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# 5. LEGAL DOCUMENTS

## 5.1. Document 44: Lease of Land (Rajab 518 AH/ August 1124 AD)[1]

This document records a lease by a certain Raḥma ibn Saʿīd, from a man called Danī ibn Kannān, of shares of land in Danī's estate (*ʾiqṭāʿ*), which was assigned to him by 'the office of the (Fatimid) ruler' (*dīwān al-sulṭān*). The sheet of paper on which the document was written also contains letter **38**, which was addressed to Danī ibn Kannān. Letter **38** is likely to have been written first, with the address on the verso, and the legal document **44** was subsequently written in the space under the address. In the legal document, Danī has the gentilic al-Šaḵriyābī. This relates to Wādī al-Šaḵriyābī, which is mentioned in an Arabic document from the Ottoman period found at Qaṣr Ibrīm (Hinds and Sakkout 1986, document no. 27). In this Ottoman document, Wādī al-Šaḵriyābī is said to be *min ʿamal ʾIbrīm* 'in the administrative district of Ibrīm'. In letter **38**, Danī has the title *al-ʿaqīd*, which appears to have denoted a 'military officer'. In Fatimid Egypt, an *ʾiqṭāʿ* typically consisted of agricultural land leased to a military grantee (*muqṭaʿ*) for a sum of money payable to the treasury (see §9.16).

It is indicated in document **44** that the estate was located on the island of ʾAbū Fāris lying 'to the west of the border of

[1] I published a preliminary edition of this document in Khan (2013). Several of the readings in the present edition differ from those of the preliminary edition.

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Nubia' (بالغرب من حد النوبة). This seems to indicate that the estate was on one of the islands in the area of the first cataract of the Nile lying to the west of the border of Nubia, which was situated at the village of al-Qaṣr on the east bank of the Nile just south of Bilāq (Philae; §2.5.4). The *ʾiqṭāʿ* estate, which was bestowed by the Fatimid government, must have been outside of Nubian territory.

The 'office of the ruler' (*dīwān al-sulṭān*) was presumably the *dīwān al-ʾiqṭāʿāt*, which is mentioned by al-Maḵzūmī (*Kitāb al-Minhāj*, 70).

The lessee leased "three shares from twenty-four shares in total, held in common." This division into twenty-four shares is connected with the laws of inheritance, in which the shares of the heirs are calculated in twenty-fourths (Grohmann, APEL I, 172). This lease of land from an *ʾiqṭāʿ* was a form of subletting, whereby the lessee had right to three parts out of twenty-four of the income on the land.

The lessor, Danī ibn Kannān, was evidently not resident on the land. The fragmentary address of letter **38** reads "[The land] of Marīs… to the leader Danī ibn Kannān," which suggests that Danī was resident in Marīs. This would explain why the document containing **38** and **44** was found in Qaṣr Ibrīm. Furthermore, Wādī al-Šaḵriyābī, to which Danī's *nisba* relates, was situated within the administrative district of Ibrīm. A *muqṭaʿ* frequently lived away from his *ʾiqṭāʿ* (Rabie 1972, 63). We have here, therefore, the case of a Fatimid military officer resident in Nubia. The writer of letter **38** to Danī calls himself in the address "his (i.e., Danī's) son (*waladihi*), Muḥammad ibn ʾAbū Ḥayy." The

fact that the writer was called Muḥammad indicates that he was a Muslim. This may imply that Danī was a Muslim. The term *walad*, however, is often used in the letters as a polite metaphorical term to designate somebody of subordinate status, so Danī may have been a Nubian Christian, which is what his name suggests. If so, then we would have here a case of a Nubian resident in Nubia who served as a Fatimid military officer.

The letter **38**, which mentions agriculture, is presumably referring to the cultivation of the *ʾiqṭāʿ* in question.

The lease is for a period of one year "beginning in (the Coptic month of) Kīhak (December–January)." The name Kīhak is a variant name of the Coptic month name Koiak, which is also spelt كياك in Arabic. The use of a Coptic month to specify the start date was due to the fact that the collection of land tax (*ḵarāj*) was calculated according to the *ḵarājī* year, which corresponded to the Coptic solar year consisting of 365 days. The Muslim lunar (*hilālī*) year was shorter than the *ḵarājī* year by approximately eleven days. Thirty-three lunar years corresponded to thirty-two solar years (Ibn Mammātī [d. 606 AH/1209 AD], *Kitāb Qawānīn al-Dawāwīn,* 358). Land tax (*ḵarāj*) related to agricultural produce and was collected seasonally at the time of the harvest, i.e., according to the solar year. The administration of the *ḵarāj*, however, worked with lunar years. In order to prevent complications, the solar year was periodically brought into line with the lunar year. This was achieved by disregarding one solar year every thirty-three lunar years. The operation was termed تحويل السنة الخراجية الى السنة الهلالية (al-Qalqašandī [d. 821 AH/1418 AD], *Ṣubḥ al-ʾAʿšā*, XIII:54–55). The last *taḥwīl* of the Fatimid period was

undertaken by al-ʾAfḍal ibn Badr al-Jamālī in 501 AH/1107–8 AD. Before this, it had been neglected for about 132 years, with the result that the lunar year had overtaken the solar year by four years. The Fatimids failed to issue an order for a *taḥwīl* when it fell due in 534 AH/1139–40 AD, which resulted in a two-year gap between the lunar year and the *ḵarājī* year in 567 AH/1171–72 AD after the fall of the Fatimid régime (Rabie 1972, 133–34). Letter **38**, which is addressed to Danī ibn Kannān and is written on the back of the sheet, relates to cultivation and mentions that the harvest will be in the month of Baramhāt, i.e., the Coptic month corresponding to March–April.

In line 7, it is stated that the lessor received the rent from the lessee in full (تاما وافيا). In line 8, however, it is indicated that the lessor allowed the lessee to pay in instalments. The phraseology referring to receipt in full must be a slavish use of a fixed formula that was not appropriate in this particular case. A similar contradiction of a formula expressing full receipt with the reality of only a partial receipt is found in the acknowledgement document **47**v.

The structure of document **44** corresponds broadly to that of extant documents of lease from Fatimid Egypt (Khan 1993a, 143–47). The components consist of:

1. *Basmala*
2. Opening formula
   The document opens with the formula استاجر فلان من فلان ‘so-and-so leased from so-and-so’. Muslim legal documents were declarative instruments. The transactions were described in an objective style with the parties referred to

in the third person. In documents of lease, the transaction is written from the point of view of the lessee (*al-musta'jir*).

Most extant documents of lease from the Fatimid period open with a demonstrative pronoun: هذا ما استاجر فلان من فلان 'this is what so-and-so leased from so-and-so'. This is the case also in contemporary documents of sale, which typically open هذا ما اشترى فلان من فلان 'this is what so-and-so bought from so-and-so'. The formula with the demonstrative pronoun is likely to be the original one. The demonstrative pronoun and the objective style arose from the fact that the legal formularies had their roots in monumental types of legal text, which were originally intended for public display. The demonstrative pronoun originally referred to the object on which the text was inscribed. The exophoric reference of the demonstrative of the original monumental formula to a surrounding physical structure on which an inscription was written was subsequently transferred to the textual object of a document (Khan 2019). Documents of lease that open directly with the verb استاجر are attested in other sources (Khan 1993a, 143).

