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A *WAQF*-DOCUMENT
FROM SINAI

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Introductory note.

In the year 1928 while surveying the ruins of Galilee I was asked by Prof. ARTHUR HJELT to join his expedition to Sinai as an interpreter. One of the purposes of this Finnish expedition was to photograph the valuable Syriac palimpsest of the Gospels, known by the name of Syrus Sinaiticus and published as a facsimile edition in Helsinki, Finland, in 1930 (*Syrus Sinaiticus*, herausgegeben von ARTHUR HJELT). This palimpsest is one of the most valuable treasures preserved in the library of the monastery at Mt. Sinai. The means of travelling was on camel-back to and from the monastery. On the desert trip as well as during the time spent in the monastery I collected, among other things, Bedouin folk-lore.

I was also happy to secure some photographs of Arabic legal contracts preserved in the library of the monastery and dating from the Middle Ages, the first of such to be published here. They belong to a large group of manuscripts that were first studied by Prof. MORITZ during his Sinaitic expedition in 1914. He worked in a painstaking way, taking hundreds of photographs and copying the manuscripts, but unfortunately all of his photographs and copies were lost, condemned as contraband of war.

Prof. MORITZ describes the firmans of the Sinaitic library in the *Sitzungsberichte der Preussischen Akademie der Wissenschaften*, VIII, 1926:

»The second task was to study the archives of the monastery, which contain chiefly a collection of *firmâns*, hitherto quite unknown to scholars. They are mostly written on paper rolls, partly of great dimensions. The firman of 540 H. = 1145 A.D. is a roll of 10 metres

length and 0.41 cm width. These firmans refer to a presumed letter of protection by Mohammed the Prophet. This letter exists only in later copies in the monastery, while the original is said to have gone to Constantinople. They were issued by the rulers of Egypt to the monastery of Sinai and form an uninterrupted series from the later Fatimide times to the beginning of the 19th century, the oldest being dated 524 H. = 1130 A.D. The contents are nearly always the same. The government officials of the peninsula of Sinai were ordered to protect the inhabitants and visitors of the monastery from oppression, especially on the part of the surrounding Arabs, and to respect the monastery and its property, the churches and landed estates on the peninsula. Of such firmans there were a hundred, frequently several being issued by the same ruler, especially during the last era of the Mameluke Sultans, when at the decline of the central power the attacks of the lower officials and especially of the Arabs against the monastery became more common. 20 of such firmans were issued by one of the late rulers of this dynasty and witness how little they were respected. For want of other documents these form the main source in studying the history of the monastery during the Middle Ages. Though well preserved, they generally were difficult to read, as they were written in the court hand-writing of different eras, of which style there are hardly any other specimens left. Nearly all of the firmans were copied — altogether 500 — and to check them they were photographed and for security developed directly. These 500 negatives (glass plates 13 × 18) are entirely lost. Of the written copies there is only one copybook left in a very bad state. This poor remnant has been used in a contribution to the history of the Sinai monastery (*Beiträge zur Geschichte des Sinaiklosters im Mittelalter nach arabischen Quellen, Abhandl. d. Gesellsch. d. Wissensch. in Göttingen, phil.-hist. Kl. N.F. Bd. XVI, 2, 1916*).»

The above-mentioned Finnish expedition was the first after Moritz to come into contact with the manuscripts in question. Below there is an attempt to present one of these legal manuscripts in a commented translation. Being the first of its kind, I have not

aimed at exhausting all of the details of my subject. I hope, however, that this preliminary study will prove useful for the future. My warm thanks are due to Prof. MORITZ (Berlin) and BRÄUNLICH (Leipzig), who have kindly made many valuable suggestions.

Helsinki, 7th of May 1933.

A. S—LO.

I.

Praise to God — he is worthy of his praise¹ — his blessings and his salutation upon all the prophets and messengers.

The legal affair² is as stated therein. (The text) was fixed³ by the humble servant⁴ *Aḥmad ibn Ilyās*⁵, the *mawlā*⁶ in the well-protected (city of) Cairo.⁷

At present [(is the) year 1064].⁸

¹ *ḥaqqā ḥamduku*, cf. *ḥaqqā ʿalaihi kalimatu-l-ʿadābi*, Koran, 39: 20. On the other hand if *ḥaqqā* is to be understood as a noun, there is another possible translation: Praise to God (I remind) of the worth of his praise (*ḥaqqā ḥamdihi*). For the acc. *ḥaqqā*, cf. fixed turn of speech in religious poetry: *laka-l-ḥamdu ḥamdan*, *Burāʿī*, *Maḡānī al-adab* I, 9: 7; RECKENDORF, Arab. Syntax, p. 115, here *adkuru* to be understood.

² *al-amru*, lit. »order».

³ *zabara*, this Arabic verb is here a technical term, employed in this sense only by the Turks; cf. *wadaʿt al-mazbar ʿalā ḥāda-d-daftar zabarahu al-faḡīr ḥābīl* etc. FEKETE, p. 7.

⁴ Cf. *al-faḡīr ʿabd ʿalī bāšā* etc., FEKETE, p. 213.

⁵ Here a Mohammedan is called with a Christian name *Ilyās*, very probably a convert from Christianity to Islam. At least in older Mohammedan times *Ilyās* is never used by the Mohammedans.

⁶ *al-mawlā*, »the high *qādī*», very difficult to be translated. This (*mawlā*) is a technical term, found in this sense only in Turkish official documents. Cf. in Arabic this word *mawlā* is either *seruus manu missus* or lord, but never a judge.

