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## Miscellanea papyrologica : I P. Lond. 1711 and Jewish Talmudic sources

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## MISCELLANEA PAPYROLOGICA

### I P. LOND. 1711 AND JEWISH TALMUDIC SOURCES

In a recently published volume<sup>1</sup> I have called attention to a strong influence of Jewish-Talmudic legal formulae upon the form of legal documents in Egypt in the late Byzantine period. Among other documents, I have dealt there briefly with P. Lond. 1711, a marriage document of 566—573 C. E. Upon further analysis and study of this document, I have discovered that it contains so much which is only explainable in terms of Jewish-Talmudic influence that it represents an excellent case study of this influence. For the sake of completeness, I shall repeat here, in substance, some of the points which I have already discussed in the above-mentioned volume.

#### 1. The General Hypothec Formula

In lines 25—26 of the document the husband subjects his property to a general hypothec to secure the payment to the wife of the *donatio propter nuptias*. The main part of the formula reads: κινδύνῳ καὶ πόρῳ καὶ τιμῆματι τῆς ἐμῆς ὑπ[οσ]τάσεως γενικῶς καὶ ἰδικῶς. The general hypothec clause begins to appear in Greco-Egyptian papyri of an obligatory nature in the latter part of the 5th century<sup>2</sup>. Among Jews a provision for a general charge upon the obligor's property in favor of the obligee had been a common feature in documents of an obligatory nature for several centuries before it began to appear in the Greco-Egyptian papyri. So much so, that already in the 2nd century C.E. it was held by the rabbis that this charge was implied in law even where the clause providing for it was omitted from the bond<sup>3</sup>.

<sup>1</sup> See Jacob J. Rabinowitz, *Jewish Law* (1956), p. 164 ff.

<sup>2</sup> See A. B. Schwarz, *Hypothek und Hypallagma*, p. 49, n. 3.

<sup>3</sup> See *Mishnah Baba Metzia* 1 : 5.

To be sure, the fact that a given legal institution was in force among Jews several centuries before its appearance in the Greco-Egyptian papyri, standing alone, is far from sufficient to prove Jewish influence upon the development of the institution among non-Jews in the late Byzantine period in Egypt and elsewhere. However, in the case of the general hypothec there is evidence of a linguistic nature which is far more convincing and which is to the effect that the very formula — the Greek as well as the Latin version thereof — by which a general hypothec was constituted was copied from a Jewish model.

The word κίνδυνος, the basic meaning of which is *risk*, *hazard*, is used in the Greco-Egyptian papyri in the sense of *security*, *pledge*<sup>4</sup>. The Latin equivalent of κίνδυνος — *periculum* — is also used in the same sense in C. 8, 16 (17), 9 (a. 528), where it is stated that the formula *fide et periculo rerum ad me pertinentium* is sufficient to constitute a general hypothec. The question arises, how did a word which in its original sense means *risk* or *hazard* come to mean *pledge* or *security*? The answer to this question, I believe, is that the Greek κίνδυνος and the Latin *periculum* are literal translations of a Hebrew term.

The Hebrew word by which the general lien on the obligor's property, similar to the general hypothec of the later Roman law, is designated is *aḥrayuth*. This word is derived from *aḥar* — after, behind or back of — and means a *standing back of*, *security*<sup>5</sup>. From the original meaning of the word *aḥrayuth* — *security*, *pledge* — there developed the secondary meaning of responsibility for loss, or risk of loss. The Hebrew term *aḥrayuth* in the sense of security was translated into Greek as κίνδυνος (risk or hazard), that is by a Greek term which corresponds to the secondary meaning of the Hebrew term. This Greek term thus became assimilated with the Hebrew *aḥrayuth* acquiring the meaning of *security* which the latter term had in Hebrew. Justinian's *periculo rerum ad me pertinentium* and its Greek equivalent in the papyri are but literal translations of *beaḥrayuth kol nekasai* (on the security of all my property) of the Hebrew writing obligatory.

<sup>4</sup> See, e.g., P. Grenf. II, 87; P. Oxy. 135. See also Preisigke, *Wörterbuch s.v. κίνδυνος*.

<sup>5</sup> See M. Jastrow, *Dictionary of the Targumim, the Talmud Babli and Yerushlami and the Midrashic Literature*, p. 41b.

In addition to the word *periculum*, the word *fides* (surety or guarantee) is used in the general hypothec formula in Justinian's code. This makes the parallel with the Talmudic formula perfect, the latter being *kol nehasai ahrain vearbain* — „all my property is guarantee and surety”<sup>6</sup>.

Also pointing in the same direction is the word *τίμημα*, which appears in the formula of the general hypothec quoted above from P. Lond. 1711 and in other 6th century papyri. This word, which elsewhere means *valuation*, has been generally misunderstood by lexicographers. Not knowing what valuation had to do with the general hypothec formula, lexicographers invented for the word a new meaning, namely, *cost*<sup>7</sup>, interpreting the word to import an undertaking on the part of the obligor to bear the cost of the procedure of execution against his property if it should become necessary for the obligee to resort to such procedure. Thus the formula *κινδύνω και πόρω και τιμήματι τῆς παντοίας μου ὑποστάσεως* appearing in P. Strassb. 40.20 is explained by Preisigke as follows: „auf Gefahr und Preisgabe meines gesamten Vermoegens, welches auch zur Bestreitung der Kosten des Verfahrens herhalten soll”. The truth of the matter, however, is that *τίμημα* means here, as elsewhere, *valuation* and that the relationship of this term to the general hypothec can only be understood in the light of the Talmudic procedure of execution against the obligor's property. One of the steps in this procedure was valuation (*shuma*) by the court of so much of the obligor's property as was necessary to satisfy the obligation<sup>8</sup>.