3. Identification of the parties
4. Identification of the property that is leased
5. Specification of the period of lease
6. Amount of rent and terms of payment
7. Constituent acts of the transaction
8. Warranty

The documents lack the following components that are characteristic of documents of lease:

Validity formula (اجارة صحيحة 'with a valid lease')
Specification of the rights of the lessee
Indication that the parties separated physically after the transaction
Confirmation that the transaction was witnessed
Witness clauses

The lack of witness clauses is surprising. The validity of a legal transaction was dependent on it being witnessed by accredited witnesses (*ʿudūl*). Documents of lease typically include autograph testimonies of witnesses consisting of a declaration that the witness has testified to the acknowledgement by the lessor and the lessee of the contents of the document, e.g., شهد فلان على اقرار الآجر والمستاجر بما فيه 'so-and-so testified to the acknowledgement of the lessor and the lessee of what is in it' (Khan 1993a, 147). The lack of witness clauses may reflect that the doucument was a copy of an original that was made as private record.

The structure of the warranty clause in the document requires some comment, since it contains an archaism for the period.

The structure of Arabic legal formulas developed over time. Major changes were made in the Abbasid period. The changes originated for the most part in the Abbasid heartlands in Iraq in formularies that were developed by Islamic legal scholars. The new Arabic formulaic structures were disseminated across the Islamic world (Khan 1994). They were first introduced in the Abbasid heartlands in Iraq and the eastern Islamic provinces, then

spread westwards to Egypt. As a consequence of this process of development, the formulae of documents in peripheral geographical areas were liable to preserve at a particular historical period archaic features that had been replaced in more central areas. This is reflected not only in the aforementioned movement of formulae from the Islamic heartlands in the east to Egypt in the west, but also within Egypt itself.

Previous research on medieval Arabic legal documents from Egypt has shown that innovations that appear in legal documents in the political centre in Fusṭāṭ and Cairo are not found at the same period in documents from Upper Egypt, which preserve more archaic structures (Khan 1993a, 7–55).

The first cataract of the Nile was on the periphery of the Islamic world. According to the trends in the development of formulae described above, the Arabic legal documents written there would be expected to preserve features that had been replaced in the political centre in Fusṭāṭ and Cairo. This is indeed reflected by the warranty clause in document **44**, which has preserved an early feature that is no longer found in legal documents further north in Egypt.

Document **44** contains (in lines 9–11) the following warranty formula against a claim from a third party:

> فما ادرك المستاجر المذكور من درك من ديوان السلطان اعز الله نصره او من احد من الناس كلهم كان على هذا دنو بن كنان خلاصه والخروج اليه ما يلزمه حكم شروط المسلمين وضمانهم
>
> ‘Whatever claim comes upon the aforementioned lessee from the Office of the Ruler, may God strengthen his victory, or from anybody, it is the duty of Danī ibn Kannān to

> clear it and pay him what is required by the law of the legal instruments of the Muslims and their warranty.'

It is significant that the government 'Office of the Ruler' is presented in the warranty as a potential source of a claim. This would, therefore, be a guarantee against an objection by the government to the subletting of land of the *ʾiqṭāʿ*.

The earliest documentary attestation of such a warranty clause is found in a document datable to the middle of the second century AH/eighth century AD from Khurasan (145 AH/762 AD; Khan 2007, 141–43, document 25):

فما ادراكك من سبل ابرهيم او غيره فعلى خلاصه بما عسر وهان

> 'Whatever claim comes upon you from ʾIbrāhīm or anybody else, it is my duty to clear it with whatever (is necessary), be it difficult (for me to pay) or easy.'

Such warranties are characteristic of transactions of sale or leases of landed property. The formula of this document from Khurasan is close to the formula of the warranty clause of documents of sale that is recommended by the second-century Iraqi jurists. ʾAbū Ḥanīfa (d. 150 AH/767 AD) and ʾAbū Yūsuf Yaʿqūb (d. 182 AH/798 AD) proposed the following formula:

فما ادرك فلان بن فلان فى ذلك من درك فعلى فلان بن فلان خلاص ذلك او رد الثمن

> 'Whatever claim is made against so-and-so son of so-and-so, it is the duty of so-and-so son of so-and-so to clear that or return the price.'[2]

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[2] This has been preserved in al-Ṭaḥāwī's *Kitāb al-Šurūṭ al-Kabīr* (ed. Wakin 1972, Text 21).

The formula of Yūsuf ibn Ḵālid (d. 189 AH/805 AD) and his pupil Hilāl ibn Yaḥyā was (Wakin 1972, Text 21):

> فما ادرك فى هذه الدار... من درك... فعلى فلان بن فلان خلاص ذلك كله
>
> 'Whatever claim is made against this house, it is the duty of so-and-so son of so-and-so to clear all that.'

The elements of the warranty clause that were developed by the jurists in Iraq can be traced to pre-Islamic sources. The use of the term *ḵalāṣ* in sense of 'clearing' or 'cleansing' a transaction of third-party claims has numerous semantic parallels in legal documents of the pre-Islamic Near East. These include documents written in Greek, Aramaic and Akkadian, the earliest being Middle Babylonian and Middle Assyrian Akkadian texts.[3] It is particularly remarkable that the Arabic term *ḵalāṣ* itself is attested in Nabatean legal documents datable to the first century AD (Yadin et al. 2002, documents nos. 1, 2 and 3; also p. 227).

The Egyptian jurist al-Ṭaḥāwī (d. 321 AH/933 AD) modified the formula slightly, notably by replacing the term *ḵalāṣ* 'clearing' with different phraseology (Wakin 1972, § I 2.0):

> فما ادرك فلان بن فلان فى ما وقع عليه هذا البيع... فعلى فلان بن فلان تسليم ما يجب عليه فى ذلك من حق
>
> 'Whatever claim is made against so-and-so son of so-and-so with regard to that which this sale concerns... it is the duty of so-and-so son of so-and-so to deliver whatever debt he owes with regard to that.'

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[3] See Frantz-Murphy (1988); Greenfield (1992b; 1992a); Yaron (1958). For further details, see Khan (1994, 212–14).

The term *ḵalāṣ* was still retained, however, by the jurist al-Saraḵsī (d. 448 AH/1056 AD; *Kitāb al-Mabsūṭ*, XXX:173), who was active in Central Asia in the fifth century AH/eleventh century AD:

> فما ادرك فلان بن فلان من درك فى هذه الدار فعلى فلان بن فلان خلاصه حتى يسلمه له
>
> 'Whatever claim is made against so-and-so son of so-and-so with regard to this house, it is the duty of so-and-so son of so-and-so to clear it by delivering it to him.'

The term *ḵalāṣ* is not used in the warranty formulas of later jurists, including that of al-Marġīnānī (sixth century AH/twelfth century AD) in his work *al-Fatāwā al-Ẓahīriyya*. Al-Marġīnānī, like al-Saraḵsī, was active in Central Asia (Khan 1993a, 49–51).

