, the conditional sale was a fact and a cession was added at the date of default.

The second combination is found in a type of document which would perhaps best be called 'annuity contracts', but since they most often appear in the context of marriage, they are commonly known as the so-called marriage settlements belonging to a specific type 'C', the *s'nh*-documents. In these documents party A acknowledges to have received from party B a sum of money described as *s'nh*, which must mean something like 'dotation capital' or 'annuity'. In return for this sum party A promises a yearly income for party B, and states that everything that he owns and will own is the security for this promise. This document of annuity very often stands on itself, but there are examples where it is accompanied by a document of sale with the same parties, written on the same day by the same scribe. In this, party A declares that he has received the money for all his current and future possessions from party B, followed by the other customary formulae for sale. This is clearly just a

¹⁴ P.Louvre N 2430 (TM 46113).

¹⁵ P.Louvre E 2427 + 2440 (TM 43827 + TM 43828) from Thebes, Jan-Feb 304 BC.

more explicit formulation of the security clause in the annuity documents and the sale is fictional or conditional in the sense that party B (mostly the woman or wife) can only claim it as far as party A (the man) defaults on the annuity provided in return for the *s'nh* 'dotation capital'. This condition is not made explicit in the text of the sale document itself, which somehow suggests that sale documents were insufficient for the transfer of property (thus apparently confirming the traditional interpretation). Lippert therefore argues that this supplementary document of sale was not given to the beneficiary but to a *Urkundenhüter*, a trustee of both parties who safeguarded the document as an impartial third party.¹⁶ Perhaps this is a lot of trust to put in someone, however, and an alternative is to assume that the supplementary sale was always on the same papyrus next to the annuity contract, so that it clearly formed a whole with it. In some cases the two documents on these large papyri became separated in modern collections, but in others they still stand next to one another.¹⁷ A third alternative is to assume that sales for all current and future possessions were readily recognizable as security for annuity contracts anyway.

An indication that a return to the traditional interpretation is unwarranted is also provided by the evolution of mortgage agreements. The procedure described above apparently changed in the Roman period. Mortgage agreements then became bilingual documents with a Greek loan on the right combined with a Demotic sale and cession (and a Greek summary of these underneath) to the left.¹⁸ Here even the combination of sale and cession is still conditional upon non-repayment of the loan, effectively replacing the sale on its own of Ptolemaic times. This suggests that sale by itself and sale and cession combined had the same legal value. Similar is the only Demotic annuity contract preserved from Roman times.¹⁹ Because of its fragmentary nature, it would have remained uncertain whether it was accompanied or not by another Demotic text, were it not for the Greek subscription, which describes the Demotic as a [κα]τ[ὰ] Αἰγυπτίαν συνγραφήν τροφίτιν ἀργυρίου [χρυσῶν ια] 'according to the Egyptian annuity contract for 21 silver drachmae' but also speaks of καὶ τὴν ἀποστασίου καὶ πρόπρασιν 'the cession and preliminary sale'. The latter 'proprasis' is a standard rendering of the document of sale in this context, so we know that this must have been lost, but more

¹⁶ LIPPERT 2008, p. 151.

¹⁷ P.Cairo 30616 (TM 43284).

¹⁸ Although the Demotic itself had probably become legally worthless by new measures favouring Greek, taken soon after the Roman conquest, in some cases the Egyptian scribes still added it above the Greek summary subscription which had become essential.

¹⁹ P.Mich V 347 (TM 12157) dated AD 21.

interesting is that in this Roman contract apparently a cession (ἀποστασίου) accompanied the sale from the start. This addition is parallel to that found in mortgages, and seems to suggest that Roman regulations stipulated that sales should be accompanied by cessions at the conception of the agreement.

A final document shedding light on the relation between sale and cession is the only known Ptolemaic period cession written by a man for a woman in the context of a combined sale and annuity contract.²⁰ The man states that he is far from ‘everything’ (*nty nb nkt nb*) for which he has written her a sale ‘before today’ (*h3.t p3 hrw*). He does not bother to specify it, but just refers to the list on the other document (houses, building plots, tombs, etc.). Initially he describes these as ‘your houses, your building plots, ...’, but as the enumeration proceeds he slips into ‘my work as choachyte’ etc. At the end he even adds *nty nb nkt nb nty mtw=y hn’ n3 nty iw=y dī.t hpr=w* ‘everything which is mine and what I will acquire (in the future)’. This transaction can hardly be put in the context of divorce, since this would have been a very painful deal for the former husband: he would effectively not be able to gather property ever again. Instead it seems more likely to assume that the marriage is not over at all, but that instead the husband is moribund and decides not to rely on the condition of not fulfilling his obligations, which would activate the sale which accompanies the annuity, but to confirm before dying that the transfer of property to his wife and children is effective. And indeed in 265/264 BC we see his wife in another document selling half of her property to her oldest son, on condition that he will take care of her during her lifetime and will bury her properly.²¹