Maimonides, in his *Code of Jewish Law*, states the rule concerning valuation of the obligor's property, which is based on Talmudic authority, as follows:

„How is the writ of execution worded? If execution is issued against the debtor's free property the writ states: „Such a one having become bound by judgment to pay so much to such a one and having failed to pay vo-

<sup>6</sup> See *Tosepta Kethubot*, 9 : 1; Babylonian Talmud *Gittin*, 37a and *Kethubot*, 82a.

This formula also appears in the warranty clause in a deed of conveyance from the Dead Sea Region dated in „the third year of the freedom of Israel” (134 C.E.). See *Revue Biblique* 61 (1954), 182 ff.; *Bulletin of the American Schools of Oriental Research*, No. 136, 15 f.; *Revue Biblique* 62 (1955), 254.

<sup>7</sup> See Preisigke, *Wörterbuch* and Liddele-Scott-Jones, *A Greek English Lexicon*, s.v. *τίμημα*.

<sup>8</sup> See *Mishnah Arakhin* 2 : 1 and Babylonian Talmud *Baba Metzia* 35a.



luntarily, we have issued this writ of execution against such a field belonging to him". Thereafter, three appraisers assess so much of the field as is necessary to satisfy the debt, causing proclamation to be made as often as to them appears expedient, until no higher bids are received, and possession of so much of the field as is assessed for the amount of the debt is given to the debtor, and his writing obligatory, if there be one, is torn up"<sup>9</sup>.

## 2. The Husband's Undertaking to Maintain and Clothe the Wife

In line 27 the husband undertakes to maintain the wife *truly* and clothe her (διαθρέψαι σε γνησίως καὶ ἐνδιδύσκειν). The Jewish marriage document (*kethubah*) contains a similar undertaking on the part of the husband, which is derived there from the Talmudic tradition interpreting Exod. 21:10 — "Her food, her raiment and her marriage duty shall he not diminish" — as referring to the duties of the husband toward his wife<sup>10</sup>.

The similarity in substance alone between the provision concerning the maintenance and clothing of the wife in P. Lond. 1711 and in the Jewish *kethubah*, though suggestive, is not conclusive of Jewish influence on the Greek document. However, there is a stylistic peculiarity in the Greek version which seems to be explainable only if we assume that the Jewish *kethubah* served as a model for the Greek document. The adverb γνησίως in the phrase διαθρέψαι σε γνησίως is more than awkward. Arangio-Ruiz, who is apparently aware of the difficulty, translates this word into Latin as *convenienter* (suitably)<sup>11</sup>. But the Greek word does not mean that; it means *truly*, *genuinely*, and *maintain truly* does not make much sense. It seems that the notary who drafted the Greek document, or the one who drafted the model from which the document was copied, abbreviated a longer formula of the Jewish *kethubah* where the word *bekušta* (*truly*, or *in truth*) occurs and where it properly belongs. By taking the word out of its proper context and transposing it in his abbreviated formula to a place where it does not be-

<sup>9</sup> Maimonides, *Mishneh Torah, Malveh ve-Loveh*, 22 : 6. English translation by Jacob J. Rabinowitz, *The Book of Civil Laws (Yale Judaica Series, vol. II, p. 160)*.

<sup>10</sup> See my *Jewish Law*, p. 45 f.

<sup>11</sup> *Fontes Iuris Romani Antejustiniani*, vol. III, p. 45.

long the scribe unwittingly betrayed the source from which he copied. The longer formula in the *kethubah*, in English translation, reads:

"Be thou my wife according to the law of Moses and Israel, and I, with the help of Heaven, will worship, cherish, support and maintain thee in accordance with the custom of Jewish husbands who worship, cherish, support and clothe their wives in truth, ..." <sup>12</sup>

The word *bekūṣṭa* at the end of the formula, which is here translated as *in truth*, belongs to the word *ve-eflah*, which is translated as *I will worship* and corresponds to the idiomatic expression *laabod beemet* (to worship in truth) which occurs several times in the Bible <sup>13</sup>. It has no affinity whatsoever with the other verbs, such as *support* and *clothe*, in the formula.

In addition to the two items of *maintenance* and *clothing* in the list of duties which the husband owes to the wife under the terms of the *kethuba*, there is still a third item in that list, namely conjugal intimacy. This too is found in P. Lond. 1711. In line 33 the husband undertakes not to refrain from cohabitation with the wife — καὶ μηδαμῶς αποστῆναι με τῆς σῆς κοίτης.