⁷ *al-maḥrūse*, a fixed epithet after the name of a great city (for Constantinople, *al-maḥrūse*, *al-maḥmiye*, for Budapest, *al-maḥrūse*), cf. the *firmāns* of FEKETE. A modern native name for Cairo is simply *al-maḥrūse*.

⁸ The contents of the writing marked in the printed Arabic text by an enclosure after the word *ḥālan* (at present) are not easy to be deciphered.

(1) This is a sale document, correct, legal, written, clear, executable, which was attended by witnessing (2) before the religious court, noble, glorious, and at the distinguished, illustrious counsel of the Sublime Porte — may God the High exalt it — (3) at Cairo¹, which may be protected from violation and calamity, before its president, our lord and master, chief justice of the Moslems and master of masters of the monotheist believers, (4) source² of favour and stability, who fortifies the law of the lord of the messengers, the *ḥanafī* judge³, who will sign his noble signature above and who expects the favour of his Master — (5) may God the High grant

There seems, however, to have been written *sanat* 1064, i. e. 1654 A.D. Here, as well as in the parallel place of the right column (in front of II 4) there was printed a seal, which was too difficult to be deciphered. Cf. J. HAMMER-PURGSTALL: *Abhandlung über die Siegel der Araber, Perser und Türken*, (Denkschriften der Akademie in Wien, 1850).

¹ *bil-qāhirati l-mu'izziyati*. The first half originates from the planet Mars, in Arabic *al-qāhir*, «the victorious», the second half from the Fatimide caliph *al-Mu'izz*, who founded the modern Cairo after the conquest of Egypt (969 A.D.), and who reigned 341—365 A.H., i. e. 952—975 A.D. The shorter name *al-Mu'izziye* occurs on the Fatimide coins from 514 A.H., under the caliphate of *al-Āmir*. On the other hand the form of *al-Mu'izziyēt al-Qāhira* is to be found on the coins from 518, 520, 521 A.H. Before the foundation of *al-Mu'izz* the name of the city was *Masr*, or *Masr al-Fustāt*, or *Fustāt* (from Lat. fossatum). Later on the name *Mu'izziye* faded away, while *Masr*, which is the oldest of all the names of Cairo, survived, and being victorious also over *al-Qāhira*, is to-day the most popular name of Cairo.

² *ma'dinu*, lit. «a quarry, a mine».

³ The *ḥanafī* (the termination of the nomina relativa is in this work transliterated simply with *-ī*, pro *-iyy*) law is the oldest of the four Sunni Schools of law, the others being *mālikī*, *šāfi'ī*, *ḥanbalī*. In Egypt as well as in all the territories of the late Ottoman Empire the *ḥanafī* school is still confined to official predominance as having been the school favoured by the Turks. The large majority of the inhabitants in Egypt are of the *šāfi'ī* persuasion while the native population of the southernmost part of the Upper Egypt and of the Sudan professes the *mālikī* doctrine. The *ḥanafī* school predominates to the extent of being almost the only school in Asia Minor and Palestine. As to the Moslem schools of law see further FITZGERALD, p. 10—24 and JUYNBOLL, p. 26—31.

his favour and honour to endure and may He exalt him¹ and let him reach his desires and wishes in both worlds. The contents of it²: (6) *Afrâm ibn Ğirĝis ibn Mişrî*, the Christian Melchite³ monk in the monastery of *tûr sinâ*, purchased with his own money and for himself from its seller *Halîl ibn Ğirĝis* (7) *ibn Mûsâ*, the Christian Melchite, known by the name of *ibn il-hait*. And (this one) sold him all the garden, which is situated in the prosperous⁴ *at-tûr* in the neighbourhood of the castle (and) (8) the ground of which is covered with palmtrees⁵ and vines etc., anything that is comprised within its fences⁶, bounded by the indication of the text⁷ by four boundaries: (9) the Southern boundary ends with the road opposite the heap of *halîl*⁸ — — — and contains the gate, and the Northern boundary⁹ ends at the »well of the palm-tree«. (10) And the Eastern boundary ends at the salty and bitter¹⁰ sea, and the Western boundary ends at the road — with its rights and definitions, belonging

¹ *wa'a'lâhu*, the *alif* of the IV theme is missing in the manuscript.

² The contents of this sale document.

³ *malakî* (not to be mixed with the Mohammedan *mâlikî*), a member of the »United Greek Church«, i. e. that branch of the Greek Church, which is united with the Roman Church. Most of the people of the Christian upper classes belong to the Melchites.

⁴ *mâ'mûr* = »prospère, florissant«, BERCHEM, *Corpus Inscriptionum Arabicarum* (1903) I, p. 423, n. 1. *mâ'mûr* seems to be a fixed epithet in connection with a settlement which is not *hurbân*, i. e. deserted.

⁵ *al-mutaĥallilati arġuhu bi'anşâbi_n-naĥli*, lit. »the ground of which is pierced by the properties of palmtrees« etc.; *naşabu*, i. e. »moveable or immoveable property«, see *Ibn Manzûr, Lisânu'l-'arabi* (*Bulâq, Cairo, 1300 A. H.*) I 254, *wan-naşabu wal-manşabatu al-mâlu* — — — *yuġâlu fulânun dû naşabin* — — — *wan-naşabu al-mâlu wal-'aġâru*.

⁶ *siyâġuhu* is not an Arabic word, but of an Egyptian origin.

⁷ *bidalâlati_l-amlâ'i*, a typical phrase in the Turkish official documents, i. e. as indicated in the text.

⁸ This latter part of the name is impossible to be deciphered.

⁹ Lit. »the sea boundary«, *baĥrî*, »Northern« in Egypt and »Southern« in the Southern parts of Arabia, TALLQVIST, *Himmelsgegenden u. Winde, Studia Orientalia* II, p. 110.

