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The study of ancient Near Eastern trial procedure has a long history, and the judicial systems of several periods have been investigated in detail. What remains lacking is a thorough and systematic treatment of the trial law and procedure from the Neo-Babylonian and Persian periods, though numerous legal texts have been studied. Recently two dissertations by F. R. Magdalene and S. E. Holtz have described the adjudicative process from the bringing of charges by an accuser through various stages and actions, including the taking of witness statements, interrogation, the examination of physical evidence, courts’ demands for further evidence, summonses, and the issuing of conditional and final verdicts. Both also provide a basis for further investigation of this southern Mesopotamian legal system, which seems to have followed longstanding traditions but also contains indications of new developments.

While both studies examine several hundred trial-related documents, one particular text that has been the subject of interpretation since the late nineteenth century receives scant attention. The document in question is Dar. 53. A close analysis of its text raises significant questions with regard to a particular aspect of trial procedure during the Neo-Babylonian and Persian periods. The text has never been satisfactorily treated, and recent references to it in scholarly literature in fact have led to erroneous conclusions about what it reveals in general, and regarding law and procedure in particular. Despite a consistent belief that the text records a trial, Dar. 53 actually arises from pre-trial demands and the resulting negotiations.

Unlike some previous periods of ancient Near Eastern history that have ample documentation for pre-trial procedures, legal texts from Neo-Babylonian and Persian times provide very little evidence for such activities. Nevertheless, combined with other indications from relevant documents, Dar. 53 allows for the conclusion that certain pre-litigation procedures and protocols could be used before one of the parties lodged a formal legal accusation, and that pre-trial negotiations between the parties could lead to agreements that might avoid the need for litigation, or at least establish the terms under which a full-fledged trial would begin.

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1 On the Neo-Sumerian period, see Falkenstein 1956–7; for Old-Babylonian, see Dombradi 1996; for Nu’zi, see Hayden 1962; and for Neo-Assyrian, see Jas 1996.

2 In addition to the work of scholars from the first half of the twentieth century, such as A. Ungnad, M. San Nicolò, and H. Petschow, some of the more recent and extended discussions include: Wunsch 1997–8 and 2000; Joannès 2000, and Wells 2004: 108–27.

3 Magdalene 2007 (based on On the Scales of Righteousness: Law and Story in the Book of Job, Ph.D. diss., Iliff School of Theology and University of Denver [Colorado Seminary], 2003) considers a variety of legal metaphors in the book of Job in light of data gleaned from Neo-Babylonian trial-related documents. She devotes an entire chapter to a legal historical study of the trial procedure reflected in these documents. Holtz 2006 seeks to understand how cases were adjudicated in these periods and carries out its analysis by means of a text typology that helps to illuminate various stages of procedure (the author is revising his dissertation for publication).

4 Holtz refers to Dar. 53 in one footnote (2006: 282–92) and uses it as an example of a text that refers to judges (dayyina) but does not name them. Magdalene mentions the text in several footnotes but only to point out that previous work both misinterpreted the oath in Dar. 53 and wrongly identified the document as recording a mid-trial search and seizure (2007: 67–8 and 88–91).

5 A set of pre-trial actions from the Old Babylonian period is well known and has received extensive discussion (Dombradi 1996: 1: 295–302). As for the Neo-Babylonian and Persian periods, on the other hand, the act of taking depositions is the only pre-trial action mentioned in Oelner, Wells and Wunsch 2003 2: 922, and it is often difficult to determine whether these so-called depositions are witness statements that were made before or during the trial.

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Previous scholarship

The first published reference to Dar. 53 comes in J. Kohler and F. E. Peiser’s pioneering work on Babylonian legal documents. What is noteworthy is that this particular reconstruction has endured for over one hundred years and therefore merits detailed discussion. They introduce the tablet as a *Vindikationsprozeß*, and the reasons for this conclusion are manifest in their translation:


This reading of the text assumes that Nabû-apla-iddin has initiated a suit to retrieve a slave who, he claims, ran away from his household. Apparently the slave had stumbled into the possession of a certain Nabû-uballit, who seems to have changed the slave’s name to sell him to Marduk-nāṣir-apli, although the slave may not yet have left the possession of Nabû-uballit. To substantiate his claim, Nabû-apla-iddin takes an oath in which he asserts that he knows where the slave is now residing, and that he plans to go and get him. The court then issues its opinion, which is recorded in this document. The court allows Nabû-apla-iddin to go to the place where he has seen the slave (supposedly the house of Nabû-uballit), thereby giving him the opportunity to confirm what he has asserted before the court. Should he be able to do so, then on that very day, he may take the slave back into his service and achieve the goal he set out to attain.