### 3. The Husband's Undertaking Not to Divorce the Wife Except for Certain Causes

In lines 29—31 the husband undertakes not *to hate* or *to divorce* the wife except for matter of *unchastity*, *ugly conduct* and *bodily irregularity* — καὶ ἐν μηδενὶ κατφρονῆσαι σου μήτε ἐκβαλεῖν σε ἐκ τοῦ ἐμοῦ συνοικεσίου παρεκτὸς λόγου πορνείας καὶ αἰσχρᾶς πράξεως καὶ σωματικῆς ἀταξίας. This provision, in substance as well as in form, bears unmistakable signs of having been copied from a Jewish-Talmudic model. Indeed, as we shall presently see, some of the elements therein have been generally misunderstood by papyrologists who have been unaware of the background and source of the provision as a whole.

What is meant by the husband's undertaking *not to hate* the wife? The answer is that the word for *hate* is a literal translation from the Hebrew or the Aramaic *sn'* (*to hate*) which is used in Bibli-

<sup>12</sup> Sefer Hashtaroth, *Dokumentenbuch von Rabbi Jehudah ben Barsillai* aus Barcelona, C.J. Halberstamm, ed. (Berlin, 1898) No. 36.

<sup>13</sup> See, e.g. 1 Sam. 12: 24; 1 Kings 2: 4; Jer. 32: 41.

cal Hebrew and in the Aramaic papyri in the terminology of divorce<sup>14</sup>. Epstein<sup>15</sup> has called attention to the fact that the word is similarly used in Palestinian Talmud *Kethubot* 5:8 and *Baba Bat-hra* 8:8, where it is stated in the name of R. Jose (3rd century): "Those who write 'If he will hate (her), if she will hate (him)', it is a condition with respect to matters pecuniary and is valid". It thus appears that in the 3rd century in Palestine the Jewish marriage document contained a condition about divorce which was couched in terms strikingly similar to those of P. Lond. 1711.

As to the grounds for divorce enumerated in the document, it seems likely that in the first one — unchastity — there is a reflection of Matt. 5:32 (παρεκτὸς λόγου πορνείας). However, the last two items — ugly conduct and bodily irregularity — point to the Jewish-Talmudic tradition as the origin of the formula.

As to the second item, it seems to be derived from a certain Talmudic text dealing with the subject of divorce. In Babylonian Talmud, *Yebamoth* 24b and in Palestinian Talmud, *Kethubot* 7:6, there is an enumeration of compromising circumstances, such as "the seller of perfumes leaving (the house) and the woman fastening her petticoat", warranting divorce by the husband, and in each case the woman's conduct is characterized as *daḥar meḥoar* (an ugly thing). It seems that R. Judah the Prince, the compiler of the Mishnah, in whose name the proposition is reported in the Babylonian Talmud, by characterizing the woman's conduct as "an ugly thing", alluded to the phrase *ervat daḥar* in Deut. 24:1, interpreting it in this sense. This interpretation of the Biblical phrase is in remarkable agreement with that of the LXX who render it as ἄσχημον πράγμα (an ugly thing).

The third item — bodily irregularity — points to Mishnah, *Kethubot* 7:7 as its origin. In this text it is stated:

"If a man betrothed a woman on the condition that there were no defects in her, and defects were found in her, her betrothal is not valid. If he married her making no conditions and defects were found in her, she may be put away without her *Kethubah*"<sup>16</sup>.

No wonder, then, that such eminent scholars as Preisigke and Arangio-Ruiz misunderstood the phrase *σωματικῆς ἀταξίας*, the for-

<sup>14</sup> See my *Jewish Law*, p. 40.

<sup>15</sup> J. N. Epstein in *Jahrbuch der jüd. - lit. Gesellschaft*, 6 (1908), 368 f.

<sup>16</sup> Danby, *The Mishnah*, p. 255.

mer interpreting it as meaning *Ehebruch in Gestalt unnatürlicher Unzucht*<sup>17</sup> and the latter rendering it as *corporalis infirmitatis*<sup>18</sup>. With regard to this rendering, I believe that it stands refuted by itself. The woman's mere infirmity of body as a ground for divorce is almost unthinkable. It would be both cruel and absurd.

#### 4. Proof by Three or More Villagers or City-dwellers

In lines 31—33 it is provided that the circumstances justifying divorce on the part of the husband are to be proved by three or more trustworthy freeman, *villagers or city-dwellers*. The phrase which I have rendered as *villagers or city-dwellers* is: *παγᾶνων ὄντων καὶ πολιτικῶν*. My rendering is in accord with Bell's note to this phrase and with Maspero's rendering thereof quoted there. Liddell-Scott-Jones, in their *Greek-English Lexicon* s.v. *παγᾶνος*, cite the word from P. Lond. 1711 and render it as "private, unofficial". Similarly, Arangio-Ruiz renders the phrase as *per ... viros privatos in civitate degentes*, which cannot but be considered a makeshift translation of a difficult phrase. There seems to be no reason whatsoever why proof should be limited to private persons dwelling in a city.

Oddly enough, the clue to the meaning of the phrase under discussion is to be found in the Aramaic papyri of the 5th century B.C. In Cowley 13, a deed of conveyance of a house dated 447 B.C., there is a provision (lines 10—11) which, in Cowley's English translation, reads:

"Whoever raises against you suit or process, (whether it be) I or a brother or sister, relative or stranger, soldier or citizen, shall pay you the sum of 10 kerashin, and the house is assuredly yours"<sup>19</sup>.

