جمعيـــة الآثـــار بالإسكندريـــة

SOCIÉTÉ ARCHÉOLOGIQUE D'ALEXANDRIE

1893 - 2003

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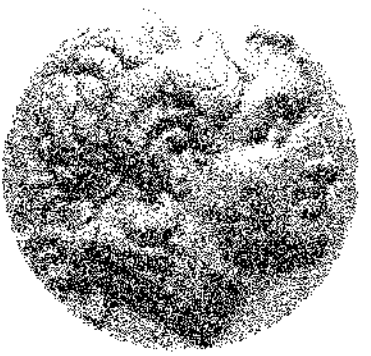

ALEXANDRIE

2003

The Archaeological Society of Alexandria

1893 - 2003

110 Years

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Preface

The issuing of volume 47 coincides with an auspicious occasion, namely that of our Society's attaining the venerable age of one hundred and ten years, an age undoubtedly worthy of being proud of. On this occasion one necessarily remembers the founding fathers who, led by Geoseppi Botti, most wisely conceived in 1893 the idea of establishing the Archaeological Society of Alexandria and of issuing a regular Bulletin. The course of events over the long span of 110 years has not been without its hazards, which at a certain time, threatened the Society's very existence. It is thanks to the resilience and tenacity of the civic community of Alexandria and their international friends that the Society is still going strong and capable of sustaining the publication of the Bulletin as well as maintaining multiple other cultural activities.

The survival of our Archaeological Society into its second hundred years calls to mind an ancient Egyptian tale, the so-called Westcar papyrus (W.M.Flinders Petrie, Egyptian Tales, 1895). It tells of a magician called Dedi who lived to the ripe old age of one hundred and ten years in the reign of King Khufu. Dedi could still eat "500 loaves of bread, a side of beef and drink 100 draughts of beer.... He restores the head that is smitten off ; he knows how to cause the lion to follow him trailing his halter on the ground ; he knows the designs of the dwelling of Tahuti which King Khufu long sought after that he might make the like of them in his pyramid." In spite of his extreme old age," Dedi sat blithely in the sun, free of infirmities without the babble of dotage. This is the salutation to worthy age."

This tale is not without its symbolic relevance. Archaeology in a sense, strives to restore "smitten off heads" and continues to seek

to unravel the mysterious designs of the pyramids ! The contributions to the present volume cover a variety of areas : Greek papyri (R.S.Bagnall), Arabic papyri (G. Frantz-Murphy), Roman art and craft (N. Bonacasa & E.Rodziewicz), late Roman archaeology (M. Rodziewicz and P. Grossmann). In a metaphorical / figurative sense and in their own ways, they are restoring "smitten off heads". To them all, I extend my sincere thanks for their continued cooperation.

My special thanks go to the Moharram Press, not only for so generously undertaking the free publication of this volume, but especially for their warm and friendly spirit as represented by the director general, Mr.Mostafa Mahdy and Mr. Mohammed Naguib Salah-el- Din, head of the technical department.

Last but not least, my special thanks go to Prof. Mona Haggag, secretary general of the Society who patiently handled every step in the intricate process of publication with her typical devotion and dedication. She deserves our sincere appreciation and gratitude.

Mostafa El-Abbadi

List of Illustrations

The Reinstitution of Courts in Early Islamic Egypt[1]

Gladys Frantz - Murphy
Regis University, Dover

Greek, Coptic, and Arabic papyri from Egypt attest to the reinstitution of courts in the beginning of the second century *hijra*. They also attest to the peaceful coexistence of Islam and Christianity. Christians chose to have legal documents that vitally affected their families' interests recorded in Arabic, despite the fact that they were free to have them recorded in Coptic. That they did so attests to their dsire to gain access to the Islamic courts as well as to their confidence in those courts. That Christians chose to gain access to Islamic courts attests that those courts met the needs of the Christian community.

The first body of evidence presented is the legal procedure attested in arbitration documents dating from prior of the Islamic conquest of Egypt into the mid-fourth century *hijra*. These arbitration documents are written in Greek, Coptic and Arabic.