Warranty clauses in documents of sale of buildings or landed property opening with the phrase *mā ʾadraka fulān ibn fulān* and using the term *ḵalāṣ* to refer to the duty of the seller to clear claims of a third party are not attested in Egyptian documents before the third century AH/ninth century AD. The earliest case I am aware of is BAU 11 (276 AH/889 AD, Fayyūm):

> فما ادرك فلان بن فلان فى الشرا من درك علقة او تباعة لاحد من الناس… فخلاص ذلك ونفاذه لازم لفلان بن فلان بالغ ما بلغ
>
> 'Should any claim be made against so-and-so the son of so-and-so with respect to this purchase by way of attachment or right due to any person… the clearing and execution of that is the obligation of so-and-so the son of so-and-so, whatever it may amount to.'

The term *ḵalāṣ* in the second half of the formula is, however, attested in a document of sale of animals that is datable to the 150s AH/760s–770s AD (Rāġīb 2006, no. XV):

فان ادعا احدا من الناس البقرتين فعلى عبد العزيز بن سليمن خلاصهما

> 'If any person claims these two cows, then it is the duty of 'Abd al-'Azīz ibn Sulaymān to clear them (of claims).'

The use of the term *ḵalāṣ* is attested in documents from Upper Egypt down to the fifth century AH/tenth century AD, e.g., APEL 72 (460 AH/1068 AD, ʾAsyūṭ):

كان على هذا البايع خلاصه كاين ما كان وبالغ ما بلغ

> 'It is the duty of this seller to clear it, whatever it is and whatever it may amount to.'

Documents from al-Fusṭāṭ at this period, however, do not use the term but rather exhibit a warranty formula that is based on the one recommended by al-Ṭaḥāwī. This reflects the fact that the documents from the Upper Egyptian countryside were more conservative of earlier traditions than those of the Egyptian capital (Khan 1993a, 26–28, 51–55).

Now, returning to the lease in document **44** from Qaṣr Ibrīm, we have noted that the warranty clause contains the term *ḵalāṣ* to express the clearing of claims. Against the background of the development of the formula of the warranty clause that has just been described, we see that the Ibrīm document, written in 518 AH/1124 AD, is the latest document attested so far that preserves this term. This formulaic archaism can be interpreted as reflecting the peripheral position in the Islamic world of the provenance of the document.

Another attestation of the term *ḵalāṣ* in the warranty of a legal document from Qaṣr Ibrīm has been preserved in the fragmentary document 1978_B10_08A-09[4] (not included in this edited corpus): [...] نفاده وضمانه وخلاصه [...] 'its execution, its warranty and its cleansing'.

## 5.2. Document 45: Lease of a Boat (566 AH/1170 AD)

This document records the lease of a boat by two Muslim dignitaries from a Christian. The two Muslim lessees have elaborate titles and are identified as accredited witnesses:

> The two elders, the notable (*al-makīn*) Guardian of the Dynasty (*walī al-dawla*) ʾAbū al-ʿUmar Hibat Allāh ibn al-Ḥasan ibn ʾIbrāhīm ibn Ṭalʿa and the dignitary (*al-wajīh*) Glory of the Dynasty (*jalāl al-dawla*) ʾAbū al-Ḥusayn ʿAlī ibn ʾIbrāhīm ibn ʿAlī ibn Nahray, the two certified witnesses of the border town of Aswan (**45**:2–3)

The titles containing the element *al-dawla* indicate that they had some kind of affiliation to a government office. For the origin of such titles, see Rosenthal (2012).

The lessor and owner of the boat is identified as Sirāj ibn Mario, the Christian from al-Muqurra (al-Muqurrī).

The boat is identified as a *zallāj*, which literally means 'gliding (boat)'. The two Muslims hired the boat in order to conduct trade in the region that was open to the Muslims between the first and second cataracts, referred to in the document as

[4] Object number 78.2.20/7, registration number 79/276; provenance LC1-17 Room 2, below floor 1; size 7 × 6 cm.

*al-islāmiyya* (written السلامية). It is stated that the *zallāj* had the capacity of a load of one hundred and fifty irdabbs. Al-ʾIdfūwī (d. 748 AH/1347 AD; *al-Ṭālīʿ al-Saʿīd*, 26) refers to a 'large *zallāj* that had a capacity of two thousand irdabbs of sugar' ( زلاجا كبيرا يسع الفى اردب سكرا). The *zallāj* in document **45**, with a capacity of one hundred and fifty irdabbs, was clearly smaller. It was also smaller than boats referred to in many of the letters of the corpus by the term *markab* (pl. *marākib*). These were larger boats that carried a greater number of passengers.

After a detailed description of the components of the *zallāj*, the document states that the purpose of the lease is to transport goods "to the border of the region where Muslims have the right to travel (*al-islāmiyya*)," from Bilāq (Philae) to the Island of Michael (*jazīrat Mikāʾīl*) in the Land of the Nubians. Bilāq was identified by the medieval geographers as the last town before the Nubian border and the first navigable point south of the first cataract (Seignobos 2010, 14–15). The Island of Michael, which was known in Nubian as Meinarti, lay just north of the second cataract.

The period of the lease is three months "beginning in Kīhak (10th December–8th January) and ending on the last day of ʾAmšīr (9th March), the Coptic months, within the year 566 AH (1170 AD) with the stipulation that they sail downstream from the Island of Michael on the first day of Baramhāt (10th March), the Coptic month" (**45**:8–9). The rent for this period is specified as fifteen dīnārs (**45**:10).

After a description of the constituent acts of the transaction, a condition is added that if they stayed in the Island of

Michael later than the beginning of Baramhāt, they would have to pay a proportion of their cargo to the lessor as a penalty.

Then follows an indication of taxation duty (*maks*): "Duty was not liable on it going upstream, but was liable on it going downstream, in accordance with customary practice" (**45**:15–16).

The transaction is stated to have been made and witnessed "in the border town of Aswan on the 20th day of the month of Rabīʿ I of the year 566 (1st December 1170 AD)" (**45**:19).

There follow then two autograph witness clauses.

The following components can be identified in the structure of the documents:

1. *Basmala*
2. Opening formula
   This opens with a demonstrative pronoun: هذا ما استاجر فلان من فلان 'this is what so-and-so leased from so-and-so', which is the usual opening of leases in the Fatimid period.
3. Identification of the parties
4. Identification of the item leased and the purpose of the lease
5. Specification of the period of lease
6. Amount of rent and terms of payment
7. Constituent acts of the transaction
8. Validity formula: وعقد الاجر منهما عقدا صحيحا 'the lessor made a valid contract with them' (**45**r:16)
9. Confirmation that the transaction was witnessed, specifying the place and date
10. Autograph witness clauses.

Under each of the witness clauses, there is a cipher which can be tentatively read as فى تاريخه ‘on its date’. In each case it appears to have been written by a different hand from that of the witness. This is evidently an example of secondary verification of the testimony of the witnesses, known as *šahāda ʿalā šahāda* ‘testifying to a testimony’. One of the functions of this was to supplement the primary witnesses whenever there was some element within a contract, or added to it, that might weaken the contract or expose it to a claim. The secondary witnesses strengthened the validity of the contract (Wakin 1972, 68–69). Another example of secondary witnessing is seen in the Fatimid contract of sale published in Khan (to appear 2024), where the clause شهد عندى ذلك والثقة بالله ‘This was witnessed in my presence, and my trust is in God’ is written under each of the witness clauses.

The document lacks a component that indicates the physical separation of the parties and a warranty, which are found in some leases of the Fatimid period.