¹⁰ *uġâġu*, cf. the *agâg*, Num. 24: 7.

to it, (11) and its properties and fences and its building and that which is known and is related to it, which is known to him in a legal manner¹ that legally excludes ignorance², (12) which is in the proprietorship of the said buyer and in his hand, in his possession and at his disposal and in his particular ownership³, by an acceptance, based upon that legal affirmation, (13) as a correct⁴, legal purchase and as a definitive, binding, completed, written, recognized, satisfactory sale, for a price, the sum⁵ of which is therefore in the Sultanic new gold (14) of full weight and standard, now current in the territory of Egypt, 60 obligatory dinars. (15) The said vendor received that from the said purchaser totally and in full, and there remains from that nothing⁶ (due) to him, (16) thus legally admitted by him⁷ in the presence of his witnesses. And the said vendor transferred⁸ (the property sold) into the hands of the said purchaser, (17) and he permitted him to receive it with a legal authorization⁹ and permission¹⁰, and this (took place)

¹ *lamīman al-ʿilma*, instead of *lamīman bil-ʿilmi* or *lil-ʿilmi*. This is a technical term; *al-maʿlūmu* — — *al-ʿilma*, a cognate object with a participle.

² I. e. in this respect.

³ The five parallel law-terms of I 12: *mulk*, *yad* (*detentio* of the owner, JUYNBOLL, p. 262), *ḥauz* (lit. «fencing in»), *taṣarruḥ* and *ih̄tiṣāṣ* («besonderer Anspruch», JUYNBOLL, p. 266).

⁴ A purchase may be *ṣaḥīḥ*, i. e. fulfilling all the secular requirements but still at the same time *bāṭil*, i. e. not *ṣarʿī*, «legal» = theologico-juridical (ex. g. if a contract is made at the hour of the call to the Friday service, Koran, 62: 9, see JUYNBOLL, p. 61).

⁵ *biṭamani mablarīhi ʿan dālīka min ad-dahabi s-sulṭānīyi*, a typical phrase in the Turkish official documents; *mablarīhi*, lit. «the height of which». This Arabic word has a similar etymological history as «amount» in English, which is derived from the verb «to mount».

⁶ *qalla walā ǧalla*, lit. «not little nor much».

⁷ I. e. by the vendor *mubīʿu (bāʿa, IV)* «the one who exposes the property for sale», instead of *bāʿiʿu (I)* in the preceding l. 15.

⁸ The phrase *ḥalla baina* etc., lit. «loosened (his rights over the property) between — — and between».

⁹ *taḥliyatān*, lit. «loosening».

¹⁰ *waʿadīna lahu fī tasallumīhi taḥliyatān waʿidnan ṣarʿīyan*, lit. «and he permitted him in its receiving with a legal loosening and permission».

after the legal examination, cognizance and scrutinization¹ (18) and (after) a comprehensive information about it, by way of complete knowledge and experience, which legally excludes² ignorance, and after a correct and legal agreement between the both (parties) concerning that, (brought about) by legal acknowledgement and acceptance. (19) And that was confirmed by a legal affirmation by the both (parties) and the testifying of that was established before our lord and our master, (20) the judge, mentioned above³ — may his glory last for ever — through the evidence of his two witnesses, (which took place) in a legal manner, (21) and according to that⁴ he issued a judgement — may God the High lend strength to his judgements and multiply upon him his favours — a judgement, correct, legal, (22) complete, recognized, satisfactory, binding in that (case), complying with its legal conditions and its written obligations, which must be observed, being informed of the divergencies about that.⁵ (23) And he in his own generous soul attested thereto. To that witnessed on the date of the fourth of the latter *ġumādā* in the year 988⁶ the witnesses of the case⁷:

Muḥammad ibn Muḥammad il-Muraṣṣaʿī
ʿAbd il-Fattāḥ il-Ġalūbī
Muḥammad ibn Halīl il-ʿUrsī.

¹ *wat-taqlībi*, $\sqrt{\quad}$ »to turn round».

² This is written *نافيةين* (with double *yā*), also on the preceding line *شريعين*. One should expect *nāfiyan*, *ṣarʿiyan*, to be written with a single *yā*.

³ *biʿaʿālihi*, (lit. »on the top of it») to rhyme with *maʿālihi*.

⁴ *bimāġabi dālīka*, which occurs later in the Arabic text.

⁵ *bil-ḥilāfi*, i. e. in case when these conditions shall not be fulfilled.

⁶ I. e. 18th of July 1580 A.D.

⁷ Also possible to be deciphered: *Muraṣṣaʿi*, *Ḥalūti*, *Harasi*.

II.

What therein is of a recorded *waqf*¹ and of a complete endowment² is found correct by me — glory to God, the lord of the worlds.³

It was clearly established before me and I judged it to be correct and enforceable.

(The text) was fixed by the humble servant *Aḥmad ibn Iḥyās*, the *mawlā* in the well-protected (city of) Cairo.

At present [(is the) year 1064].

(1) This is a *waqf*, legal, correct, enforceable, written, recognized, executable, upon which the testifying came out (2) at the Sublime Porte, mentioned on the left⁴ — may God the High exalt it and

¹ *waqf*, pl. *auqāf*, comes from a root meaning »to stand still, to be firm». The nearest English equivalent for this technical term is »foundation», acc. to Fitzgerald, p. 206.