I. Procedure

Arabic document attest that the forms of admissible evidence in Islamic courts can be broken down into testimony, sworn testimony, and documents. The papyrus document itself could be used as evidence. *Hujja* is well attested in the papyri to mean, a "document", "proof", "allegation", and "evidence". Examples of documentary attestations follow. A settlement published by

(1) An earlier version of this paper was presented at the Middle East Studies Association in Boston in 1990, and published as "Settlement of Property Disputes in Provincial Egypt: The Reinstitution of Courts in the Early Islamic Period", al-Masiq 6 (1993): 95 - 105.

Grohmann and executed at Ushmūn in 412/1022 (P. Cairo. Arab. II[2], 138, 16) records an agreement for the division of inherited property. The document is stated to have been "written as evidence" كتبه حجة له for the two legatees and is signed by two witnesses.

Meaning "allegation", *hujja* is attested in a document dated 382/922 originating from Tutūn, a village in the southwestern Fayyūm (P. Berlin. Arab. I, 14, 14)[3]. The settlement is for the accidental death of a horse. A third party pays the owner, while the parties responsible for the death of the horse then agree to repay the third party according to the terms set out in the document. The text states[4].

ولا يحتج عليهم بحجة بغير ما سمي ووصف في هذه الوثيقة

They will not contend between themselves by means an "allegation" حجـة (*hujja*) for anything other than that which is named and described in this document وثيقة (*wathīqa*).
The document is signed by witnesses.

Hujja is attested to mean the document itself in another document published by Grohmann written in 284/897[5] at Ushmūn (P. Cairo. Arab. II, 121, 5 - 6). In the document the seller renounces her rights in property and states that,

ليس لها ... ولا قـ[ـول ولا يمتن لها ... ولا حجة

(2) For Arabic papyrological abbreviations see http//scriptorium.lib.duke.edu/papyrus/texts/clist_arabic.html. For Greek papyrological abbreviations see http//scriptorium.lib.duke.edu/papyrus/texts/clist.html.

(3) Counting the third line of the insert above the left side, along with the *bismillahi* as line 1; the lines are not indicated in the published edition.

(4) بغير is edited as بغيّر in the published edition.

(5) the numbers in the date of this document are inadvertently transposed to 248/897 in Frantz-Murphy, "Settelement", p. 96.

She has no word, قـول (*qawl*)" ... no oath يمين (*yamīn*) in her favor ... and no document حجة (*hujja*) ...

i. e., giving her rights or claims in the property. The document is signed by witnesses.

Hujja meaning "proof" is attested in a document recording the emancipation of a slave dated 304/912 originating from Nubia (P. Berlin. Arab II, 7).

وكتبت لك ... هذا الكتاب ... ليكون حجة فى يديك ... بما فى هذا الكتاب ...

I have had this document (*kitāb*) written for you ... To be proof in your hands ... of what is in this document (*kitāb*).
The document is signed by witnesses.

In the early second century *hijra* documents continued to be written in Coptic as well as in Greek. The Greek and Coptic settlement documents attest the same forms of evidence as the Arabic documents. The family archive from Jeme published by schiller[6] records a family dispute over title to shares in inherited residential property. The archive includes settlement documents ending disputes which had embroiled three generations. According to these papyri evidence had been presented in the course of the proceedings in the same three forms as those attested in the Arabic documents -- testimony, sworn testimony, and documents.

Coptic papyri attest the same forms of admissible evidence as do the Greek. On Coptic papyrus from Edfu published by Schiller in fact attests all three forms in the same document[7].

(6) A. A. Schiller, "A Family from Jeme", *Study in onore di Vincenzo Arangio-Ruiz*, vol. IV (Naples, 1952): 329 - 375.

(7) A. A. Schiller, "The Budge Papyrus", *Journal of the American Research Center in Egypt* 7 (1968): 79 - 118, p. 83 lines 18, 19, and 22.

... you may have need of two witnesses to tell your business to them before you die ... so that I may find them for their testimony ... we receives a deed ...