## 5.3. Document 46 Recto: Document of Testimony

Item **46** of the corpus is a sheet containing two legal documents. The document on the recto is a testimony opening شهد الشهود المسمون في هذا الكتاب ‘The witnesses named in this document bore testimony’. The document on the verso is a document of sale opening هذا ما اشترى ‘This is what X bought’.

The text on the left side of the document of testimony has been lost, whereas no text has been lost from the document of sale. This may suggest that the testimony was written first and later, after the document became damaged, the sheet was re-used

to write the text of the document of sale on the verso on the surviving writing material. For this reason, the testimony is considered to be the recto and the document of sale the verso.

The testimony and the documents of sale relate to different transactions.

Since the text of the testimony on the recto is fragmentary, the details of the transaction that it records are obscure in places. The surviving text of the document includes the phrase شركة صحيحة ماضية نافذة 'a valid, effective, operative partnership (*šarika*)' (**46**r:31). The witness clauses at the end of the document refer to "the acknowledgement by the seller and the buyer." This indicates that the transaction was a sale of property as a partnership. There appear to have been two sellers. The name of one of these is given as Muḥammad, son of the commander, Kanz al-Dawla ʾAbū al-Makārim Hibat Allāh at the beginning of the document (**46**r:3). This was the Kanz al-Dawla Muḥammad, who appears in the family tree of holders of the office of Kanz al-Dawla in §3.4. The name of the second person is lost in the lacuna at the end of line 3, but it must have been Ġalyūn ibn Sulaymān ibn Ġalyūn, who is mentioned later in the document (**46**r:7), where it is stated that he has been "named in this document." He is said to be from the village of Dendur, which was situated in Lower Nubia on the west bank of the Nile between Aswan and Qaṣr Ibrīm. This person is the buyer in the document of sale on the verso, where his name is given as Ġalyūn ibn Sulaymān al-Kanzī (**46**v:2).

Both sellers, therefore, were Kanzīs and at least one had settled within Lower Nubia. The property that is sold is said to

be "in the possession of them both, not in the possession of one of the two of them" (**46**r:6), which indicates that the sellers themselves were in partnership. The purpose of the transaction was evidently to bring a further person into the partnership. This appears to have been "Pāpāy, the daughter of Ampātā, the Christian woman" (**46**r:9), to whom shares of the property were sold.

As far as can be inferred from the fragmentary text, several plots of land were involved in this transaction of sale, though they are treated as a single lot in the sale. These plots appear to have been situated in the region of the town of Aswan, which is mentioned in **46**r:18. The first of these is said to 'border on (literally: bend towards) the land of Nubia on the west' (وانحرف الى بلد النوبة في الغرب) and border on the Nile in the east (**46**r:11–12). A village is mentioned with a name that could be read as هنداو and identified with the village of Hindāwī south of Aswan (Salvoldi and Geus 2017, 70). If this is correct, then the plot would be situated in Nubia.

Its length is "nine cubits, according to (the length of) cubit that is in current use (*ḏirāʿ al-ʿamal*)" (**46**r:10). This type of cubit is referred to in many Egyptian sources. According to al-Maqrīzī (*Ḫiṭaṭ*, I:380), it was equivalent to the so-called *Hāšimī* cubit, which was introduced by the Abbasids during the reign of al-Manṣūr (136–58 AH/754–75 AD). Hinz (1955, 55) calculates its length as approximately 66.5 cm. For references to *ḏirāʿ al-ʿamal* in the medieval sources, see Grohmann (1954, 173–74).

Included in the sale are watering places (*wird* **46**r:21) and a building with an upper and lower floor. The rights of the property include the right to drink from its water well (شرب من بئر مائه,

**46**r:24) and the right of access to all its amenities. The transaction includes also "four cows and two bulls and… forty head of riding animals" (**46**r:26–27).

Al-Ṭaḥāwī gives models of documents that were used in order to admit another person into a partnership (*šarika*) in the ownership of a property (ed. Wakin 1972, IV 8.0). These do not correspond to the formulary of **46** recto, which is a document of testimony (*šahāda*).

When a person bought a property, two documents were drawn up. One of these is what is referred to as the *ʾaṣl* 'origin, base, foundation', i.e., a foundational certificate of his ownership. This is a document of sale written from the perspective of the buyer, opening هذا ما اشترى فلان 'this is what so-and-so bought'. The second of these was a document of *šahāda* 'a document testifying in his support to the validity of his ownership'.

Many such documents of *šahāda* from the Middle Ages are extant. They typically open with the formula شهد الشهود المسمون اخر هذا الكتاب .. على اقرار فلان 'The witnesses at the end of this document have borne testimony… to the acknowledgement of so-and-so' or slight variants of this. Examples of *šahāda* documents relating to the transfer of property include Vienna: National Library 10254 (ed. Thung 2006, 66–67). Such documents can be considered to record acts of secondary witnessing (*šahāda ʿalā šahāda*) in order to strengthen the protection of the contract against claims (Wakin 1972, 68–70). Al-Ṭaḥāwī (III, *al-Buyūʿ*, 12.0–12.2) recommends that such *šahāda* documents contain a copy of the full text of the *ʾaṣl* document and the names of its witnesses.

Our document **46** recto is, therefore, a document of secondary witnessing strengthening the validity of a primary *ʾaṣl* document of partnership, which is not extant.

## 5.4. Document 46 Verso: Document of Sale

This document records the purchase of a plot of land by Ġalyūn ibn Sulaymān al-Kanzī from Faḵr ibn Furayj ibn Mīnā al-ʾIsamnāwī. As we have seen, Ġalyūn ibn Sulaymān was a partner in the partnership recorded on the recto.

Ġalyūn bought "seven cubits, (measured) in the cubit of the elbow (*ḏirāʿ al-mirfaq*), held in common (*mušāʿ*), of all the land known as Šabb Šalūl in the east opposite the village known as Murwā" (**46**v:5–7). The latter could perhaps be identified with the village of Murwaw (Salvoldi and Geus 2017, 70), situated between Aswan and Qaṣr Ibrīm on the west bank of the Nile. If this is correct, then the plot would be situated in Nubia.

The term *mušāʿ* 'held in common', which is generally used in reference to shares of property, was inserted as an addition above the line. This term indicates that the seven cubits constituted a share of the whole plot and that this share was not a discrete portion but rather a share in joint ownership. The same is likely to apply to the nine cubits of the plot mentioned in the document of testimony on the recto.

The southern boundary "extends to a piece of land known (by the name) of the aforementioned purchaser recently" (**46**v:7–8). This suggests that the transaction recorded in this document extended Ġalyūn's ownership of land. "The eastern boundary extends to the desert and the western boundary extends to the Nile"

(**46**v:10–11). This indicates that the plot was located on the east bank of the Nile.

The rights of the property acquired by the purchaser include the right to drink from its water well (**46**v:11–12).

The formula of the document conforms broadly to that of documents of sale of the period. It does not contain an explicit warranty clause, but the warranty is covered by the generic statement "according to the requirements of the condition of sale of the Muslims, and their warranties and stipulations (ضمانهم وشروطهم)" (**46**v:20–21).