The phrase which Cowley renders as *soldier or citizen* is *baal degel ubaal kiryah*, which literally means *a man of a (military) standard and a man of a city*. By *a man of a standard* is probably meant a man living in a military settlement, village. The description is apparently meant to be all-inclusive, and this is also the import of the phrase *παγᾶνων ὄντων καὶ πολιτικῶν*, which is an almost literal trans-

<sup>17</sup> Preisigke, *Wörterbuch*, s.v. *σωματικός*.

<sup>18</sup> *Fontes Iuris Romani Antejustiniani*, vol. III, p. 45.

<sup>19</sup> A. Cowley, *Aramaic Papyri of the Fifth Century B.C.*, p. 36.

lation of the Aramaic phrase. It is perhaps not without significance in this connection that, as has already been noted by Bell, the provision that the wife's misconduct be proved by 3 men bears a striking resemblance to the provision to the same effect in P. Eleph 1 (311/310 B.C.)<sup>20</sup>.

5. ἔργῳ καὶ δυνάμει

In lines 43—50 of the document the husband undertakes that if he divorces the wife without just cause he will pay her χρυσοῦ νομίσματα δεκαοκτὼ ἔργῳ καὶ δυνάμει ἀπαιτούμενα. The formula ἔργῳ καὶ δυνάμει ἀπαιτούμενα, which also occurs in the penal clause of other 6th century papyri, has been interpreted by Brassloff<sup>21</sup> to mean that the provision for a penalty is not a mere formality but an agreement entered into in full earnestness, which is in reality (ἔργῳ) to be enforced by the authority of the state (δύναμις). Wilcken<sup>22</sup>, though questioning Brassloff's interpretation of δυνάμει, is in general agreement with his interpretation of the formula as a whole. Hunt and Edgar<sup>23</sup> render the formula into English as "to be really and truly exacted". I would suggest that the formula be rendered into English instead as "to be actually (ἔργῳ) as well as potentially (δυνάμει) exacted", that is in fact as well as in theory, which seems to me best to convey the meaning of the formula.

I have long suspected that the formula under discussion is an adaptation of the Aramaic *delo keasmaḳta udelo keṭofse deṣtare*, generally found in the execution clause of Jewish documents of an obligatory nature. The literal translation of this formula is: „not as a reliance and not as a (mere) form of documents". Its import is the same as that of the Greek formula, as interpreted by Brassloff, that is that the provision is not a mere matter of form. This

<sup>20</sup> On the relationship between P. Eleph 1 and the Aramaic papyri, see my *Jewish Law*, p. 42 ff. It is perhaps also not without significance that in P. Lond. 1711, lines 66—68, as in the Aramaic papyrus Sayce-Cowley, P. Eleph. G. (Cowley 15) of 441 B.C. and as in P. Eleph.<sup>6</sup> 1, the husband undertakes not to marry another woman. A provision of this nature in a marriage contract is in order where, as under Jewish Law, polygamy is permissible.

<sup>21</sup> S. Brassloff, *Zu den Quellen der byzantinischen Rechtsgeschichte* (ZSSSt. 25 (1904), 305).

<sup>22</sup> Arch. für Pap. IV, 214.

<sup>23</sup> Hunt and Edgar, *Select Papyri*, vol. I, No. 25, lines 26—27 = P. Oxy. 139.



Aramaic formula is found already in the Babylonian Talmud, *Baba Bathra* 44b, where it is quoted in the name of Rab̄ Hisda (late 3<sup>rd</sup> century), so that it is fairly certain that it is not an adaptation of the Greek formula which begins to appear in the 6th century only.

My suspicion concerning the Talmudic origin of the Greek formula has been confirmed by P. Lond. 1711, where this formula is followed by another formula, which has defied correct interpretation by papyrologists and which is easily explainable as a free, though not unskilful, translation of another Talmudic formula. In line 47 of P. Lond. 1711, immediately following the ἔργω καὶ δύναμει formula, there occurs a formula which is transcribed by Bell as follows: καὶ. ἐνος ἐξελθεῖν με ἐκ τοῦ... σῆ<sup>24</sup>. In a note to the 2<sup>nd</sup> word, which is partly illegible, he says "γυμνός is perhaps possible, though an unlikely word". However, in the light of a certain Talmudic parallel γυμνός is not only not unlikely but very likely indeed. From several texts in the Babylonian Talmud<sup>25</sup> it appears that the execution clause in documents of an obligatory nature would usually contain the formulæ *afilu miglima deal katpai* (even from the cloak on my back), the import of which is that all of the obligor's property, without exception, is subject to seizure in satisfaction of the obligation. The Greek formula, which should be rendered into English as "even if I should come out without a cloak", is apparently but a paraphrase of the Talmudic formula.

#### 6. Ἀξιόπιστος and ἐλεύθερος

These two adjectives, used in lines 32—33 of P. Lond. 1711 with respect to witnesses, are perhaps also of Jewish origin. The first one of these (ἀξιόπιστος — trustworthy) seems to occur only in papyri of the late Byzantine period<sup>26</sup>, while in Jewish sources its equivalent (*‘edim ne’emanim* — trustworthy witnesses) is very ancient. It occurs already in Isaiah VIII, 2. As to the second adjective (ἐλεύθερος), I believe that it is the equivalent of the Hebrew *kasher* and should be rendered not as *free*, but as *fit, proper, legitimate*<sup>27</sup>.