Acceptable evidence in Byzantine Greek documents includes the same three forms: An archive from Idfū, in which some papyri are written in Greek and some in Coptic, records arbitration proceedings which began in 622 C.E. continuing for a quarter of a century, until 647 C.E.[8] One of the Greek documents in that archives (*SB* VI, 8987) dated 622 records a deed that is referred to in those Coptic proceedings. A final settlement to this dispute (*SB* VI, 8988) dated 647 is also written in Greek. It is noteworthy that this dispute had begun in the time of the Persian invasion. The dispute and the litigation continued through the Arab conquest. During the entire quarter century of invasion and conquest, the parties involved continued their dispute. They were apparently unaffected by the invasion and conquest, traveling back and forth between Idfū nd Ushmūn in their attempts to secure documentary proof of their ownership of the property in dispute. The dispute was finally settled by the claimant renouncing his claims and executing a deed of settlement written in Greek (*SB* VI, 8988).

Going back further in time, in an archive of pre-Islamic Greek document from Syēnē (Aswan) dating from the late sixth century C.E., 574 - 594, family members submit to arbitration to end a dispute over shares in inherited property[9]. In these documents evidence is given by reference to documents, by testimony, and sworn testimony.

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(8) *Idem.*

(9) (P. Lond. V and P. Münch. I).

An even earlier Greek document from Aphroditō dating from between 527 and 565 records the arbitrated settlement of a property dispute (P. Mich. XIII, 659). No one could produce a document. Twenty-five years had elapsed and the witnesses could not be produced, and so evidence was finally taken by sworn testimony.

In summary, based on documentary attestation the three types of evidence accepted in settlements remained the same in these documents dating from pre-Islamic times, the early sixth century C.E., into the mid-eleventh century C.E./5th *hijri*.

However, with regard to the witnessing clauses of the documents, a significant difference distinguished Arabic practice from the two pre-Islamic traditions.

II. Reinstitution of Courts

Although the *Qur'ān* (2:282) prescribes documentary evidence,

يا أيها الذين ءامنوا إذا تداينتم بدين إلى أجل مسمى فاكتبوه ...

O you who believe, if you borrow money one from another for a stated term, then write it ...

early Islamic legal practice preferred oral to written testimony, which is also sanctioned by the Qur'ān in the next verse (2:283).

وإن كنتم على سفر ولم تجدوا كاتبا فرهن مقبوضة ...

But if you are on a trip and do not find a writer, then a pledge may be taken ...

Nonetheless, in the event of a dispute, rather than producing a witnessed document, the witnesses who had signed the document would be asked to testify orally.

Arabic document, as documents in the two other linguistic traditions, were signed by witnesses. But, unlike the Coptic and Greek documents, the Arabic documents were not signed by the parties to the transactions. The parties to Arabic transactions never signed. Professional witnesses signed testifying to their agreement. In the event of a dispute, the witnesses, and not the document, were the primary form of evidence. The document was regarded only as a means of reminding the witnesses of the particulars of the agreement. And in fact, a document dated 230/8465 records a witness being called to give such oral testimony as to what was in a document he had signed (P. Khalili. Arab. I, 12).

بسم الله الرحمن الرحيم شهدت فى كتاب ليعقوب بن اسحق بن اسمعيل البغـدادى
على هرون مولى اسحق بن اسمعيل البغدادى ان ليعقوب بن اسحق عليه تسعين دينـــار
حالة ليعقول عليه اشهدنى فى ذى القعدة سنة ثلاثين ومائتين

In the name of God the merciful and compassionate. I bore witness in a document (*kitāb*) for Ya°qūb ibn °Ishāq ibn °isma°īl al-Baghdādī against Hārūn the freedman of °Ishāq al-Baghdādī that Ya°qūb ibn °Ishāq was owed by him ninety dinars, now due to Ya°qūb from him. He called me to witness in *dhū al-qa°da*, in the year two hundred and thirty.

Coptic documents were signed by the parties to the transaction, if they could write, or someone signed their own name stating that they did so because the party in question could not write. Coptic document were also signed by one or more of the arbitrators named in the body of the document, as well as by other

witnesses. But, as in the instance in the document from Bala`izah referred to above, a document was preferred to sworn testimony as evidence.

Greek documents were similarly signed by the parties to the transaction, or, in the event of illiteracy, someone signed on their behalf. And Greek documents were also signed by multiple witnesses. Therefore, while evidentiary procedure was the same in each of the three legal traditions, only the Arabic tradition preferred oral over written testimony. Another difference was that the parties to the contract did not sign the document in the Arabic legal tradition.