## 5.5. Document 47: An Acknowledgement of a Debt and Testimonies

The recto of **47** contains an acknowledgement document (*ʾiqrār*). A document of acknowledgement records a formal recognition of rights on the part of a declarant (*al-muqirr*) to a beneficiary (*al-muqarr lahu*) regarding an object of recognition (*al-muqarr bihi*). This gained legal validity due to its being made in the presence of accredited witnesses. This type of document appears to have been based on pre-Islamic models (Khan 1994, 204–12).

In the *ʾiqrār* on **47** recto (dated Ramaḍān 515 AH/November 1121 AD), ʿUbayd Allāh ibn Ḥasan, the trader (*al-jallāb*), acknowledged that he owed Merki ibn Abrām one and a half dīnārs. Merki, who, judging by his name, was a Nubian, is stated to have been a freedman of the judge ʾAbū al-Ḵayr ʾIbrāhīm ibn Muḥammad ibn al-Ḥusayn ibn Muḥammad ibn al-Zubayr. This judge belongs to the Banū Zubayr, a prominent family of judges in the Fatimid period, some of whose members are mentioned in

other documents of the corpus (see §3.4). The sender of **21**, ʿAbd Allāh ibn al-Qāḍī al-Rašīd ʿAlī ibn al-Zubayr, was the grandson of the judge ʾAbū al-Ḵayr ʾIbrāhīm.

The verso of **47** contains two testimonies instigated by the creditor Merki ibn Abrām in connection with the complicated recovery of the debt owed to him. The testimonies open with the formula اشهدنی مرکی بن ابرام 'Merki ibn Abrām called me to witness' and are written by an accredited witness.

The first testimony declares that Merki 'has received in full' (قبض واستوفا **47**v:2) a debt that is owed by ʿUbayd Allāh ibn Ḥasan, and released him fully from this debt. This is qualified, however, by the statement that the debtor only "paid a quarter of a dīnār and an eighth of gold," i.e., not the full debt of one and a half dīnārs. The statements of full receipt were presumably taken slavishly from the fixed formula of receipts and then this was qualified.

The second testimony declares that Merki "has received in full from ʿAbd Allāh, a freedman, substituting for his father, a quarter, a sixth and an eighth of a dīnār… on behalf of his debtor ʿUbayd Allāh ibn Ḥasan." ʿAbd Allāh was the son of ʿUbayd Allāh ibn Ḥasan, who paid on the latter's behalf. Again Merki released his debtor "with a release of full receipt." This is then qualified by the statement that his debtor still owed him the remaining quarter and two sixths of a dīnār. The remainder of the document indicates that this release was made "after he (the creditor) had received a legal injunction (*ḥukm*) against him (the debtor) for the remainder," which was ratified by an oath sworn by God.

Another witness finally adds a note in a different hand at the end of the document that he had witnessed everything that the other witness witnessed. This was, therefore, a *šahāda ʿalā šahāda*, i.e., a secondary act of witnessing. This second witness states that he was present at the receipt of the injunction against him (i.e., against the debtor) and "the injunction was written above" (كتب الحكم اعلاه). This presumably refers to the fact that in the document that contained the injunction, the injunction was written above and the witnesses added their signatures below.

## 5.6. Document 48 Recto: Marriage Contract (23rd Rabīʿ I 484 AH/15th May 1091)[5]

The recto of document **48** contains a marriage contract, which is written in a wide landscape type of format. The formula opens, after the *basmala*, as follows:

هذا ما اصدق فلان فلانة وتزوجها به

> 'This is what so-and-so (the bridegroom) granted to so-and-so (the bride) and married her with it' (**48**r:2–3)

This is referring to the bridal gift, known as *ṣadāq* or *mahr*, which the bridegroom is obliged to give to the bride in consideration of the rights that a husband acquires over the wife. This is based on the Qurʾān 4:4: وَءَاتُواْ ٱلنِّسَآءَ صَدُقَٰتِهِنَّ نِحْلَةً 'Give women their bridal gifts as a free offering'.

According to Islamic law, a marriage contract is made between the bridegroom and the bride's *walī*, i.e., her 'representative'

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[5] An edition of document **48** was made by ʿĪsā (2000). My reading differs in a number of places.

or ‘guardian’. The *walī* is mentioned later in the document, where it is stated:

> The groom named in this document accepted from the representative (of the bride) named with him in it the contract of marriage mentioned in this document on the condition of the aforementioned endowment. (**48**r:9–10)

This indicates that the groom undertook the constituent acts of the contract with the *walī* rather than the bride. It was the custom, however, for the bridal gift to be given to the bride and not to the *walī* (Schacht et al. 2012).

The names of the bridegroom and the bride are given with a long genealogy, which indicates that the two were related:

> *Bridegroom*: Muḥammad, known as ʾAbū ʿAbd Allāh ibn ʾIsmaʿīl ibn Ḥusayn ibn ʾIbrāhīm ibn Ḥusayn {ibn ʾIbrāhīm} ibn ʾAṣfar ibn Maymūn ibn Baydūs ibn Basūn (**48**r:2)

> *Bride*: ʾUmm al-Ḥasan ibnat ʿAlī ibn ʾAḥmad ibn Ḥusayn ibn ʾIbrāhīm ibn Ḥusayn ibn ʾAṣfar ibn Maymūn ibn Baydūs ibn Basūn (**48**r:2–3)

The second phrase ‘ibn ʾIbrāhīm’ in the geneaology of the bridegroom, which is enclosed in curly brackets, appears to be a dittography. It does not appear in the geneaology of the bride or in the genealogy of the son of the bridegroom on the verso (**48**v:3).

The bridal gift was twenty-three dīnārs, but, as was the custom, only a portion of this, viz. eight dīnārs, was paid at the time of the drawing up of the contract. The remainder would be paid after the passage of five years. The amount of the bridal gift and the terms of the postponed portion of the payment differ

considerably across the surviving medieval marriage contracts (Grohmann 1934, I:71–72; Mouton et al. 2013, 43–45). The sum of twenty-three dīnārs is in the lower half of the attested amounts of the bridal price in the documents, which can exceed 100 dīnārs. The bride price in contract no. 5 of the corpus of marriage contracts from Damascus (ed. Mouton et al. 2013, 89–90), for example, is 110 dīnārs.

The *walī*, i.e., the guardian of the bride who represented her, was "the noble preacher (*al-šarīf al-ḵaṭīb*) ʾAbū ʿAlī Muḥammad ibn Ḥaydara ibn al-Ḥusayn ibn al-Ḥasan al-Ḥusaynī." This man is mentioned by al-ʾIdfūwī (d. 748 AH/1347 AD) in his *al-Ṭāliʿ al-Saʿīd* (414). Al-ʾIdfūwī saw in Aswan a document written by him dated 527 AH/1132–33 AD. At that time he was apparently *qāḍī* of Qūṣ. According to Islamic law, the *walī* of the bride should be preferably her father. If the father is not alive or available, then the *walī* should be her paternal grandfather, or in his absence the nearest male relative in the male line.[6] If for any reason this is not possible, then the *walī* has to be a representative of the public authority, i.e., a representative of the *qāḍī* under whose authority the legal contract was made (Schacht et al. 2012). This is the case in our document, where the *walī* was a dignitary who was not a relative of the bride, but was a representative of the judicial authority.