In Kohler and Peiser’s view this record is about the court granting Nabû-apla-iddin access to the slave to prove his ownership right (“Spurfolge”). Regardless of how one reads the text, the story behind it must be inferred to some extent. For the sake of clarity, the elements of their reconstruction are presented below in the chronological order that this particular reading assumes:

1. Nabû-apla-iddin has ownership and possession of the slave.
2. The slave disappears from Nabû-apla-iddin’s possession.
3. Nabû-uballit changes the slave’s name and initiates the sale of the slave to Marduk-nāṣir-apli.
4. Marduk-nāṣir-apli pays the money for the slave, but the slave is not yet transferred from the possession of the seller to that of the buyer.
5. At some point (the chronological placement of this event is variable), Nabû-apla-iddin sees the slave in the household of Nabû-uballit.
6. Nabû-apla-iddin goes to court and sues to get his slave back. The defendant would appear to be Nabû-uballit.
7. Nabû-apla-iddin swears that he knows exactly where he can go and find the slave.
8. The judges tell him that he should go there in order to confirm that the slave is indeed in the house of Nabû-uballit.
9. The judges also say that once this is confirmed, the slave will be required immediately to enter back into the possession and service of Nabû-apla-iddin.

According to this reconstruction, Dar. 53 is a case of property reclamation. It demonstrates the original owner’s right to take legal actions of this nature, and the court’s willingness to support this right. It also shows the risk that a person such as Marduk-nāṣir-apli assumes when purchasing property from a seller of, presumably, unknown credibility.

Overall, the case presents a situation similar to those envisaged by older Babylonian law collections, in which an owner claims to have lost property, another may have found and sold it, and a third says he purchased it in good faith.8 The idea is that courts have to sort through these

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6 Kohler and Peiser 1890–8 3: 51 f.
7 The spelling of names has been normalized according to current conventions; filiations are omitted.
8 We use the modern legal term “good faith” as it is used in many areas of law, but most importantly in commercial law, to express the idea that one has a sincere belief in something or has no fraudulent or malicious intentions in regard to an act. A good-faith purchaser for value (buyer in good faith) is protected under American law by Uniform Commercial Code secs. 1–201(9) and 2–403, which is law in every
matters with some care, since any one of the three involved could be lying. While an attempted reclamation of property is certainly involved in the case, Kohler and Peiser’s interpretation carries significant problems which will be discussed below.

Shortly after Kohler and Peiser’s publication, C. H. W. Johns discussed Dar. 53 and repeated nearly verbatim the former’s interpretation.9 CAD D (1959) also relies on it, at least concerning the clause about compensation.10 Later volumes do not include any interpretative contextual translation. The document seems not to have been discussed again until 1972, when I. Spar refers to it in his dissertation. He, too, follows Kohler and Peiser’s view, although he understands the slave not to have run away but to have been stolen by Nabû-uballit. He summarizes the text this way: “In Dar. 53 the court decreed that if the claimant’s [Nabû-apla-iddin’s] allegations of theft proved to be correct, the accuser [Nabû-apla-iddin] should have his slave returned to him.”11 In 1984, the same reconstruction of events appears in M. A. Dandamaev’s treatment of slavery during the Neo-Babylonian and Persian periods.12 He also has included Spar’s idea of theft in his interpretation and adds: “It is characteristic of this type of document that no mention is made of a punishment for the abductor of the slave.” In an extensive 1995 article on ancient Near Eastern slavery, R. Westbrook refers to this text citing Dandamaev’s interpretation and summarizes its content as outlined above in 1–4 and 10.13 F. Joannès in a 1997 essay on the Neo-Babylonian oath mentions Dar. 53 to support the idea that the oath could be used by claimants of property when they were unable to produce written proof of their right to the property, and suggests that the original owner may have acquired the slave “par transmission familiale”.14 More recently he provided a transliteration of the whole text on the Achemenet website,15 but his short summary of its contents does not go beyond the indisputable premises: that a fugitive slave is claimed by his purported owner. In a 2004 edition of three Neo-Babylonian court cases M. Jursa mentions Dar. 53 in passing.16 He correctly understands the payment to be compensation for the slave’s work rather than his purchase price, but he assumes it to be made “to the slave’s rightful owner if the slave were to be found working for the plaintiff after the case has been decided against him”. This view finally marks a departure from Kohler and Peiser’s ideas because it assumes a pre-trial situation, but it still does not convince in all details. Why would litigants want to make an arrangement before the court takes a decision about what should happen in case the losing party does not comply to it? The text therefore is in need of a new interpretation.