So what was the condition of women who received such annuity contracts and became *s-hm.t n s’nh* ‘annuity woman’, a title apparently born with pride since it appears when they are identified in contracts?²² Initially these marriages were misunderstood as trial marriages, and then for a long time people believed they were the most ‘decent’ marriages in view of the equality of value of the *s’nh* on the one hand and annual payments by the husband on the other. Although the latter is probably untrue,²³ it seems ‘annuity wives’ had the best possible status, since in the contracts the husband (or relative) confirmed that his entire possessions were the security for the dotation capital (theoretically?) paid in by the woman. Moreover the annuity contracts, unlike some of the other types of marriage contracts, do not say anything about the possibility of divorce.

²⁰ P.Louvre N 2428 (TM 46111) from 277 BC.

²¹ P.BM Andrews 1 (TM 310).

²² DEPAUW 2014, p. 80.

²³ LIPPERT 2008, p. 168.

Yet in the famous Siut archive which deals with a case of divorce and re-marriage, this is exactly what happened.²⁴ A man called Petetum had married his first wife, an annuity woman, and had two children by her. Shortly before he died in 181 BC he remarried with the agreement of his first wife, with a woman with whom he apparently already had two children. At the occasion of his second marriage, again with the consent of all parties involved, his property was divided: 2/3 for the children of his first marriage and 1/3 for those of his second. Eleven years later, however, in 170 BC his daughter-in-law Chratianch who had married his oldest son from his first marriage, protests against this arrangement. Unfortunately for her, however, she had consented to it herself three years earlier, in 173 BC, and thus lost the trial before the judges.

The final verdict quotes two existing laws that seem to put Chratianch in the right.²⁵ The first says that a man who marries and draws up an annuity contract, then divorces and marries again and draws up another annuity contract for his second wife, when such a man dies his possessions will go to his first wife and their common offspring. The second says that a man who has written an annuity contract cannot sell any of his possessions without the consent of his wife or her oldest son; if he does, the transaction will be invalid.

What thus ruined Chratianch's case was that she herself (and her husband earlier) had consented to both the new marriage of Petetum and the division of property between Petetum's offspring. Her claim that she was forced to agree is considered invalid, and it is explicitly pointed out that she has signed the contract in her own hand, a rather uncommon safety measure enhancing the legal value of the deed.²⁶

Against this background, the story of Setne and Tabubu becomes more understandable. In this Demotic narrative, part of the so-called First Setne Story,²⁷ the hero Setne is walking around and suddenly spots the beautiful Tabubu, a daughter of the prophet of Bastet wearing a see-through dress, and falls head over heels in love with her. She allows him to come to her house, but when he wants to take 'appropriate action', she tells him that she is not a woman of the street but wants him to write a document concerning money (i.e. a sale) for all his possessions and an annuity contract. After he agrees and insists on going ahead with things, she then forces him to fetch his children, to make them sign underneath the contract. When he has again agreed, and the children have

²⁴ PESTMAN 1961, p. 187-188.

²⁵ PESTMAN 1961, p. 43-44.

²⁶ See DEPAUW 2003, p. 66-111.

²⁷ TM 55857: GOLDBRUNNER 2006. See also VINSON 2009, p. 283-303.

done what Tabubu wanted, Tabubu then decides that she wants the children dead. Blind of love and lust, Setne agrees and has his children slaughtered. With animals that are devouring his offspring howling in the background, he then mounts the stairs with Tabubu and finally get his way with her, only to wake up completely naked in a rather embarrassing position with pharaoh approaching. Almost like Bobby Ewing in the famous shower episode of the 'Dallas' soap, he realizes everything has been a dream. The story illustrates beautifully that death of possible rivals was the ultimate safety measure, because – like Chrtianch – children and in-laws can still dispute settlements.

'SALE' IN DEMOTIC AS IMMEDIATE CASH SALE

Sale in Egyptian law is in principle cash sale: the sale document is a confirmation that the vendor has received the price in silver (money) (or in barter in the case of an exchange). Donations are very similar to sale documents but do not refer to a price, they just say 'I have given you ...'. Even so, the price itself is not mentioned in the Demotic documents, unlike in the abnormal hieratic contracts. This thus seems an idiosyncratic scribal tradition rather than a principle of Egyptian law. In any case this allowed the sale documents to be used also for donations or as security, as we have seen above.²⁸ This vagueness of purpose and even sometimes ambiguity of parties seems almost typical, and clarity can often only be achieved by study of the archive of which the document is part.²⁹

A Demotic sale is in principle immediate, and the vendor has to guarantee 'clear title' to the buyer. He is responsible for claims that might come from third parties. If there is nevertheless a dispute of ownership which the vendor could not solve, a three year period seems to have been crucial in Egyptian law to challenge or confirm transfer of property. The dispute was to be made public by filing several so-called 'public protests' or *š'r*, official documents which, if they remained unchallenged, effectively put the plaintiff in the right.³⁰

To prevent the illegitimate sales, the vendor also handed over older sale documents concerning the same property. This is attested in several archives where consecutive sales concerning the same property have been found.³¹

²⁸ LIPPERT 2008, p. 147-148.