<sup>24</sup> See, e.g. A. Gulak, *Ozar Hashtaroth*, nos. 213—215.

<sup>25</sup> See Babylonian Talmud, *Baba Kama* 116, *Baba Bathra* 44b, 157a. See also the forms cited in the preceding notes, all of which contain this formula.

<sup>26</sup> See Preisigke, *Wörterbuch*, s.h.v.

<sup>27</sup> See M. Jastrow, *Dictionary of the Talmud Bavli etc.*, p. 677a—678a.



The meaning *legitimate* for ἐλεύθερος will also explain how ἡ ἐλευθέρα came to be used in the sense of *wife*<sup>28</sup>. The literal translation is *the legitimate one*, that is the *legitimate wife*. The word has the same meaning in the phrase τὰ πρόποντα ἐλευθέραις γυναίξιν, cited by Preisigke *s.v.* from P. CPR 30, II, 18. This phrase should accordingly be rendered as "that which is proper for legitimate wives", that is the husband undertakes to provide the wife with all that is proper for her station as a legitimate wife. In the corresponding clause in the formula of the Karaite *kethubah* (*marriage document*) quoted by Gaster the phrase *nashim kesheroth* (legitimate wives) occurs<sup>29</sup>.

It is not unlikely that the use of ἐλεύθερος in the sense of legitimate goes back to the 4th century B.C. In P. Eleph 1 (311/310 B.C.) lines 2—4, it is stated: λαμβάνει Ἡρακλείδης Δημητρίαν Κώϊαν γυναῖκα γνησίαν ... ἐλεύθερος ἐλευθέραν. This is rendered by Hunt and Edgar as follows: „Hereclides takes as his lawful wife Demetria, Coan, both being freeborn”<sup>30</sup>. It seems to me that the phrase ἐλεύθερος ἐλευθέραν should rather be rendered as *both being legitimate for one another*. In the same document, lines 4—5, we read: ... παρεχέτω δὲ Ἡρακλείδης Δημητρίαι ὅσα προσήκει γυναικὶ ἐλευθέραι πάντα... This is translated by Hunt and Edgar as follows: "... and Heraclides shall supply to Demetria all that is proper for a freeborn wife..."<sup>31</sup> Again, it seems to me preferable to translate γυναικὶ ἐλευθέραι as *to a legitimate wife*, rather than *to a freeborn wife*. Some support for this translation may be seen in the fact that in the corresponding clauses in P. Giess 2 (173 B.C.), P. Gen. 21 (2nd century B.C.) and P. Tebt. 104 (92 B.C.) the phrase γυναικὶ γαμετῆι (to a wedded wife) is used<sup>32</sup>. The emphasis apparently was upon the *weddedness, legitimacy* of the wife, as distinguished from the concubine, which conferred upon her a high station in the social order.

<sup>28</sup> See Liddell-Scott-Jones, *ibid.* *s.v.* ἐλεύθερος, citing P. Oxy 1872.8 (V/VI C.E.). Cf. ἡ γαμετή (the wedded one, wife) in P. Lond. 1722.4 (573 C.E.).

<sup>29</sup> M. Gaster, *Die Kethubah bei den Samaritanern* (Monatsschrift für die Geschichte und Wissenschaft des Judentums 54 (1910), 578).

<sup>30</sup> A. S. Hunt and C. C. Edgar, *Select Papyri I*, p. 3.

<sup>31</sup> *Ibid.*

<sup>32</sup> Preisigke, *Wörterbuch*, *s.v.* γαμετή renders the phrase γυνή γαμετή citing P. Giess. 2 and Tebt. 104. as *rechtmässige Ehefrau*, Cf. no. 28, above.

A further nuance of the meaning of *kasher* is that of *zealous, industrious*, from which the abstract noun *kashruth* — *industry* — is formed<sup>33</sup>. This nuance is especially pronounced in Midrash Rabbah to Koheleth (Ecclesiastes), III, 9, cited by Jastrow<sup>34</sup>. The original there reads *mah mehani kasher bekashrute* and is rendered by Jastrow as "what has the industrious profited by his industry". Now, the term ἐλευθερία seems to be used in some Coptic<sup>35</sup> and in some Greek<sup>36</sup> papyri representing employment contracts in precisely the same sense of *industry*.

The meaning of ἐλευθερία in the above-mentioned contracts has been discussed by Till and Steinwenter, but neither of them has arrived at its correct meaning (see below). I shall quote a portion from Till's German translation of a Coptic contract of employment as captain on a boat, in which the term ἐλευθερία occurs and in which the meaning *industry* fits the context most admirably. It reads:

"Nun aber (δέ) erkläre (ὁμολογεῖν) ich, dass ich Schiffer auf diesem καράβιον — Schiffe bleibe in aller Anständigkeit (ἐλευθερία), ohne faul (ὀκνεῖν) (und) nachlässig zu sein (καταφρονεῖν). Wir dürfen nichts voreinander verbergen von dem, was Gott uns (als Gewinn) bescheren wird und wir wollen (einander) den ausgemachten (ἀπότακτος) Anteil (ἀναλογία) am (Ertrag des) 'Apa Severos' geben von heute an bis zum Ende des Jahres"<sup>37</sup>.