Dar. 53 reconsidered

Our edition is based on collation and provides the basis for an entirely new understanding. It is true that Marduk-nāṣir-apli purchased the slave from Nabû-uballit, that Nabû-apla-iddin claims §40 and Laws of Hammurabi §§9–11, which show that a prior owner could bring suit against a buyer in good faith who had purchased the property in question from a third party. In such a situation, if the buyer in good faith had purchased stolen property and the original owner had not been involved in the sale, then the third-party vendor would be guilty of fraud, and the buyer would have rights to take legal action against the vendor. An unsuccessful attempt to sue a buyer in good faith is documented in Cyr. 332, where, as it turns out, the original owner had lodged a false claim. Nevertheless this case proves our point: it would not have been allowed without the legal system granting the original owner such rights. For further discussion of Neo-Babylonian contract law and fraudulent sales, see Oelner et al. 2003 2: 944–61, 964 f. 9 Johns 1904: 110.

9 CAD D, 122 f. s.v. dātu a: “he will replace (the slave) according to the pertinent royal decree.”

10 Spar 1972: 10.

11 Dandamaev 1984: 223.


prior ownership of the slave, and that the slave’s name may well have been changed. Beyond these conclusions, however, most of the previous ideas about the text have been misguided. For example, the text does not record a formal trial before judges. Nabû-apla-iddin never claims to have seen the slave in the household of Nabû-uballiš, Nabû-apla-iddin does not swear that he knows where the slave is but, in fact, swears to the exact opposite of that. The case does not conclude in Nabû-apla-iddin’s favour. On the contrary, the party whom the document favours is the one who holds the document. Since Dar. 53 comes from the archive of the Egibi family, Marduk-nāṣir-apli must have been that party. Ultimately, the document represents a private contract between two possible litigants in anticipation of litigation. Marduk-nāṣir-apli initiated the execution of the contract with Nabû-apla-iddin before witnesses in order to assure that a lawsuit would take place if conditions should warrant it.

Dar. 53 (BM 30744: 76–11–17, 471)

1. The copy suggests -AG- in m4-AG-IBILA at the end of the line but the signs on the edge are far from clear. As there are no other tablets known pertaining to this case, the identity of the vendor remains obscure.

1. The collation confirms Peiser’s suggestion.

1. The second part of the oath is difficult to read because it was written over an incomplete erasure. Peiser emends to a(?)-ta(?)-ba(?)-ak(?), Joanne’s suggests id-da=gal; both readings fit the context but do not match the signs (see Fig. 1). Our reading is owed to A. R. George.

1. The third witness appears as a witness in another Egibi tablet, Camb. 341:12. It records a considerable debt owed to Marduk-nāṣir-apli’s father.

1–8 (This is concerning the slave) Nabû-šēpšu-šuzziz, whom Marduk-nāṣir-apli, son of Itti-Marduk-balātu from the Egibi family, bought from Nabû-uballiš(?), son of Nabû-apla-iddin from

Fig. 1 BM 30744 obv. 8, detail.
the Sin-sadunu family, and (later) Nabu-apla-iddin, son of Nabu-nadin-ahī from the Mudammiq-Marduk family, spoke thus: “He is Nabu-killanni, my slave.” And (then) he escaped.

7 The Nabu-apla-iddin has sworn by Bēl and Nabu: “(May I be cursed) if I know where he is or he is (staying) with me.”

9–12 (From) wherever Nabu-apla-iddin sees him, he will bring him before the chief judge and the judges; (and) their case will be settled.