²⁹ Examples in PESTMAN 1995, p. 79-87.

³⁰ MUHS 2002, p. 259-272.

³¹ E.g. the archive of Apynchis son of Tesenouphis (www.trismegistos.org/archive/108) or that of Teos and Thabis (www.trismegistos.org/archive/228).

Previous sale documents may even have played a role in the layout and form of later ones.³² If there was no previous owner, land could also be auctioned off to the highest bidder, e.g. after the Great Theban Revolt in the 2nd cent. BC.³³

DOCUMENTING SALES IN DEMOTIC

So far I have not said much about institutional arrangements or the way the agreement between the parties was documented. First of all it seems that the Demotic contracts were written evidence of oral agreements. The text explicitly states at the beginning that the first party has declared ('said') something to the second party. The official character of that declaration is confirmed by the elaborate clauses of the contract itself, but also its materiality. Almost all Demotic contracts are written on papyrus (1523 of the 1611), with the few exceptions being 72 pottery sherds and 7 limestone fragments (the so-called ostraca), 4 wooden tablets, 1 complete pottery vessel and finally 4 stelae. Contracts of sale are even more exceptional on writing surfaces other than papyrus. Except for 2 stelae which document ownership to a tomb, and an unclear ostrakon, there are currently only 4 pottery sherds from Ayn Manawir in the Kharga oasis, where papyrus was scarce and ostraca formed the standard writing material.³⁴ As a general rule, papyrus was the only 'proper' material for important sale contracts, and preferably a very large sheet with long lines and ample margins was used, the so-called large format.³⁵

The authority of the person in whose name the contract was written, in many cases probably also the actual scribe, will also have added to the impression: this was the temple notary, or perhaps better temple scribe, whose family (or families if there was more than one) belonged to the local nobility.³⁶

I have already mentioned the possibility to add a clause inside the contract in which an interested third party, often a spouse, father or son, is mentioned as approving the contract. In some cases, although certainly not as a rule, this person also signs the contract in his own hand, and this handwritten confirma-

³² DEPAUW 1999, p. 70 & 101.

³³ MANNING 1999, p. 227-284.

³⁴ For a survey of the material from Manawir, see e.g. WUTTMANN – BOUSQUET – CHAUVEAU – DILS – MARCHAND – SCHWEITZER – VOLAY 1996, p. 385-451.

³⁵ I here focus on the large format Demotic contracts, which are customary for most sales. For information on format, see DEPAUW 2013, p. 155-170.

³⁶ ARLT 2009, p. 29-49.

tion is also a possibility for the declarant himself or anyone other interested third party.³⁷

These signatures of interested third parties should not be confused with those of the witnesses. These ‘objective’, neutral and trustworthy citizens were called upon to add their signatures (name and father’s name), mostly on the back of the contract, exactly on the reverse of where the verb ‘to declare’, introducing all legal statements, was written on the front. Especially in earlier periods, some of the witnesses even copied the entire text of the contract, a very cumbersome procedure which showed that at least some were good scribes. Their presence and signatures were essential for the validity of the contract, as is indicated by the fact that their names were copied when the contract needed to be duplicated, but also by claims that a contract was invalid ‘because it had not yet been filled with witnesses’. Their signatures may themselves not have sufficed, however, in case of discussion, as a legal text in great detail stipulates all the rules of validity of a contract in case the witnesses have died and they can no longer confirm the transaction.³⁸

Further confirmation of the validity was provided by subscriptions added underneath the contract by institutions. A first important one was the (most often Greek) tax receipt, which could also be written on a separate sheet of papyrus or an ostrakon. The other common subscription is the registration of the contract, almost always in Greek. After the third century BC, the procedure became very common in the middle of the second century BC, when the rules were probably changed and Demotic contracts lost their validity unless they were registered.³⁹

After the contract was written, it was not sealed (unlike common practice for some types in Greek), but rolled up and normally handed over to the buyer together with older title deeds concerning the same property, if available. In some cases a so-called ‘neutral’ trustee seems to have kept the document(s), but his role is not well known.⁴⁰

³⁷ For a survey of the formal aspects discussed in this section, with reference to further literature, see DEPAUW 2012, p. 309-320 or LIPPERT 2008, p. 136-140.

³⁸ LIPPERT 2004, p. 38.

³⁹ PESTMAN 1985, p. 17-25, but see now DEPAUW 2011, p. 189-199.

⁴⁰ LIPPERT 2008, p. 145.

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