We learn in **48**r:12–13 that the *walī* ʾAbū ʿAlī Muḥammad ibn Ḥaydara ibn al-Ḥusayn ibn al-Ḥasan al-Ḥusaynī was the son of the judge responsible for jurisdiction in Aswan, ʾAbū Turāb

[6] There were slight differences of opinion in the various schools of law; see Alrudainy et al. (2024, 35).

Ḥaydara ibn al-Ḥusayn ibn al-Ḥasan al-Ḥusaynī, and that this judge authorised ʾAbū ʿAlī Muḥammad to act as *walī*. The document also indicates that the judge ʾAbū Turāb Ḥaydara ibn al-Ḥusayn was deputising for another son of his, the noble judge, leader of the Ṭālibids in the southern sector of Upper Egypt (بالصعيد الاعلى), ʾAbū ʿAbd Allāh Muḥammad ibn Ḥaydara ibn al-Ḥusayn ibn al-Ḥasan al-Ḥusaynī. According to Yāqūt (d. 626 AH/1229 AD; *Kitāb Muʿjam al-Buldān*, III:408), the southern sector of Upper Egypt was constituted by the region from Aswan to Aḵmīm.

The names of these judges reflect their affiliation to prominent Shiʿite families. The *nisba* al-Ḥusaynī indicates descent from Ḥusayn ibn ʿAlī ibn ʾAbī Ṭālib, a grandson of the prophet Muḥammad. The Ṭālibids were descendants of ʾAbū Ṭālib, the father of ʿAlī, the prophet's cousin and son-in-law. The *kunya* ʾAbū Turāb (literally: Father of Dust), in the name of the judge presiding over Aswan, was attributed to ʿAlī ibn ʾAbī Ṭālib.[7]

The authorisation of ʾAbū ʿAlī Muḥammad to act as *walī* was validated by witnesses (شهد على ذلك 'that was witnessed' **48**r:13).

We learn from this that the marriage contract was drawn up within the jurisdiction of the judge of Aswan and not in Nubia. Although the judge authorised (*ʾaḏina*, literally 'permitted' **48**r:12) the appointment of ʾAbū ʿAlī Muḥammad as *walī*, the bride formally appointed him as her *walī* and this act of appointment (*tawkīl*) was witnessed (**48**r:8).

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[7] See *Ṣaḥīḥ Muslim*, https://sunnah.com/muslim:2409, accessed 8 March 2024.

The contract closes with eight witness clauses. Marriage contracts frequently have more witness clauses than are usual in other types of contract, as is the case here. A marriage contract published by Abbott (1941) dated 336 AH/948 AD had 77 witnesses!

## 5.7. Document 48 Verso: Acknowledgement (21st Šaʿbān 516 AH/25th October, 1122 AD)

The verso of **48** contains an acknowledgement (*ʾiqrār*) by the son of the bridegroom of the marriage in the contract recorded on the recto. The son, who is called ʿAbd al-Ḥusayn, acknowledges that he has received from his father four and a half dīnārs, "this being everything that is apportioned to him by right of his inheritance from his mother… of the postponed portion of her bridal gift, which is certified as being owed to her by his father on the recto" (**48**v:4–5). The *ʾiqrār* closes with five witness clauses. Three of the witnesses have the name al-Ḥusayn ibn al-Ḥasan al-Ḥusaynī in their genealogy and so belong to the family of the *walī* mentioned on the recto.

The *ʾiqrār* was written in 516 AH/1122 AD, thirty-two years after the contract on the recto, which was written in 484 AH/1091 AD. The reference to "the postponed portion of her bridal gift, which is certified as being owed to her by his father" indicates that the groom never paid this to his wife, although he undertook to do so in the contract on the recto five years after the date of the contract. Rapoport (2000) has drawn attention to the fact that medieval Egyptian documents show that husbands frequently did not pay the postponed portions of the bridal gift.

He argues that the specific dates for the deadline of payment mentioned in contracts are legal fictions intended to prevent the marriage from being nullified on the grounds of formal irregularities. In practice, it seems, women did not demand the postponed portion until the termination of the marriage contract. The practice of postponing, therefore, is likely to have had the purpose of deterring husbands from unilateral divorces. Further evidence for this is adduced from Fatimid documents of marriage by Alrudayny et al. (2023, 31).

The son in our document receives from his father four and a half dīnārs from the total of the postponed payment, which was fifteen dīnārs. The marriage gift was deemed to be the property of the wife and was part of her estate after her death. As remarked, in practice, women did not demand the postponed payment until the termination of the contract. With the death of the woman the contract was terminated and, in the case of the situation reflected by our document, it is the son, her heir, who has demanded the postponed payment. According to the document, this is "everything that is apportioned to him by right of his inheritance from his mother." It is not clear how the son's inheritance right to four and a half dīnārs from the fifteen dīnārs of the original postponed payment was calculated. According to Islamic law, the husband would have had the right to receive one quarter of his deceased wife's estate, since there was a living son (Qurʾān 4:12).

## 5.8. Document 49 Recto: Document concerning Division of Property after Divorce (Muḥarram 429 AH/October–November 1037 AD)

The recto of **49** contains a document relating to a divorce between Qērqe ibn Yuḥannis and Maryam ibnat Yuḥannis. This is the first of a series of documents relating to the turbulent marital affairs of Maryam ibnat Yuḥannis (**50**, **51**, **52**, **53**). It is specified in some of the other documents that the two parties named in **49** recto were Nubians. The name Qērqe (قيرقة) appears to be an attempt to represent the Nubian name Georgi, a shortened form of Georgios.[8] Maqrīzī in his *al-Muqaffā al-Kabīr* (IV:227) refers to a Nubian called قيرقي, which indicates that a name with this form was in use elsewhere. In **49** verso, his name is spelt قيورقة, which represents the medial /o/. In **50**, the name is represented as جريج Jurayj, which is an Arabicised form of the same name. The documents were drawn up under the jurisdiction of a Muslim *qāḍī*, presumably in Aswan or its vicinity.

Unfortunately, the right side of the document has been torn away and this makes the interpretation of the full contents of the document difficult.

At the top there is a note that indicates that the parties recognised "in my presence," i.e., the presence of the presiding judge, everything that is in the document (اعترفوا عندى جميعا بجميع ما فى هذا الكتاب). The judge's name is given as Hibat Allāh ibn Makīn ibn Hibat Allāh ibn Fāris ibn Ḥammād ibn Suwayd. A

[8] See http://www.medievalnubia.info/dev/index.php/Names, accessed 8 March 2024.

similar note appears at the top of the marriage contract **51** recto, which was made before the same judge.

The opening formula of the document is missing in the lacuna on the right side, but it is likely that the document was a testimony (*šahāda*) opening [شهد الشهود المسمون اخر هذا الكتاب] 'The witnesses named at the end of this document have borne testimony'. The word الكتاب is extant after the lacuna. At the end of the document only one witness clause has been preserved, but presumably others were written on the right side that is now lost. Several medieval documents of divorce that have been published are testimonies, e.g., Vienna: National Library 15311 (ed. Thung 2006, 31), National Library 32302 (ed. Thung 2006, 27–28), National Library 3165 (ed. Grohmann and Khoury 1993, 42).

It is recorded in the document that an argument and dispute (مشاجرة ومنازعة) had occurred and then after a lacuna there is reference to a divorce (طلاق).