Knowing the Arabic preference for oral testimony, the appearance of a subtle but systematic change in the witnessing clause of Coptic document attested beginning in 112/730 - 731 signals the reinstitution of courts in Islamic Egypt after their disappearance in the Byzantine period[10]. The subtle grammatical change altered the seller's testimony to the validity of the document from a statement that "he agreed to the sale", making the witness's testimony a future condition that, "when asked, he will testify that he agreed".

While Islamists would be aware that early Arabic customary practice and Islamic jurisprudence valued oral testimony over written evidence, Till, working from the Coptic and Greek, but not the Arabic evidence, had wondered what could have been behind this systematic grammatical change in the Coptic formulary. Might it have been that this subtle change brought those documents within the purview of Muslim evidentiary preference? Christians were free to continue to have their documents written in Coptic. Some Coptic

(10) W. C. Till, "Die koptische Stipulationsklausel", *Orientalia*, n. s., 19 (1950): 81 - 87.

documents dating from 112/730 and 123/740 state that the document is "written in the Egyptian language at the request of the seller"[11]. These documents attest that Christians had had a choice. In fact, some documents continued to be written in the Coptic through the second / eighth century.

Given that the documents themselves provide irrefutable evidence that the Christian community had its own system of justice that was recognized by the Muslim administrators, why did Christians opt to have their documents written in Arabic, a language which they did not understand, as some documents expressly state, and signed by registered Muslim witnesses, as they did?[12] In these contracts the parties involved are Christian, by their names, while the witnesses have Muslim names[13]. Why did the Coptic speaking Christian population opt for document written in Arabic and signed by Muslim witnesses?

To answer these questions we must first ask another. What happened in the event that an arbitrated settlement written in Coptic or in Greek failed? The Budge papyrus[14] provides incontrovertible evidence that Byzantine and Coptic arbitration repeatedly failed. The dispute recorded in the documents in that archive, written in Coptic and in Greek, went on for over twenty-five years spanning the Byzantine and early Islamic period. Why was this the case?

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(11) W. C. Till, *Die koptischen Ostraka der Papyrussamlung der oesterreichischen Nationalbibliothek* (Vienna, 1960), No. 12 dated 8 December 733, and No. 13, dated November 733.

(12) E. Tynan, *Histoire de l'organisation judiciaire en pays de l'Islam* (Leiden, 1960; second edition), pp. 236 - 252; G. Frantz-Murphy, "A comparison of the Arabic and earlier Egyptian contract formularies, Part I: The Arabic contracts from Egypt (3rd / 9th - 5th / 11th centuries)", *Journal of Near Eastern Studies* 40, iii (1981): 223.

(13) G. Frantz-Murphy, " A comparison ... Part I), 203 - 255 and 355 - 356.

(14) See above n. 8.

In comparing Arabic formulary for the sale of property with the earlier Egyptian contract formularies, we find that a warranty clause was a constitutive element of both the Arabic and Byzantine Greek formularies, but not of the intervening Coptic[15]. According to the parallel Arabic and Greek warranty, the seller was obligated to clear/clean claims brought by all third parties, *i.e.*, to warrant the buyer's clear title.

But the fossilized Byzantine warranty had ceased to work in the last century and a half of Byzantine rule. As Schiller[16] argues, there were no longer courts to enforce the warranty's provisions. Strengthening the Byzantine warranty by pledges and fines of even four to six times the purchase price, as well as by sacred oaths, could not render the warranty efficacious failing any means of legal enforcement.

The later documents written in Coptic do not include a warranty. Rather, they contain a promise by the seller "Not to lay claim". If a third party laid claim, he, the third party, would be liable to a fine and "estrangement from the Christian oath". The document, not the seller, provided security. However, neither did the Coptic promise not to lay claim prevent third party claims, even though strengthened by the threat of fine escalated to as mush as twenty-four times the purchase price, and threat of "estrangement from the Christian oath". Failing a court to enforce a warranty, the Coptic documents omitted the clause. More seriously, the Coptic document left no room for valid claims. The warranty clause had

(15) G. Frantz-Murphy, "A comparison of the Arabic and earlier Egyptian contract formularies, Part II: Terminology in the Arabic warranty and the idiom of clearing / cleaning", *Journal of Near eastern Studies* 44, ii (1985): 99 - 114.