² *ḥabs*, pl. *aḥbās*, lit. »tying up» (as in a settlement). »The essence of a *waqf* at the present day is that it is a perpetuity: no perpetuity, no *waqf*. But this has not always been the case. According to (Abu) Haneefa (the first founder of the Hanafi school of law) it signifies the appropriation of any particular thing in such a way that the appropriator's right in it shall continue and the advantage of it go to some charitable purpose in the manner of a loan. This view also survives in the early Maliki lawyers, among whom a *waqf* for a definite period with reversion to the *wāqif* or his heirs (now obsolete) was a possibility; and there are traces of it in Shia law in which the word *ḥabs* is used for the purely secular grant of a usufruct, and Shia authority may be found for the contention that in default of express trusts the property is not maintained for the benefit of the poor but reverts to the *wāqif*. Practically, however, only one definition holds the field to-day in all schools alike, that first propounded by Imam Abu Yusuf, the real architect of the law in this field: »According to the two disciples, *waqf* signifies the appropriation of a particular article in such a manner as subjects it to the rules of divine property, whence the appropriator's right in it is extinguished and it becomes the property of God by the advantage of it resulting to his creatures.» (FITZGERALD, p. 206, 207).

³ Between the words *al-ʿālamīn* and *wawuddiḥa* there is in the manuscript a sign of an unconnected *kāf*, which is perhaps an abbreviature.

⁴ *yasratahu*, i. e. the left column of the manuscript.

may He ennoble it.¹ (3) The contents of it (were drawn up as follows) before our lord and master, chief justice of the Moslems and master of masters of the monotheist believers, (4) the source of favour and stability, who fortifies the law of the lord of the messengers, the *ḥanafî* judge, (5) who is mentioned on the left — God the High may support his judgements and perpetuate his happiness. (6) *Afrâm ibn Ğirġis ibn Mişrî*, the Christian Melchite (7) monk of the monastery of *tûr sînâ*, (who is) the buyer mentioned on the left, made his witnesses to testify for himself in a legal manner, (8) that when in a state of health and well-being and of his free will and desire² he created a waqf³, (9) endowed⁴, perpetuated, ratified⁵, bequeathed⁶, consecrated, founded⁷ and dedicated⁸ all

¹ *wašarraḡahu*, belongs syntactically to the preceeding line, but this Arabic text is printed so as to start each line in strict accordance with the original.

² *wahuwa biḥâli ş-siḥḥati was-salâmati waṭ-ṭawd'iyati wal-iḥtiyâri* is a Coptic technical term. Cf. another formula in the *Faiyûm* parchment: *ašhadû 'alâ anjusihim fî şaḥḥat 'aqlihim wa'abdânihim*. The following verbs, *waqqafa*, *ḥabbasa*, *abbada*, *akkada*, *ḥallala*, *ḥarrama*, *sabbala*, *taşaddaqa*, have all attained a certain religious colour over their original concrete meaning.

³ *waqqafa*, the nearest English equivalent is »to bequeath, to found«. Entitled to create a *waqf* is (according to *ḥanafî* law) any Moslem or any subject of or protected alien in a Moslem state, who is free, sane etc. (FITZGERALD, p. 208). Note that here in this *waqf* a Christian is entitled to create a *waqf*. This would be impossible in *mâlikî* or *şâfi'î* law. A Christian cannot make a *waqf* either for mosque or church — the former is contrary to his own religion, the latter to Islam (FITZGERALD, p. 209). Note that in this particular *waqf* a Christian is not prevented from creating a *waqf* for a monastery, which belongs to the same class as hospitals, almshouses, schools, libraries. »*waqf* ist eigentlich das Rechtsgeschäft. In übertragener Bedeutung bezeichnet *waqf* aber auch die unveräusserlich gemachte Sache selbst; *ḥabs*, d. i. eigentlich: »festbinden« zu einem bestimmten Zwecke, dann: die unveräusserlich gemachte Sache.» JUYNBOLL, p. 277. Further about the *waqf* law see pp. 276—283.

⁴ Lit. »to imprison, confine«.

⁵ Lit. »to affirm«.

⁶ Lit. »to permit«.

⁷ Lit. »to allow«.

⁸ Cf. *şadaqa*, an alm, i. e. a donation, given without worldly recompense, only with a religious motive, or at least not displeasing to God. Contrast the

that garden, (10) which is situated in the prosperous *aṭ-ṭūr*, in the neighbourhood of the castle, the ground of which is covered with palms and vines etc.¹ (11) and the fences of which surround it with its rights and boundaries and contents, as described and bounded (12) on the left, and is sufficiently recognized by its boundaries on the left, as not to need any repetition here², that is known to him³ (13) in a legal manner that legally excludes ignorance (in this respect), which is in his proprietorship and possession and at his disposal and in his hand⁴ (14) by way of the purchase, which is registered on the left, into a *waqf*, correct and legal, and a pious foundation, clear and executable, (15) not to be sold and not to be donated and not to be mortgaged and not to be privately owned and not to be transferred and not even a part of it.⁵ (16) But it shall stand by its rules⁶, it shall be preserved by its conditions, founded according to its foundations, which are mentioned therein, (17) for ever and ever and from age to age until God shall inherit the earth and all there is upon it, (18) as He is the best of heirs.⁷ The above-mentioned founder established this *waqf* of his on condit-

secular form of a gift, *hibā*. The legal difference between these two is, that the former becomes valid and irrevocable at once after the offer couched in the form of a declaration (*iğāb*). The latter, however, is revocable by the donor always until delivery and in some cases also after the acceptance (*qabūl*) of the property (*iğāb*, *qabūl*, I: 18, and *tiqbāl*, I: 12).

¹ *al-mutaḥallili arḍuhu*, note the masc. form of the participle, pro the feminine *al-mutaḥallilati*.

² *an al-i'ādati hunā*.

³ I. e. to the *wāqif*.

⁴ Cf. I: 12.