In his introductory remarks to document No. 38 just quoted, Till says: "Der Aussteller verspricht 'in aller ἐλευθερία' zu bleiben (vgl. 25 und 35). Da hier gleich darauf das Versprechen folgt, nichts vom Ertrag des gemeinsamen Unternehmens geheim zu halten, sondern ihn ehrlich nach dem vereinbarten Schlüssel aufzuteilen, liegt es nahe, hier ἐλευθερία als „Ehrlichkeit, Anständigkeit" zu verstehen (vgl. 25)"<sup>38</sup>. However, in view of the parallel clauses in Nos. 25 and 35 cited by Till, where no division of profits is invol-

<sup>33</sup> See Jastrow, *op. et loc. cit. supra* No. 27.

<sup>34</sup> *Ibid.*

<sup>35</sup> W. Till, *Die koptischen Arbeitsverträge* (Symbolae Taubenschlag I (1956), pp. 294, 302, 304).

<sup>36</sup> O. Montevecchi, *I contratti di lavoro e di servizio nell' Egitto greco-romano e bizantino*, Nos. 17, 19.

<sup>37</sup> Till, *ibid.*, p. 304.

<sup>38</sup> *Ibid.* p. 303 f.

ved, it would seem that enlightenment with respect to the meaning of ἐλευθερία is to be sought in what precedes the term, rather than in what follows it. The employee promises not to be lazy or neglectful of his work (in the language of modern American collective labor agreements: "soldiering on the job"), but to preserve his industry.

In No. 25 Till renders ἐλευθερία as *Unbescholtenheit*. In his introductory remarks to this document he discusses this term at length as follows:

"Das Versprechen, die ἐλευθερία zu bewahren, findet sich ebenso in den Urkunden 35 und 38. Ich habe die Meinung geäußert, dass der Betreffende damit verspricht, seine Unbescholtenheit zu bewahren. Steinwenter ist der Meinung, dass es sich um die gedankenlose Übernahme einer byzantinischen Klausel handelt, die hier ihren ursprünglichen Sinn verloren hat. Mir erscheint es sehr wahrscheinlich, dass wir beide recht haben, dass nämlich die gedankenlos übernommene Formel in den koptischen Urkunden einen anderen, ihr ursprünglich ganz fremden Sinn erhalten hat. Da ἐλεύθερος "unbescholten" bedeutet, lag es nahe, das dazugehörige Abstraktum ἐλευθερία als "Unbescholtenheit" zu verstehen. Wenn dieses Wort in unseren Urkunden überhaupt einen Sinn hat, musz es eben diesen auch in den griechischen Arbeitsverträgen (Mont. Contr. 17, 16; 19, 29) haben, denn kein anderer passt in den Zusammenhang, am allerwenigsten "Freiheit", da gerade in diesen Arbeitsverträgen der Arbeitnehmer seine persönliche Freiheit für die Dauer des Vertrages in sehr weitgehendem Ausmasse aufgibt"<sup>39</sup>.

In the light of what has been said above about the equivalence of *kashruth* and ἐλευθερία it would seem that neither Till nor Steinwenter is right. The clause is not eine *gedankenlose übernahme einer byzantinischen Klausel*; it is perfectly plausible. The maker of the contract promises not to be lazy but to work for his employer with industry.

In conclusion I beg to be permitted a general observation: Whenever one finds a peculiar Greek term used in the legal papyri of any period, and particularly of the Byzantine period, one should, as a matter of sound methodology, examine the possibility that the term in question represents an Aramaism or a Hebraism.

<sup>39</sup> *Ibid.* p. 294 f.

## II ARAMAIC PAPYRUS BROOKLY 7 AND P. FREIB. III 29.

In his programmatic article *Das babylonische Recht in den Griechischen Papyri*<sup>1</sup>, Taubenschlag points to P. Freib. III 29 (179/8 B.C.), where a brother seems to have given his sister in marriage, as one of the manifestations of Babylonian influence on the law of the Greek papyri<sup>2</sup>. For a similar power of the brother under ancient Babylonian law, he cites David, *Adoption*, 76 ff<sup>3</sup>. In an introductory note to his article, he says: "... auch Fälle mittelbarer Beeinflussung (über Syrien und Palästina) sollen Berücksichtigung finden"<sup>4</sup>.

I believe that in P. Freib. III 29 we have an instance of indirect influence of Babylonian law on the law of the Greek papyri by way of Palestine. In Brooklyn 7 (420 B.C.), lines 1—4, in Kraeling's translation, we read: "In the month of Tishri, that is Epiphi, in the 4th year of Darius [the King, at that time] in Yeb the fortress said Ananiah b. Haggai, Aramaean of Yeb the fortress, (of) the *degel* of [Iddin]- Nabu, to Zakkur b. Me[shullam, Aramae]an of Syene, of the same *degel*, saying:

I have come to thy house and asked of thee the woman Yehoyishma [by name], thy sister, for marriage"<sup>5</sup>.