(16) A. A. Schiller, "The courts are no more", *Studi in Onori di Edoardo Volterra*, Volume I (Naples, 1952), 469 - 502.

been dropped for over two centuries in the Coptic documents because there was no authority to enforce its terms. However, upon reinstitution of courts in the Islamic period, the warranty clause was reinstated and is regularly attested in the Arabic documents[17]

In his article Schiller argues that courts had disappeared from Egypt long before the Arab conquest[18]. In fact, courts had disappeared before the reign of Justinian. And relying solely on Coptic and Greek evidence, Schiller came to the erroneous conclusion that there were still no courts in Islamic Egypt in the second century *hijra*/eighth C.E.

Arabic documents indicate that if not courts, then judicial officials were, in fact, designated and empowered by the Muslim administration within less than a century of the Arab conquest. In two documents from dated 91/709 (P. Heid. Arab. I, 10, 7 - 10 and 11, 3 - 7), the governor of Egypt Qurrā ibn Sharīk instructs the district official to establish the evidence and to render and effectively enforce a decision in a legal dispute which had been brought to the attention of the governor.

بسم الله الرحمن الرحيم من قرة بن شريك إلى زكرياء صاحب اشـمون ..... فإن يحنس بن شنوده اخبرنى أن له ثمنية عشر دينرا دين على انبا صلم من كورته وغلبه على حقه فان كان ما اخبرنى حقا واقام علـى ذلك البينة فاجمع بينه وبين صاحبه فما كان له من حق فستخرجه لـه ولا تظلمن عبدك ...

صلم for سلم read (P. Heid. Arab. I, 10, 1 - 10)

(17) G. Frantz-Murphy, "A comparison ... Part II", 99 - 114.
(18) Schiller, "Courts", 469 - 502.

In the name of God the Beneficent the Compassionate. From Qurrah ibn Sharīkh to Zakarīya° governor (*sāhib*)[19] of Ushmūn ... Verily Yuhannis ibn Shanūdah told me that he has eighteen dinars, loans against Anbā Sālim from his district (*kūra*). and they are his by right. If what he tells me is right, establish the evidence (*iqāma*) to the effect, and resole this between him and his associate (*sāhib*). Recover what was his by right for him. Do not wrong your servant (*°abd*).

Just as the governor of Egypt empowered Christian officials at that early date, district officials must have appointed village officials at a lower level. Arabic narrative sources provide evidence that they did so eight years after the date of this correspondence[20]. Al-Kindī (d. 359/872 - 3) provides oblique reference to what may have been the Islamization of the personnel staffing provincial courts at the end of the first Islamic century. Between 99 - 102 / 717 - 720 Coptic village officials (*meizoteroi*) were ordered to be replaced by Muslims[21].

وكان على أهل مصر أبو عبيدة بن عقبة بن نـــافع الفـــهرى. ونزعـــت
مَوازيت القبط عن الكُوَر، واستعمل المسلمون عليهم

When Abū °Ubayed Allāh ibn °Uqbah ibn nāfi° al-Fahrī was over the people of Egypt, he dismissed the Coptic village officials in the districts and appointed Muslims over them.

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(19) For *sāhib* as "governor", see N. Abbott, *The Kurrah Papyri from Aphrodito in the Oriental Institute* (Chicago, 1938), I, note to line 3.

(20) Tyan, *Histoire*, 124; Muhammad ibn Yūsūf *al-Kindī, Kitāb al-umarā° wa Kitāb al-qudāt*, ed., R. Guest (Leiden, 1912), under the entry for 133 mentions that an ill *qādī* appointed his notary to act for him

(21) Al-Kindī, Muhammad ibn Yūsūf, *wulāt misr*, Hussein Nassār, ed., (Cairo, 1959), p. 90 corrects the Guest ed. p. 69.

This change in personnel from Christians to Muslims, which took place at approximately the same time as the change in the Coptic stipulation clause, leads to the conclusion that this coincidence was not coincidental.