⁵ This kind of a formula is also to be found in the *waqf* documents of MORITZ, Arabic Palaeography. Ex. g. a *waqf* of Sultan Hasan, (755 A.H. = 1354 A.D.) *hādā mā auqafahu* — — — (4 l.) *waqfan ṣaḥīḥan ṣar'īyan, lā yubā'u walā yūhabu walā yūratu walā yakūnu ilā mulkan liḏhi ilā abada, l-ābadin* [*waṣarāta an-naṣara*, etc. »he stipulated that the control over it should be in the hands of Imam so and so», cf. II 30]. Cf. also a formula in the *Faiyūm* parchment: *in šā'a bā'a wa'in šā'a wahaba wa'in šā'a ṣadaqa*.

⁶ *uṣūl*. About the *uṣūl* science see JUYNBOLL, p. 39-54.

⁷ *wahuwa ḥairu l-wārithin*, cf. Koran, 21: 89.

ion that its profit be first appropriated¹ for its (19) building and its reparation and for the irrigation of its trees and for their fecundating² and cleaning (20) and fecundating and for that which serves for the preservation of (the property) itself³, and for the fostering of its benefits and for the development of its fruits (21) and its trees and for the improvement of its soil and its reservoirs even if all its revenue should be expended for these purposes, (22) and what remains after that, this is to be spent for the community of the monks and the servants in the monastery of *tūr sīnā* (23) according to which the overseer⁴ will see fit and devote to it his authoritative expounding of the law⁵, for the Melchite Christians (24) and for the poor of the Melchite Christians, who come to the above-mentioned monastery and those who visit it. (25) But should it be impossible (to spend) the income⁶ for that, then the income should be spent for the poor of the Melchite Christians of the Church of the Holy Sepulchre⁷ (26) in the holy Jerusalem, but failing which, for the poor of the Melchite Christians wherever they are (27) and wherever they are found. But should there be again a possibility to spend the income (in the way) which (at first) was impossible⁸, (28) then the spending of the income shall revert

¹ *‘alā an yubda’ a min ra’i’ihi*, lit. »that it should be started from its profit».

² *ta’biriḥā*, this twice written word refers originally to the act of fructification of the opposite sexes of the palm trees.

³ *wamā fīhi baqā’u li’ainihi*, lit. »and where (i. e. according to how much) there is endurance for itself».

⁴ *nāzir*, inspector, overseer, also for an *οἰκονόμος* in a monastery, see below, lines 31—32.

⁵ *ig̃tihād*, lit. »ardour, striving, exertion», here »a complete knowledge in the study and expounding of the law»; cf. *muḡtahid*, an authority in expounding the law.

⁶ *ṣarḡ*, lit. »excess».

⁷ *al-qumāme*, lit. »dung, heap of dung». As to this name for (*kenṣet*) *al-qiyāme*, the Holy Sepulchre, cf. *Muḡammad ibn Aḡmad ibn T̃yās*, in his History of Egypt: *Ta’riḡ Miṣr al-maṣḡūr bibadā’i’ al-zuhūr fi waqā’i’ al-duḡūr*, III part, page 8, line 14; also *Muḡīr al-Dīn al-Ḥanbalī*, in his book: *al-Uns al-ḡalīl*, pages 114, 152 below, 153 above, 226 below, 227 middle.

⁸ Lit. »to spend the income to what was impossible».

to it and be preferred to any other.¹ This state (of affairs) shall continue (29) for ever and ever² and from age to age till God inherit the earth and who is thereupon, (30) for He is the best of heirs. And he stipulated³ that the control of that and the supervision over it shall be (entrusted) only (31) to the one, who shall be the Oikonomos in the said monastery of *tūr sînā*, failing which, to the one who shall be the Oikonomos of the Church of the Holy Sepulchre in Jerusalem; (32) then after him to the one, who shall have the office of the Oikonomos there, and so on, one Oikonomos after another. (33) Should it become again possible to entrust the supervision to the Oikonomos of the said monastery of *tūr sînā*, the supervision shall go to him, and he shall have priority over another. (34) This state (of affairs) shall continue in the same manner whatever happens⁴, until God — may He (35) be praised — inherit the earth and who is thereupon, for He is the best of heirs. When the act of the said founder was duly testified, (36) he removed his hand from the said *waqf* and delivered it in a legal manner to its appointed guardian. Then it seemed good to the said founder⁵ (37) to withdraw the declaration of *waqf* and to change that into a declaration of *mulk*.⁶ But he was opposed by the said appointed guardian, (38) (by name) *qustāranṭūs*⁷ *ibn miḥāʾil*, the Melchite Christian. (39) And the one who is capable for the required duties

¹ Lit. »and precede any other than it», i. e. it shall have the preference in all cases.

² *abada l-ābadīn*, pro *abada l-abadīn*, cf. MORITZ, pl. 150.

³ *wašaraṭa an-naḥara*, cf. MORITZ, pl. 150.

⁴ *wuḡūdan waʿadaman wataʿadduran waʿimkānan*, lit. »may it exist or not exist, to be possible or impossible», i. e. »whatever happens».

⁵ Note the misprint (*lil-wāqifi*) in the printed Arabic text, there is *al-wāqifu* in the original manuscript.

⁶ *mulk*, a technical term for private, actual ownership of objects capable of legal transfer.