As I have suggested elsewhere<sup>6</sup>, Zakkur b. Meshullam was not Yehoyishma's natural brother. He was styled her „brother" by virtue of the fact that she and her slave mother had been manumitted by his father Meshullam in a way resembling adoption. But regardless of whether Zakkur was Yehoyishma's natural or adoptive brother, it is clear that under the law which prevailed among the Jews of Elephantine a brother had the power to give his orphaned sister in marriage. It is not without significance in this connection that a similar power of the brothers to marry off their minor

<sup>1</sup> J.J.P., VII—VIII (1953—1954), 169 ff.

<sup>2</sup> *Ibid.*, 175.

<sup>3</sup> *Ibid.*, 175, No. 2.

<sup>4</sup> *Ibid.*, 169.

<sup>5</sup> Emil G. Kraeling, *The Brooklyn Museum Aramaic Papyri*, 205.

<sup>6</sup> See Jacob J. Rabinowitz, *Jewish Law* (New York, 1956), 29. Cf. Kraeling, *ibid.*, 178, 201.

orphaned sister is mentioned in the Mishnah. In Mishnah Yebamoth 13,2, in Danby's translation, we read:

"Who is the minor that must exercise right of Refusal? Any whose mother or brothers have with her consent given her in marriage".

A word of caution must, however, be added. It is perhaps not safe to generalize from P. Freib. III 29, for, as I have shown elsewhere<sup>8</sup>, this document exhibits some marks of belonging to the Jewish legal tradition and it may well be that the parties thereto were Jews.

### III A NOTE ON THE ΠΡΑΚΤΩΡ ΞΕΝΙΚΩΝ

The problem of the origin and competence of the πράκτωρ ξενικῶν is a perplexing one. Płodzien<sup>1</sup>, who has made an exhaustive study of this problem, states that about the middle of the 3rd century B.C.<sup>2</sup> there were three πράκτορες, called βασιλικῶν, ιδιωτικῶν and ξενικῶν. The first one of these was the execution officer in fiscal cases, the second one in cases affecting residents and the third one in cases affecting non-residents. He then goes on to say: "Towards the end of the III century B.C. and later neither the πράκτωρ τῶν βασιλικῶν nor the πράκτωρ τῶν ιδιωτικῶν are mentioned in exe- cutional documents. It is an indication that both the officials have ceased to exist and the πράκτωρ ξενικῶν has taken over their functions"<sup>3</sup>.

As I see it, the difficulty with Płodzień's view is, that even if we assume that for some unknown reason it was considered necessary or expedient to have a separate execution officer in cases involving non-residents, it is hardly likely that this officer, whose competence was a limited one, should have absorbed the functions of his two companions with the broad competence covering the more regular and frequent cases involving the royal treasury and

<sup>7</sup> H. Danby, *The Mishnah*, 237. In a note on the phrase "right of Refusal", Danby says: "If a girl that was a minor was, after her father's death, given in marriage by her mother or brothers, she may abjure the contract before two witnesses, and be set free without the need of a bill of divorce".

<sup>8</sup> *Jewish Law*, 61 f.

<sup>1</sup> S. Płodzień, *The Origin and Competence of the Πράκτωρ Ξενικῶν* (JJP 5 (1951), 217 ff.).

<sup>2</sup> *Ibid.* 221 f.

<sup>3</sup> *Ibid.* 223



residents, respectively<sup>4</sup>. The problem, I think, is by no means satisfactorily solved, and further suggestions are in order. I shall offer one in this paper.

In addition to the three πράκτορες enumerated by Plodzien there was still a fourth one, namely a πράκτωρ ἱερῶν, mentioned in P. Eleph. 27 (223 B.C.), that is an execution officer whose competence covered cases involving debts to the temples. I submit that πράκτωρ ξενικῶν is the opposite of πράκτωρ ἱερῶν, the word ξενικῶν being used in the sense of *non-sacred, common, profane*. Non-sacred debts would of course include debts to the crown (βασιλικῶν) and debts to private persons (ιδιωτικῶν).

My authority for considering ξενικῶν as meaning *non-sacred, profane* is, I must admit, based on Jewish, not Greek, sources. However, in view of the fact that Egypt had a considerable Jewish population in the third century B.C., the information obtainable from Jewish sources should not be dismissed *a priori*. The Hebrew *zar* (strange, stranger) is often used in the Bible in the sense of *non-sacred, profane*, as may be seen from the following examples: "And Nadab and Abihu, the sons of Aaron, took either of them his censer, and put fire therein, and put incense thereon, and offered strange fire ('eš zarah) before the Lord, which he commanded them not." — Lev. 10:1; "There shall no stranger (zar) eat of the holy thing: a sojourner of the priest, or an hired servant, shall not eat of the holy thing". — Lev. 22:10.

In Jewish-Aramaic the word *hilona'ah* is defined by Jastrow as follows: "(*hol*; v. *hol III*) outsider, stranger, non-priest, non-Israelite". Turning to *hol III* we find the following definition: "(outside of the sanctuary, foreign), profane, common"<sup>5</sup>.

The development of the office of πράκτωρ occurred perhaps along the following lines<sup>6</sup>: At first there was only one πράκτωρ whose competence extended to all cases. Later on the functions of this one officer were divided between two — the πράκτωρ βασιλικῶν and the πράκτωρ ιδιωτικῶν. Still later the office of πράκτωρ ἱερῶν was created and the two offices of πράκτωρ βασιλικῶν and πράκτωρ ιδιωτικῶν were consolidated into one under the name of πράκτωρ ξενικῶν.