Since Arabic customary practice and Islamic jurisprudence valued oral testimony over written evidence, and since Muslims were now available as judges to whom the population could bring their legal disputes, the change in the Coptic stipulation clause brought those documents and the evidence that they recorded into the purview of Islamic courts. Islamic courts, unlike Coptic, had the power of enforcement. In fact, among the Coptic Jeme documents, two disputes (nos. 25 and 47) dated 120 - 121 / 737 - 738, *i.e.*, after the change in the stipulation clause, were referred by the litigants to the Islamic courts, "the representative of our lord the illustrious amir (ἀμιρᾶ)[22]. The *amīr* is also the judicial official in the document cited above (P. Heid. Arab. I, X and XI) who instructed the district official to establish the evidence and to render a legal decision.

III. Familial Nature of Litigation

Contracts between Christians dating from fourth / tenth century Egypt for the sale of residential property written in Arabic state that the document was,

... قرى عليها بالعربية وفسر لها بالعجمية

... read to her in Arabic and explained to her in the "foreign" language.

In these contacts the parties to the contracts have Coptic names while the witnesses have Muslim names[23]. This lead to the

(22) Schiller, "A Family Archive ... ".
(23) G. Frantz-Murphy, " A comparison ... Part I), 223.

conclusion that the Arabic contracts served the needs of the non-Muslim population.

Christians chose to arrange transfer of their property by contract in Arabic bringing their property transactions within the purview of Islamic courts. Doing so was in their interest. Islamic courts served their needs. Acceptance of Muslim courts would not have been difficult since, they shared evidentiary procedure, and constitutive formulary, as well as idioms with the preceeding Coptic and Greek courts on the evidence of the contract formulary of the two earlier linguistic traditions(24). Islamic courts were called upon to resolve disputes which profoundly affected the litigants' families and community.

The family living arrangements described in the Arabic settlement documents are the same as those recorded in earlier Coptic and Greek contracts and settlement documents - rights in joint tenancy in residences, shares in kitchen, the right to occupy an alcove under a staircase, joint use of a dining room or balcony, shares of multiple related owners in the same property. The legal contingencies which these contracts and property settlements had to take into consideration were community and interfamilial relations, not abstract property rights(25). That Christians entrusted their familial relationships to Islamic courts testifies to the Christian community's confidence in those courts.

According to Islamic jurisprudence, being a Muslim was pre-requisite for being a witness. From narrative sources we learn that

(24) G. Frantz-Murphy, " A comparison ... Part I), and "Part II", and "Part III: The idiom of Satisfaction", *JNES* 47, ii (1988): 105 - 112; "Part IV: Quittance", *JNES* 47, iii (1988): 269 - 280; "Part V: Formulaic Elements and Conclusions", *JNES* 48, I (1989): 97 - 107.

(25) G. Frantz-Murphy, " A comparison ... Part I), 223.

an effort was made to enforce this qualifications[26]. Some of the witnesses who did sign the Arabic documents referred to may in fact have been recent converts, or from families of recent converts to Islam. There are witnesses with Muslim patronymics and Coptic first names, witnesses who signed in Coptic, and several who had only a rudimentary ability to write their name in Arabic. Some singed with the equivalent of an "x"[27].

In conclusion, the Christian population of Egypt had had no judicial system with the authority to render and enforce decisions since before the sixth century C.E. In the second/eight century the majority population, of their own accord, opted to have their legal document recorded in Arabic. By doing so they gained access to Islamic courts. Those courts were staffed by what must have been a small minority of Arabic - speaking Muslim officials. Christians chose to make use of a newly instituted and apparently effective judicial system. That judicial system, in matters of property law, was virtually the same as the earlier system with which the Christian population was familiar. And in the event that a contract were violated, the duly witnessed document could be taken to an Islamic court, where a judicial decision could be both rendered and enforced by Muslim officials administering Islamic law.

(26) E. Tyan, "Le notarit ?", 19 - 22; Tyan, *Histoire*, 242 - 244 for references to the periodic review, as early as the third / ninth century, of the trustworthiness of professional witnesses.

(27) P. Chic. Arab. Part I, p. 205.