12a–15 If (the slave) is seen in the house of Nabu-apla-iddin, then for the days that he will have served Nabu-apla-iddin he will pay compensation (to Marduk-nāṣir-apli) according to the king’s rules.


Archival context
As previously noted, this document has survived among the remains of the Egibi archive from Babylon. The Egibi family ran a successful set of business enterprises and achieved, it appears, a high degree of importance and influence. Marduk-nāṣir-apli, our buyer in good faith, came from this family, and this is one of his earliest business records. He was the eldest son of Itti-Marduk-balatu, who vanishes from our documentation with the beginning of Darius’ reign. He seems to have died unexpectedly early before he had a chance to initiate his eldest son into his business dealings. He had probably already arranged for his son’s marriage, but the dowry transfer had not yet taken place, for it was conducted by Marduk-nāṣir-apli’s maternal grandfather on his behalf early in Darius’ reign.

Marduk-nāṣir-apli and his two brothers were heirs to a large fortune that three generations had helped to build. Their father and grandfather were well connected to high officials in the royal administration and had made their money through commodity trading and tax farming. They had acquired and owned dozens of slaves, some of whom were hired out or working on their own account. A few prominent slaves successfully managed part of the family’s business affairs. An inventory from Darius’ fourteenth year counts over one hundred slaves and mentions some additional ones as fugitives.

It appears that Marduk-nāṣir-apli was about eighteen years old at the time of his father’s death, and probably only nineteen or twenty at the time of the transaction recorded in this tablet. His youth and lack of business acumen made him vulnerable to fall prey to a fraudster. His father would have been on his guard, since he had been exposed to fraudulent claims and knew better how to prevent or fight them. We may suspect that Marduk-nāṣir-apli, after running into difficulties with the slave purchase, received advice and guidance on how to proceed from his grandfather, and possibly from the business acquaintance of his father who acts as the third witness to our record. Unfortunately, none of the other participants or witnesses of the document appears again in the records of which we are aware.

Reconstruction of events and legal analysis
The text essentially opens with an historical prologue that identifies three facts about the slave named Nabu-šēpu-šuzziz. The first comes in the very first clause, which states that Marduk-nāṣir-apli purchased the slave from Nabu-uballit. The second fact appears in the next clause, which records Nabu-apla-iddin’s statement: “He is Nabu-killanni, my slave.” It seems unlikely that it would have been recorded unless it had been a formal statement made before witnesses. The third

17 For an extensive discussion of the Egibi archive, see Wunsch 2000b, esp. 1–15. This work does not, however, address the slave materials and thus no discussion of Dar. 53 is included.
18 See Wunsch 1995–6: no. 4.
19 For more on their business practices, see Wunsch 2000b: 12–15.
20 Dar. 379: 17.
21 The first mention of Marduk-nāṣir-apli comes in the will of Itti-Marduk-balatu, which dates to the accession year of Cyrus, about 19 years before Dar. 53; see Wunsch 1993: no. 260.
22 See, e.g., Nbn. 720 (with duplicate TCL 13 219); note the join to this tablet in Wunsch 2000b: no. 90. Interestingly enough, the two would-be swindlers in Nbn. 720 are from the Sin-sadunu family, and hence bear the same family name as the man who is said to have sold the slave to Marduk-nāṣir-apli in Dar. 53 and who thus may have been involved in an attempt to defraud Marduk-nāṣir-apli (see further discussion below).
clause, which is connected syntetically to the second clause just as the second is connected to the first, reveals the third fact: the slave has run off. It is tempting, perhaps, to include this third clause as part of Nabû-apla-iddin’s statement, but doing so becomes problematic in view of Nabû-apla-iddin’s subsequent oath. His oath is clearly assertory and must be understood as a typical Neo-Babylonian assertory oath, which leaves the apodosis (“may I be cursed”) unstated and thus appears to assert the opposite of what the oath-taker really means.23 The key words ascribed to Nabû-apla-iddin’s oath are ki aṣar aṣbi idā “if I know where he is”. Nabû-apla-iddin is claiming that he has no idea where the slave might be found. The slave has indeed disappeared. He is at neither Marduk-nāṣir-apli’s house nor Nabû-apla-iddin’s house, let alone Nabû-uballit’s house. If the disappearance of the slave were to have occurred prior to Nabû-apla-iddin’s first statement (“He is Nabû-killanni, my slave”), then he certainly could have included in his statement the fact that the slave escaped. If, however, the slave were still missing at the time Dar. 53 was written, as Nabû-apla-iddin’s oath indicates, how would he have been able to identify the slave as his missing slave? The slave must have reappeared in order to have been sold to Marduk-nāṣir-apli and for Nabû-apla-iddin to have claimed him. He then disappeared again. It is this latter disappearance to which the text most likely refers. It is the more important of the two disappearances, since it prevents the slave from being available for questioning by the parties involved in the matter. The third clause, therefore, is unlikely to be part of Nabû-apla-iddin’s initial statement.