Qērqe ibn Yuḥannis made two claims against his wife. One of these (**49**r:8–9) relates to dīnārs. This presumably related to the bridal gift (*ṣadāq*, *mahr*). According to Islamic law, the bridal gift is the property of the wife. If her husband divorces her, it remains with her and the husband is obliged to pay her any of the postponed payment that he has not yet paid. The basis of this is Qurʾān 4:20: "If you want to take a wife in place of the one (you have), and you have given her plenty of wealth, then do not take any of it back."

If the man divorces a wife before the marriage has been consummated, he must leave half of the bridal gift with her (Qurʾān 2:236–37). In our document there is a reference to an

infant girl (الطفلة الرضيعة, **49**r:12), which indicates that the marriage had been consummated.

The other claim of Qērqe related to clothing (*qišr*)[9] and the dowry (*raḥl*).[10] The dowry was given to the bride by the bride's family and typically consisted of a trousseau of clothes, textiles and household utensils. Dowries were not required by Islamic law and so were not recorded in Muslim marriage contracts, which registered only the bridal gift bestowed by the groom. According to Sunni inheritance law, daughters received half the share of their brothers. Families, therefore, used the custom of the dowry as a form of pre-mortem inheritance to compensate for this. The dowry remained under the woman's exclusive ownership and control throughout the marriage, and also through widowhood and divorce. Husbands, in principle, had no formal right over their wives' dowries (Rapoport 2005, 12–30). According to the document, however, Qērqe claimed that the dowry belonged to him and that Maryam should send it to him (**49**r:10–11).

These seemingly irregular claims of the husband indicate that the divorce was not a unilateral repudiation by the husband but rather a consensual separation, known as *ḫul*ʿ. In a consensual separation a wife gave up some, or all, of her financial rights, including the postponed bridal price, in return for a divorce. In this type of divorce, the wife typically initiated the separation and returned the bride price by way of compensation to the husband. In some cases, the compensation may have been greater

[9] For the term *qišr* in the sense of clothing, see Lane (*Lexicon*, 2525).

[10] For the term *raḥl*, literally 'luggage', in the sense of dowry, see Goitein (1978, 124, 453).

than the bride price. Separation by *ḵulʿ* was, in fact, more commonly practiced than unilateral repudiation, in which the husband forfeited all claims to the property of the wife (Rapoport 2005, 69, 72; Hallaq 2009, 66–67). Although the term *ṭalāq* appears in our document, this is found as a generic term for divorce in combination with the specific term *ḵulʿ* in some medieval documents, e.g., Vienna: National Library 28011 (ed. Grohmann and Khoury 1993, 43–46): بطلقة واحدة خلع 'with a single act of repudiation of compensation'.

The document then mentions an infant girl (الطفلة الرضيعة) over whom there seems to have been a dispute. It is indicated, however, that they came to an agreement and separated, being in sound mind and body, not forced or coerced.

Document **50**, which was written one and a half years later, was an acknowledgement of this divorce. Document **49** recto, therefore, may have been a document of agreement of assignment of property before the divorce officially took place.

## 5.9. Document 49 Verso: Court Record relating to Divorce

On the verso of the divorce document **49** recto, there are two fragmentary documents.

One document is written on the top left side of the verso. Only the first few words of the lines of this are extant. It appears to be an instruction to a fellow judge recording a decision concerning the husband's claims recorded on the recto. It opens with the request: "My brother please attend... [ ] to the man who granted her the bride price (مصدقها)." The remainder of this

instruction is largely obscure. There is a mention of 'his portion' (حصته) and the prohibition 'do not oblige him' (لا تحوجه), which may be indicating that he is not obliged to pay the postponed portion of the bride price to his wife.

The other document is a court record, the left side of which is missing. The document relates to the specific content of the dowry that the husband is claiming from his wife. In this document, the husband's name is spelt قيورقة Qēōrqe. It is stated that Qēōrqe ibn Yuḥannis and Maryam ibnat Yuḥannis attended (حضر) court and Qēōrqe had "this document," i.e., the document with the text on the recto, in his hand. He made a claim for clothes (*qišr*), presumably of Maryam's dowry, which included:

زنارين *zunnārayn* 'two belts'[11] (**49**v:10)
ملفة *milaffa* 'a head-cloth'[12] (**49**v:10)
مخدة *miḵadda* 'a pillow' (**49**v:10)
منديل *mindīl* 'a kerchief' (**49**v:10)
الملاتين *al-malʾatayn* 'two cloaks'[13] (**49**v:10)
الردا *al-ridāʾ* 'mantle' (**49**v:11)
القطيفة *al-qaṭīfa* 'items of velvet' (**49**v:11–12)

In addition, Qēōrqe claims "what remains owed to him by her with regard to […]."

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[11] According to Lane (*Lexicon*, 1258), the *zunnār* was a waist-belt worn by Christians.

[12] According to Dozy (1845, 403), the *milaffa* was a piece of cloth that women placed on their head so that their veil was not moistened by the perfumed oil that they put on their hair.

[13] This item of clothing had the variants forms *mulāʾa* and *milāya* (Dozy 1845, 408–11).

The document closes with a statement that any further claims by either party would be invalid.

There are no autograph witness clauses, but the simple statement شهد على ذلك *šuhida ʿalā ḏālika* ‘that was witnessed’.

## 5.10. Document 50: Acknowledgement relating to Divorce (15th Jumādā II 430 AH/14th March 1039 AD)

This document, which is dated one and half years later than document **49** recto, is an acknowledgement (*ʾiqrār*) by the husband that he has divorced his wife. This, therefore, records the carrying out of the divorce. Here the husband has the Arabicised name Jurayj ibn Yuḥannis, rather than Qērqe or Qēōrqe.

The core content of the acknowledgement is as follows:

انه طلق زوجته مريم ابنت يحنس طلقة واحدة يملك بها نفسها وقوتها منه

> ‘that he had divorced his wife, Maryam ibnat Yuḥannis with one act of repudiation, by which she acquired from him possession of herself and control of herself’ (**50**:8–10)

The specification of *ṭalqa wāhīda* ‘one act of repudiation’ is significant, since in Islamic law a husband was allowed to take a wife back if he repudiated her once or twice. If he repudiated her three times, then he was not permitted to take her back unless she had subsequently been married to another man and this second marriage had terminated. Some extant medieval documents indicate that a divorce was made by a triple repudiation, e.g., Vienna: National Library 32302 (ed. Thung 2006, 27–28): طلق ثلث بتة ‘he repudiated three times’.

A parallel to the phrase تملك بها نفسها 'by which she acquired possession of herself' is found in a divorce document from Damascus dated 490 AH/1097 AD (ed. Mouton et al. 2013, 121–123). Similar phraseology is found also in documents of manumission of slaves, e.g., وملكت نفسها 'and she (the manumitted slave girl) took possession of herself' (APEL 37, ed. Grohmann 1934, I:61–64).

As discussed in the commentary on **49**, the divorce must have been a consensual separation (*k̲ulʿ*). The document Vienna: National Library 28011 (ed. Grohmann and Khoury 1993, 43–46), which is cited above, combines the phrase طلقة واحدة, which occurs in our document, with the term *k̲ulʿ*: بطلقة واحدة خلع 'with a single act of repudiation of compensation'.