⁷ Here *nāzir* (Oikonomos) is a technical term among the Christians, so also *mutawallī* (a parallel to the *mawlā*, *qādī* of the Muslims); *al-marqūm*, earlier (II 23, 31—33) is mentioned his function, but now also his personal name: *qustāranṭūs*, i. e. an old abbreviation of Constantinus + Antonius.

shall continue to administrate.¹ That (case) was argued by both (parties) and they were both litigants and they both contended with each other, until (40) both of them brought their case to our master the judge, the one signed above² — may God the High keep for ever his high position. (41) And they both pleaded that (case) before him, and he deliberated on the point at issue with deep deliberation and considered it with a worthy consideration (42) and he saw on the side of the appointed guardian a preponderating weight and a convincing proof. (43) So the said *waqf* became legally³ established before him as regards the condition of its supervision (44) through the evidence of the witnesses thereof, and according to that he issued a judgement⁴ — may God the High lend (45) strength to his judgements and multiply upon him his favours⁵ — (46) and the said *waqf* shall be valid with its enforcement, efficiency and ratification — a judgement, correct, (47) legal, complete, recognized, satisfactory, binding in that (case), complying with⁶ its legal conditions (48) and its written obligations⁷, which must be observed, being informed of the divergencies among the noble law teachers.⁸ (49) So it became a *waqf*, legal, complete,

¹ *watamassaka yatawallā man qābil bil-luzāmi*, pro — — *qābil lil-luzāmi*.

² *al-muwaqqā'u a'lāhu*, the latter word to rhyme with *ulāhu* (his high position); cf. a parallel case *bi'ā'ālīhi—mā'ālīhi*, I 20.

³ Note the cognate object *tubūtan šar'īyan* in the foll. line.

⁴ Note the cogn. obj. *ḥukman* etc. in l. 46—47, and *bimā'ğabi dālika* in l. 45, which also belongs to *ḥakama*.

⁵ *alāihi an'āmahu*, by a misprint these 2 words are missing in the printed Arabic text.

⁶ Lit. «fulfilling».

⁷ *wāğib*, pl. *wāğibāt* (duty) or *farḍ*, pl. *furūd* (lit. «notch»), i. e. expressly commanded in the Koran or absolutely commanded in the Traditions (*ḥadīṭ*). These represent the first class of the commandments (*aḥkām*) distinguished by the Moslem lawyer-casuists. The second group: *sunna*, *masnūn*, *mandūb*, recommended, and thirdly for adiafora stands *ğā'iz*, *mubāḥ*, JUYNBOLL, p. 59—60.

⁸ Lit. «being informed of the opposite things standing between the noble *imāms*; *imām*, 1) a leader in prayer, 2) a religious head, 3) a pre-eminent law teacher, ex. g. the three great founders of the *ḥanafi* school. The differ-

recognized, satisfactory, recorded, enforcible (50) and strong through the following¹ of the judgement of the above-mentioned judge, to which annulment shall find no way (51) neither by setting aside nor by resistance.² All that was witnessed on the blessed day, (52) the fourth of the latter *ġumâdâ*, in the year 988. (53) (These) witnessed for themselves in that (case):

Muḥammad ibn Muḥammad il-Muraṣṣaʿi
ʿAbd il-Fattâḥ il-Ġalûbî
Muḥammad ibn Halîl il-ʿUrsî.

ences of opinion, which on some points separate the three founders from each other, are at least as great as those which separate them from the heads of the other three orthodox schools. It is commonly said that where the three founders differ the rule is to take the opinion of the majority.

¹ Instead of this strange form *biluhûqi*, which (*luḥûq*) is not to be found in the dictionaries, one should rather expect *bil-ḥuqûq*, i. e. «through the rights».

² The document in question is a bilateral contract because there is a definite beneficiary and a *mutawallî*, an appointed guardian of the *waqf*, other than the *wâqif*, and because the *wâqif* himself is not the first beneficiary, (cf. FITZGERALD, p. 217). The approval of the *qâdî* is necessary already in this early period, the *qâdî* controls the *mutawallî*, in this case through an inspecting officer (*nâzir* = overseer), who is an authority in expounding the Moslem law (*iġtihâd*, II 23).

The property, which is the object of the foundation in question, was possible to be made *waqf*, because it was 1) *mâl mutaqaṣṣim* (i. e. capable of legal ownership and transfer), 2) *mulk* (i. e. actually in a legally secured private ownership). In this *ḥanafî* system the *wâqif* is entitled to reserve to himself in the declaration of *waqf* a right to modify the course of devolution to the office of *mutawallî* and to add or to alter the objects on which the income may be expended.

Corrigenda in the printed Arabic text.

Column and line:

I 12 read وحوزه

I 17 read وتخليئة

II (intr.) first line, read عندي

II 1, read صحيح

II 4, read مويد

II 20, read وتأبيرها

II 36 الواقف

II 45, add between the second and third word عليه انعامه

Abbreviations:

Faiyûm parchment = A parchment of a sale document (of a house), private property of Geheimrat, Prof. B. MORITZ, Berlin. This document is dated 414 A.H. and was found in *Faiyûm*, Egypt.

Fekete = Türkische Schriften aus dem Archive des Palatins Nikolaus Esterhazy 1606—1645. (Schriften des Palatins Nikolaus Esterhazy). Redigiert von LUDWIG FEKETE, Budapest 1932.

Fitzgerald = SEYMOUR VESEY-FITZGERALD, An Abridgement of Muhammadan Law according to its various schools, Oxford, 1931.

Juynboll = TH. W. JUYNBOLL, Handbuch des Islamischen Gesetzes, Leiden—Leipzig 1910.

Moritz = »Arabic Palaeography» (Publications of the Khedivial Library, Cairo, N:o 16). A collection of Arabic texts from the first century of the Hidjra till the year 1000. Edited by B. MORITZ. 188 plates. Cairo 1905.