Following this three-part introduction, the text records Nabû-apla-iddin’s oath. As just argued, the oath is essentially one of denial: he swears that he does not know the location of the slave. This is curious. What might prompt him to take such an oath? Nabû-apla-iddin has had to go on the defensive. In order to ascertain the reasons for this and other questions, a new reconstruction of events is necessary.

Apparently Marduk-nāṣir-apli bought the slave innocently from Nabû-uballit.24 The dispute arose when Nabû-apla-iddin, the purported original owner, somehow learned of Marduk-nāṣir-apli’s possession of the slave. He must have gone to Marduk-nāṣir-apli and claimed that the slave’s true name was Nabû-killanni and that he was the slave’s legitimate owner.25 If this were indeed the case, Nabû-apla-iddin would have legal ownership rights superior to those of Marduk-nāṣir-apli, in spite of the fact that Marduk-nāṣir-apli may have been a buyer in good faith.26 If the purported original owner’s claim should be legitimate, Marduk-nāṣir-apli would have to tender the slave back to Nabû-apla-iddin. His right for contractual damages would be against Nabû-uballit, the wrongful vendor. Thus, Nabû-apla-iddin came to make a demand upon Marduk-nāṣir-apli in regard to his rightful ownership of the slave. It is possible that the pre-trial demand was made privately. A pre-trial demand could, however, have been made in a formal and public manner before a group of mār bānī as in Camb. 359.27 The explicit recording of the statement in our document indicates that it was likely made in public. The problem is that the slave has now escaped from Marduk-nāṣir-apli, and title, therefore, cannot be formally settled.

This raises the question as to why the slave ran. It may be that Nabû-apla-iddin’s claim was rightful and that the slave, fearing severe punishment, ran upon Nabû-apla-iddin’s detection of him. At first sight one might believe that this is the likely explanation. Marduk-nāṣir-apli (or his more experienced grandfather) appears, however, to be suspicious of the situation. He believes