The document closes with a confirmation that "the acknowledgement by the divorcer and the divorcee of all that was mentioned in it was witnessed." This implies that Maryam also made a formal acknowledgement.

## 5.11. Document 51 Recto: Marriage Contract (Ṣafar 432 AH/October 1040 AD)

The recto of **51** contains a contract of a subsequent marriage of Maryam ibnat Yuḥannis. The groom is the Nubian Mariane ibn Īsū.

The formulary of the document is that of Muslim contracts of marriage.

The document opens, after the *basmala*, with the standard formula:

هذا ما اصدق فلان فلانة وبه تزوجها

‘This is what so-and-so (the bridegroom) granted to so-and-so (the bride) and he married her by it.’ (**51**r:4)

At the top of the document, there is a note indicating that “the two spouses and the guardian of the bride recognised all that is in this document.” This is followed by a statement that “it was written by Hibat Allāh ibn Makīn on its date.” This is the judge that appears in **49** recto and also the letter **53**.

The bride price, which is referred to by the term *mahr* (**51**r:5), was four dīnārs. Three dīnārs of this was paid in advance (*muʿajjal*) “before his having sexual intercourse with her and his deflowering of her” and the payment of the remaining one dīnār was postponed until the passage of one year. According to Islamic law, brides were not able to claim the full bride price until the marriage was consummated. According to the contract, Maryam was a virgin (**51**r:14). We learn in **49**r:12 that there was an infant girl (الطفلة الرضيعة) from Maryam’s previous marriage. So the reference to her virginity seems to be part of a fossilised formulaic phraseology of marriage contracts that was not adapted to the reality of the situation.

The guardian of the bride was Kayl ibn Mariane (**51**r:13), who, judging by his name, was likewise a Nubian.

The contract closes with four witness clauses.

## 5.12. Document 51 Verso: Testimony (Ḏū al-Ḥijja 432 AH/August 1041 AD)

On the verso of the contract recording the marriage of Mariane ibn Īsū and Maryam ibnat Yuḥannis, there is a document, in a

faded hand, that lists various items that the husband undertakes to give to the wife. These include:

اربع قسط زيت الجوز *ʾarbaʿ qisṭ zayt al-jawz* 'four measures of walnut oil' (**51**v:3)

الخل *al-ḵall* 'vinegar' (**51**v:3)

الملح *al-milḥ* 'salt' (**51**v:3)

الحصيرة *al-ḥaṣīra* 'straw mat' (**51**v:3)

القز *al-qazz* 'raw silk' (**51**v:3)

الحطب *al-ḥaṭab* 'fire wood' (**51**v:4)

المشاط *al-mišāṭ* 'combs' (**51**v:4)

الكمين *al-kummayn* 'two sleeves' (**51**v:4)

الملفة *al-milaffa* 'head-cloth' (**51**v:4)

النفقة ويبتى قمح لكل شهر استقبال ذلك *al-nafaqa waybatay qamḥ li-kull šahr istiqbāl ḏālika* 'an allowance of two waybas of wheat each month in the future' (**51**v:4–5)

The document opens

[هذا] ما اشهدنى مرينى بن يسو النوبى

'This is what Mariane ibn Īsū the Nubian called me to witness.' (**51**v:2)

The document, therefore, has the form of a testimony. It closes with the clause:

وكتب هبة الله بن مكين فى تاريخه

'It was written by Hibat Allāh ibn Makīn on its date.' (**51**v:6)

Hibat Allāh ibn Makīn was the judge who certified the contract on the recto.

It is dated Ḏū al-Ḥijja 432 AH/August 1041 AD. This was several months after the contract on the recto, which is dated Ṣafar 432 AH/October 1040 AD.

## 5.13. Document 52: Court Record relating to Marriage

This document is a court record relating to the marriage of Mariane ibn Īsū (spelt in one case in this document Īsūy) and Maryam ibnat Yuḥannis. It opens

حضر مرینی بن یسوی النوبی وزوجته مریم ابنت یحنس النوبی

> ‘Mariane ibn Īsūy the Nubian and his wife Maryam ibnat Yuḥannis the Nubian attended (court)’ (**52**:2)

The document records that a dispute had arisen between the husband and wife since the husband had not fulfilled the full obligations of the marriage contract. The wife produced the contract dated Ṣafar of the year 432 AH/October 1040 AD (i.e., **51** recto), indicating that the husband was obliged to pay in advance three dīnārs but she had received only two dīnārs. This statement of hers was certified by witnesses:

اشهدت علی نفسها انها قبضت منه دینارین

> ‘She called witnesses to certify that she had received from him two dīnars.’ (**52**:8–9)

The court record indicates that the husband agreed to pay the remaining debt of a dīnār in six months’ time, this being Ḏū al-Ḥijja of the year 432 AH/August–September 1041 AD. It is indicated that this undertaking of his was witnessed:

شهد على ذلك

'That was witnessed.' (**52**:12)

The court record closes with three witness clauses.

It is significant that the document written on the verso of the marriage contract between Mariane ibn Īsū and Maryam ibnat Yuḥannis (**51**) is dated Ḏū al-Ḥijja of the year 432. This was the date that Mariane undertook in the court record to pay the debt of one dīnār. The fact that it was written on the verso of the contract and written by the judge who certified the marriage contract suggests that the delivery of the various commodities by Mariane to his wife that is recorded in **51** verso was intended to be in lieu of a cash payment of the debt of one dīnār.

## 5.14. Document 53: Letter relating to a Marital Dispute

This document is a letter that records a further episode in the troubled marriage of Mariane ibn Īsū and Maryam ibnat Yuḥannis. It is a letter written by the judge Hibat Allāh ibn Makīn, who certified their marriage contract (**51** recto) and the divorce document (**49** recto). We learn from the address that he is writing from al-Marāġa, a town in Upper Egypt north of Aswan. His title of *qāḍī* is explicitly indicated in the address (**53**v, left, 1). The letter was addressed to a certain ʾAbū al-Ḥasan Zuhayr, who, although his title is not specified in the address, appears to have been another judge.

The writer Hibat Allāh indicates that the bearer of the letter is Mariane ibn Īsū. Hibat Allāh goes on to report that a long time ago he had authorised a divorce between a man known as Qērqe

(i.e., the Qērqe ibn Yuḥannis appearing in the documents relating to divorce **49** and **50**) and Maryam ibnat Yuḥannis. Then, a year ago, he had authorised the marriage of Mariane ibn Īsū to Maryam ibnat Yuḥannis. Recently, however, Qērqe had taken Maryam out of the house of Mariane, claiming that she was his wife. Hibat Allāh requests the addressee to arrest Qērqe and send this man to him together with Maryam and Mariane so that he "can act with them according to the requirements of the law," since he (Hibat Allāh) wrote Maryam's divorce document and her marriage document.

The letter, therefore, requests the extradition of parties to the dispute to the jurisdiction of Hibat Allāh. The dispute must be resolved by the judge who certified the divorce and the marriage.

On the verso of the letter, Hibat Allāh indicates that Mariane had gone to the judge in Aḵmīm, situated near to al-Marāġa between Aswan and Asyūṭ, but this judge sent him to Hibat Allāh, since he wrote the marriage contract. This indicates that these events took place in Upper Egypt.