The numerals, imbedded in the English translation, which are enclosed in brackets, mark the starting point of each line in the Arabic manuscript. Also the Arabic printed text is arranged so as to start each line in accordance with the original manuscript.

Index of terms.

The Roman numerals indicate the column of the manuscript, the Arabic numerals the line of it. The Roman numerals under the $\sqrt{\quad}$ refer to the form of the verb.

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$\sqrt{adā}$ II (to devote), II 23

$\sqrt{āda}$ II (to fortify), I 4, II 44

$\sqrt{āda}$ I, II 27

\sqrt{adaman} , II 34

$\sqrt{adāra}$ V (to be impossible),
II 25, 26, 31

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II 9

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شرعياً تاماً معتبراً مرضياً مولاً في ذلك مستوفياً شرائطه الشرعية
 وواجباته المحررة المرعية عالمياً بالخلاف الواقع بين الأئمة الاشراف
 فصار ذلك وفقاً شرعياً تاماً معتبراً مرضياً مسجلاً لازماً
 (٥٠) قوياً بلحوق حكم الحاكم المشار اليه لا يتطرق اليه الفساد
 بنقض ولا عناد وشهد بذلك كله في اليوم المبارك
 الرابع من جمادى الاخرة سنة ثمان وثمانين وتسعمائة

شهد عليهم بذلك

محمد بن محمد المرصعي عبد الفتاح الجلوبي

محمد بن خليل العرسي

يمجري الحال في ذلك كذلك وجوداً وعملاً وتعذراً وامكاناً الى ان يرث
الله سبحانه

(٣٥) الارض ومن عليها وهو خير الوارثين ولما تم الاشهاد على
الواقف المذكور

بذلك رفع يده عن الوقف المذكور وسلمه لمتول عليه شرعاً ثم
بدا للواقف

المذكور الرجوع عن الوقفية ورد ذلك الى الملكية فعارضه المتولى

المرقوم وهو قسطار نطوس بن ميخائيل النصراني الملكي وتمسك

بتول من قابل بالزوم وتنازعا في ذلك وتجادلا وتخاصما حتى

(٤٠) ترافعا الى مولانا الحاكم الموقع أعلاه أدام الله تعالى علاه

وتداعيا ذلك لديه فنظر في محل النزاع نظراً أنيقاً وتأمله

تأملاً حقيقاً ورأى في جانب المتولى رجحاناً قوياً وبرهاناً جلياً

وثبت لديه الوقف المذكور بشرط النظر

بشهادة شهوده ثبوتاً شرعياً حكم أيد الله تعالى

(٤٥) أحكامه وأسبغ بموجب ذلك

ويصح الوقف المذكور ولزومه ونفوضه وإبرامه حكماً صحيحاً

على ما يراه الناظر على ذلك ويؤدي اليه اجتهاده للنصارى الملكية
ولفقراء النصارى الملكية الواردين على الدير المذكور والمترددين
عليه

(٢٥) فان تعذر الصرف لذلك صرف لفقراء النصارى الملكية
بالقمامة

بالقدس الشريف فان تعذر لفقراء النصارى الملكية أينما كانوا
وحيثما وجدوا واذا عاد امكان الصرف الى ما تعذر الصرف اليه
عاد الصرف اليه وقدم على غيره يجري الحال في ذلك كذلك
أبد الابدين ودهر الدهرين الى ان يرث الله الارض ومن عليها (٥١)
(٣٠) وهو خير الوارثين وشرط النظر على ذلك والولاية عليه له
وحده

لمن يكون ناظراً على دير طور سيناء المذكور فان تعذر فلمن يكون
ناظر القمامة بالقدس الشريف

ثم من بعده لمن يلي النظر عليها ناظراً بعد ناظر وهلم جراً وإذا عاد (٥٢)
امكان النظر لناظر دير طور سيناء المذكور عاد النظر اليه وقدم
على غيره

وحبس وأبد وأكد وحلل وحرم وسبل وتصدق بجميع الغيظ
(١٠) الكائن بالطور المعمور بجوار القلعة المتخلل أرضه بأشباب

النخل والكرم

وما دار عليه سياجه بمقوقه وحدوده واشتمالاته الموصوف الحدود
يسرته ويستغنى بتحديدده يسرته عن الاعادة هنا المعلوم ذلك له
العلم الشرعي النافي للجهالة شرعاً الجاري في ملكه وحوزه وتصرفه
ويده

بطريق الشراء المسطر يسرته وفقاً صحيحاً شرعياً وحبساً صريحاً مرعياً
(١٥) لا يباع ولا يوهب ولا يرهن ولا يملك ولا يتناقل به ولا بيعه قائماً
على أصوله محفوظاً على شروطه مسبلاً على سبله التي تذكر فيه
أبد الابدين ودهر الدهرين إلى أن يرث الله الارض ومن عليها وهو
خير الوارثين أنشأ الواقف المذكور وقفه هذا على أن يبدأ
من ريعه بعمارتها ومرمته وسقي أشجاره وتأبيرها وتنظيفها

(٢٠) وتأبيرها وما فيه البقاء لعينه والدوام لمنفعته والنمو لثمرته
وأشجاره واصلاح أرضه وأجاجينه ولو صرف في ذلك جميع غلته
وما فضل بعد ذلك يصرف لجماعة الرهبان والخدام بدير طور سيناء

II

ما فيه من الوقف المسجل والحبس المكمل صح عندي

— أَلْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ — ووضح لدي وحكمت بصحته ولزومه