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24 It is likely that the original contract named an additional guarantor concerning the status of the slave as many such contracts did (cf. Dandamaev 1984: 182–6).
25 Dandamaev suggests that the slave’s name, Nabû-šēpu-šuzzu, means “O Nabû! Stop his feet!” (1984: 223). If this were so, the name might have been a provisional one for a slave of disputed identity and with a predisposition for running away.
26 See the discussion in fn. 8 above.
27 For further discussion and supporting materials on private and public demands, see Magdalene 2007: 67 f. Holtz 2006 also cites evidence that points to pre-trial activity. First, he notes several texts whose wording suggests that “the complaint takes place outside the court, in a separate procedure between the plaintiffs and the defendants” (p. 243). Second, his analysis of verb forms that introduce a number of trial records indicates that a pre-trial confrontation between the accuser and the defendant probably took place more frequently than previously thought (pp. 243–8). We agree that pre-trial demands were typically made, but would stress that such a protocol in the Neo-Babylonian period was optional and not required for the plaintiff to have legal standing to bring suit. Moreover, it could take many forms, both formal and informal, cf. Magdalene 2007: 67 f., 93 f. Finally, several documents that Holtz considers “preliminary protocols” or records of investigation might be better analysed as evidence of pre-trial activity (see several of those cited in Holtz 2006: 294–9). He believes, for example, that part of YOS 7 7 (an extremely long record recounting various charges and decisions against Gimillu, an infamous embezzler from this period) con-
that he might be the victim of fraud. On the one hand, the slave and Nabû-apla-iddin might have conspired together, along with Nabû-uballit. Perhaps the plan was to transfer the slave secretly to Nabû-uballit and then later, after the sale to Marduk-nāṣir-apli, to have the slave escape and return to the home of Nabû-apla-iddin. The slave’s cooperation could have been obtained through a variety of incentives or coercive measures. In this scenario, Marduk-nāṣir-apli would lose the purchase money (very likely split by Nabû-apla-iddin and Nabû-uballit) and might even be liable to pay damages for theft, since he would not be able to prove he was a buyer in good faith by producing the vendor, Nabû-uballit, whose brief mention in the text seems to indicate that he has vanished. On the other hand, Nabû-apla-iddin and Nabû-uballit might have conspired without the slave’s cooperation. Their goals would largely be the same as those just described, though they would not have anticipated the slave’s escape from the possession of Marduk-nāṣir-apli. Nabû-apla-iddin might have intended to retrieve the slave from Marduk-nāṣir-apli by force of law, claiming that his rights superseded those of Marduk-nāṣir-apli. After the slave’s disappearance, Marduk-nāṣir-apli might have suspected that the slave would eventually wander back to or be captured by his former owner. One final possibility is that Marduk-nāṣir-apli simply assumes that the slave does not like his new master and has deliberately fled to his former master’s abode. Marduk-nāṣir-apli would not want to be cheated out of property that he believes he has rightfully purchased and may fear that, should the slave return of his own accord to Nabû-apla-iddin, the latter will use his services without litigating the title question. With all of these possibilities, Marduk-nāṣir-apli would have needed to protect himself and keep his ability to litigate the case open should the slave reappear.

Regardless of which scenario Marduk-nāṣir-apli envisages, he is suspicious of Nabû-apla-iddin’s demand. It is likely that he made an equally public counter-demand of Nabû-apla-iddin and began to exert pressure by means of his economic and social clout. He doubtlessly insisted that the purported owner swear before witnesses that he did not know the slave’s current whereabouts. An assembly of mār banī, for instance, could hear oaths that might eventually be used in trial proceedings.28 Thus, nothing unusual from a legal perspective is occurring here, when the purported owner swears that he has not seen the slave. We should note that this oath is not dispositive in Marduk-nāṣir-apli’s potential suit against Nabû-apla-iddin for fraud, since the oath fails to end the dispute decisively in Nabû-apla-iddin’s favor. The matter is not finished. Marduk-nāṣir-apli, therefore, seeks to negotiate with Nabû-apla-iddin. More specifically, Marduk-nāṣir-apli seeks to enter into a pre-litigation contract with Nabû-apla-iddin regarding how the latter will deal with the slave should he learn of the slave’s whereabouts or should the slave return to his home.

As his part of the contract, Nabû-apla-iddin agrees that, should he learn of the slave’s whereabouts, he will bring the slave immediately to the judges so that Marduk-nāṣir-apli and Nabû-apla-iddin can litigate the title question. If Nabû-apla-iddin should fail in this contractual duty, he will have to pay liquidated damages to Marduk-nāṣir-apli equal to the daily rent (mandattu)29 for the slave set by the king’s rules.30 This payment would be necessary for each day that, on account of Nabû-apla-iddin’s failure to bring the slave to court, Marduk-nāṣir-apli was deprived of the usufruct of a slave he had purchased in good faith. This sum is not in the nature of compensation to Marduk-nāṣir-apli for the ultimate loss of the slave: the person responsible for that is the vendor, Nabû-uballit. Rather, the sum serves as liquidated damages and gives Nabû-apla-iddin an incentive to litigate the matter in an appropriate and timely fashion.31

The final question is what was Marduk-nāṣir-apli’s part of the contract. In other words, what
did he give in exchange for Nabu-apla-iddin’s promise to deliver the slave to the court? This is not apparent on the face of the document. What seems most likely is that Marduk-nāṣir-apli promised not to sue for fraud immediately, but to postpone the litigation until the slave should return or be captured. He could raise the fraud claim in the future as a counterclaim, were Nabu-apla-iddin to press forward in his title suit. In the end, he seems to have given Nabu-apla-iddin the benefit of the doubt that the latter’s claim was legitimate, that the slave disappeared on his own initiative and had not reappeared in the meantime.