<sup>4</sup> M. Jastrow, *A. Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature*, 456a.

<sup>5</sup> *Ibid.*, 433a.

<sup>6</sup> See Table I at the end of Plodzien's Article cited in note 1, above.



## IV THE MEANING OF ΑΛΛΑΣΣΩ IN SOME POPYRI FROM KARANIS

In P. Cairo, Journal d'entrée 57083 (296 C.E.) and P. Cairo, Journal d'entrée 57401 (318 C.E.), both of them published, with translation and notes, by Boak and Youtie in *JJP* IX—X (1955—1956), 145 ff., there occurs a clause which has caused considerable difficulty to the editors and which is easily explainable when one of the key-words therein is properly understood as a legal Aramaism. In the first one of these papyri<sup>1</sup>, which is entitled by the editors "An Agreement to Act as Substitute for an Armed Messenger", there occurs the following clause: καὶ οὐκ οὔσης ἐξουσίας [όπο]-τέρω ἡμῶν ἀλλάξε τι τούτων ἢ παραβῆνέ τει τῶν ἐγγεγραμμένων κατ' οὐδένα τρόπον. This is translated by the editors as follows: "And it is not permissible for either of us to alter any of these statements or to transgress any of the terms herein written in any way"<sup>2</sup>. A similar clause occurs in the second papyrus just mentioned. In a note<sup>3</sup> to the latter document, the editors take the word ἀλλάσσω in its literal meaning and resort to an interpretation of the clause under discussion which hardly makes sense. According to the editors, the parties undertake not to make any changes in the wording of the terms of the agreement, that is, in effect, they undertake not to commit forgery — which does not make much sense.

The meaning of the clause under discussion becomes clear and its import perfectly plausible if we assume that the term ἀλλάσσω is a literal translation of the Aramaic כִּשַׁב or the Hebrew כִּשַׁב (to change) which are used in the sense of *to breach* the terms of an agreement<sup>4</sup>. The phrase ἀλλάξε ἢ παραβῆνε is therefore a redundancy and should be rendered into English as "breach or transgress"<sup>5</sup>.

<sup>1</sup> *JJP* IX—X (1955—1956), 145 ff.

<sup>2</sup> *Ibid.*, 152.

<sup>3</sup> *Ibid.*, 156.

<sup>4</sup> See Gesenius-Buhl, *Hebräisches und Aramäisches Handwörterbuch über das alte Testament* (17th edition), 851a and 928b—929a.

<sup>5</sup> In P. Cairo, Journal d'entrée 57401, l. 13 ἀλλάξαι τὸν ἕτερον should be rendered as "breach with respect to the other". To be sure, the direct complement (τὸν ἕτερον) is incorrect usage. But this is to be expected in a literal translation from a foreign language. Cf. P. Aberd. 55, lines 10—12, quoted by Taubenschlag in *JJP* VII—VIII (1953—1954), 179, n. 5. The reading ἀ[φαιρ]ῆται is perhaps to be amended instead as ἀ[λλαξ]ῆται. Also, the term ἀμετανόητος, men-

As I have shown elsewhere<sup>6</sup>, *emutare* and *inmutare* are similarly used in legal sources of the Middle Ages in Europe, such as *Lex Visigothorum* II, 5,5 and Marculfi Formularum Liber II, No. 24.

The term ἀλλάσσω in the sense of *to transgress* also occurs in I Maccabees, 1,49: ὥστε ἐπιλαθέσθαι τοῦ νόμου καὶ ἀλλάξαι πάντα τὰ δικαιώματα. It is interesting to note here that the phrase ἀλλάξαι πάντα τὰ δικαιώματα is rendered by Oesterley<sup>7</sup> into English as "change all the (traditional) ordinances". He was apparently unaware that the Greek phrase is a literal translation from the Hebrew or the Aramaic and should be rendered into English as "transgress all the ordinances".

It should also be noted here that καταλλάσσω is used in a 4th century B.C. inscription from Tegea in the sense of "contravene, transgress regulations"<sup>8</sup>. It is not unlikely that here too the term represents a legal Aramaism.

Addendum to p. 173 note 19. In the light of the evidence of Greek influence which I have discovered in the Aramaic papyri (See my *Jewish Law* 75 ff.; *Grecisms and Greek Terms in the Aramaic Papyri*, *Biblica* 39, 77 ff.; *More on Grecisms in Aramaic Documents*, to be published in *Biblica* it is not unlikely that *ba'al kiryah* is a translation of the Greek πολίτης.

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tioned by Taubenschlag in the same note, is strongly reminiscent of ללא למחזור (not to be retracted from) of the Jewish formulary. See my *Jewish law*, 247 f.

<sup>6</sup> See my *Jewish Law*, l.c.

<sup>7</sup> *Apud* R. H. Charles, *The Apocrypha and Pseudepigrapha of the Old Testament*, I, 70.

<sup>8</sup> See Liddell-Scott-Jones, *A Greek-English Lexicon*, s.h.v., citing IG5 (2).3.2. This was pointed out to me several years ago by one of my pupils.