In light of the foregoing analysis concerning the roles of the parties involved in Dar. 53, we propose a reconstruction of the events that stand behind the text as follows:

1. Nabu-apla-iddin has ownership and possession of the slave.
2. The slave is taken into possession by Nabu-uballit under unknown circumstances.
3. Nabu-uballit changes the slave’s name and sells him to Marduk-nāṣir-apli.
4. Marduk-nāṣir-apli pays for the slave, and the slave is transferred into his possession.
5. Nabu-apla-iddin goes to Marduk-nāṣir-apli and formally claims before witnesses that this slave actually belongs to him.
6. The slave escapes.
7. Marduk-nāṣir-apli suspects fraud and counter-demands.
8. On the defensive, Nabu-apla-iddin swears not to know the whereabouts of the slave.
9. Marduk-nāṣir-apli (the buyer) and Nabu-apla-iddin (the purported owner) negotiate and reach an agreement.
10. The agreement has two parts: (a) if Nabu-apla-iddin sees the slave anywhere, he must bring him immediately to the judges; (b) if he fails to do so, he will have to pay quitrent.

Conclusion

Dar. 53 has been a long-standing problem. Previous solutions have proved unsatisfactory. The foregoing discussion has made use of text collation and new findings in the study of legal procedure from the Neo-Babylonian and Persian periods in order to advance a new interpretation and to highlight the role that pre-trial activity may have played in these periods. Dar. 53 presents a record of such activity between two parties who could become legal adversaries in a trial concerning the question of who is legally entitled to a slave currently named Nabû-šēpšu-šuzziz. The slave might once have been owned by Nabû-apla-iddin but later entered the possession of Marduk-nāṣir-apli of the Egibi family, only to disappear. The two parties form a contract, in which Nabû-apla-iddin agrees that, immediately upon learning of the slave’s location, he will bring the slave to court for litigation concerning who has good title to the slave. If the slave should reappear at Nabû-apla-iddin’s property or work for him in any capacity, Nabû-apla-iddin will pay the standard daily mandattu for the slave to Marduk-nāṣir-apli. In exchange, Marduk-nāṣir-apli most likely agrees to postpone his suit on a fraud claim against Nabû-apla-iddin until such time as the slave reappears. The contract reflects Marduk-nāṣir-apli’s willingness to accept for now Nabû-apla-iddin’s proffered story, and demonstrates that Marduk-nāṣir-apli’s right to sue for the actual loss of the

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32 It is necessary here to utilize the term “contract” in a precise and technical fashion. While ancient historians sometimes use the term more loosely, understanding what it means as a legal term of art can help in understanding the nature of the agreement between Marduk-nāṣir-apli and Nabû-apla-iddin. The agreement is indeed contractual rather than coercive, since neither party has the legal authority to coerce the other. What this means, though, is that the agreement must contain particular features. Bilateral contracts, both ancient and modern, require: (a) evidence of mutual “consideration”; (b) evidence of a “bargained-for-exchange”; and (c) evidence that the exchange is voluntary. That is, a bilateral contract, in order to be a contract, must have a voluntary exchange of things of value between the parties to the contract. What party A offers or promises to offer to party B is party A’s “consideration”. The benefit that party A would like to receive from party B is party A’s “bargain”. Party B must also offer or promise to offer consideration in return for party B’s expected bargain. The requirement that things of value be exchanged in a contract is explicitly acknowledged in a few ancient Near Eastern contractual documents. Furthermore, contracts must contain a voluntary assumption of obligation. Although bargaining power between the two parties to a given contract is often unequal, each party must have the fundamental ability to enter into the exchange freely. In the Neo-Babylonian period, the fact that the decision to enter into the contract was voluntary was sometimes set in writing. For example, contracts for movables commonly stated that the seller made the sale ina hād lībbītu “of his own free will” (see Oelsner et al. 2003: 2: 945).

33 On counterclaims in ancient Near Eastern litigation, see Magdalene 2007: 70.
slave is against the vendor, should he ever reappear. This text, in sum, represents a contract in anticipation of litigation that came about through negotiations between the potential parties to a lawsuit involving a claim and counterclaim regarding the ownership of slave. These pre-trial negotiations have, for the time being, postponed what likely would prove to be a bitter set of legal proceedings.

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