زير العبد الفقير أحمد بن إلياس

المولى بمصر المحروسة

حالا

هذا وقف شرعي صحيح لازم محرر معتبر مرعي صدر الاشهاد به

بالباب العالي المشار اليه يسرته أعلاه الله تعالى

وشرفه مضمونه: بين يدي سيدنا ومولانا أفضى قضاة المسلمين

أولى ولاية الموحدين

معدن الفضل واليقين مويد شريعة سيد المرسلين الحاكم الحنفي

(٥) المشار اليه يسرته أيد الله تعالى أحكامه وأدام مسرته

أشهد عليه أفرام بن جرجس بن مصري النصراني الملكي الراهب

بدير طور سيدنا المشتري المذكور يسرته شهوده الاشهاد الشرعي

وهو بحال الصحة والسلامة والطواعية والاختيار أنه وقف

بين المشتري المذكور وبين (١٧) المبيع المذكور وأذن له في تسلمه تخلية واذناً شرعيين وذلك بعد النظر والمعرفة والتقليب الشرعي (١٨) والاحاطة بذلك علماً وخبرة نافين للجهالة شرعاً والمعاقدة الصحيحة الشرعية بينها على ذلك بالايجاب والقبول الشرعي (١٩) وتصادقا على ذلك تصادقا شرعياً وثبت الاشهاد بذلك لدى سيدنا ومولانا (٢٠) الحاكم المشار اليه باعليه دامت معاليه بشهادة شهيديه ثبوتاً شرعياً وحكم (٢١) أيد الله تعالى أحكامه وأسبغ عليه أنعامه بموجب ذلك حكماً صحيحاً شرعياً (٢٢) تاماً معتبراً مرضياً مولا في ذلك مستوفياً شرائطه الشرعية وواجباته المحررة المرعية عالملاً بالخلاف في ذلك (٢٣) وأشهد على نفسه الكريمة بذلك وبه شهد بتاريخ رابع جمادى الاخرة سنة ثمان وثمانين وتسعمائة

شهود الحال

محمد بن محمد المرصعي عبد الفتاح الجلوبى (٥)

محمد بن خليل العرسى

الملكي المعروف بابن الخيط فباعه جميع الغيط الكائن بالطور
 المعمور بجوار القلعة (٨) المتخللة أرضه بأنشاب النخل والكرم
 وغير ذلك مما دار عليه سياجه المحدود بدلالة الاملاء بمحدود
 أربعة: (٩) ألد القبلي ينتهي الى الطريق تجاه كوم خليل
 بفروان وفيه الباب والحد البحري ينتهي لبئر النخلة (١٠) والحد
 الشرقي ينتهي لبحر الملح الاجاج والحد الغربي ينتهي الى الطريق
 بما لذلك من حقوقه وحدوده (١١) وأنشابه وسياجه وبنائه
 وما يعرف به وينسب اليه المعلوم ذلك لمياً العلم الشرعي النافي للجهالة
 شرعاً (١٢) الجارى ذلك في ملك البائع المذكور وبيده وحوزة
 وتصرفه واختصاصه بتقبال قياً على ذلك التصادق الشرعي
 (١٣) اشتراء صحيحاً شرعياً وبيعاً بتأليماً ناجزاً محرراً معتبراً مرضياً
 بثمان مبلغة عن ذلك من الذهب السلطاني (١٤) الجديد التام
 الوزن والعيار المتعامل به الان بالديار المصرية ستون ديناراً على
 الحلول (١٥) مقبوض ذلك بيد البائع المذكور من المشتري
 المذكور بالتام والكمال ولم يتاخر له من ذلك شيءٌ قل ولا جل
 (١٦) باعترافه بذلك لشهوده الاعتراف الشرعي وخلي البائع المذكور

أحمد لله حق حمده وصلواته وسلامه على جميع الانبياء والمرسلين

الأمير كما ذكر فيه زير العبد الفقير

أحمد بن إلياس المولى بمصر المحروسة

حالا

- (١) هذا كتاب تباع صحيح شرعي محرر صريح مرعي صدر
 الاشهاد به (٢) بمجلس الشريعة الشريفة الزهراء ومحفل الطريقة
 المنيفة الغراء بالباب العالي أعلاه الله تعالى (٣) بالقاهرة المعزية
 حميت عن الاصر والبلية بين يديه متوليه سيدنا ومولانا أفضى
 قضاة المسلمين أولى ولاية الموحدين (٤) معدن الفضل واليقين
 مؤيد شريعة سيد المرسلين الحاكم الحنفي الذي سيوقع خطه الكريم
 أعلاه المتوقع رضي مولاه (٥) أدام الله تعالى فضله ومجده
 وعلاه وبلغه في الدارين سؤله ومناه . مضمونه : إشتري (٦) أفرام
 بن جرجس بن مصري النصراني الملكي الراهب بدير طور سيناء
 بماله لنفسه من بائعه خليل بن جرجس (٧) ابن موسى النصراني

الحمد لله وحده ولا يشركه احد في الربوبية والملكوت
 الا الله كما يكون في القدر
 الحمد لله وحده ولا يشركه احد في الربوبية والملكوت
 الا الله كما يكون في القدر

ما في من انزل السجل والشكر في حق
 الله سبحانه وتعالى
 ما في من انزل السجل والشكر في حق
 الله سبحانه وتعالى

بالتفاهة المعرب حيث لا يفرق بين
 من يولد من دون الله ولا يخلق
 من يولد من دون الله ولا يخلق

ادام الله في فضل وعلاؤه
 ولغنى الدارين سوله مناه
 ادام الله في فضل وعلاؤه
 ولغنى الدارين سوله مناه

اي موسى النضر في الملك العرف
 ابو الخضر فاعلم
 اي موسى النضر في الملك العرف
 ابو الخضر فاعلم

المظلمه صانعا والملك الكرم
 وغير ذلك ما اراد عليه
 المظلمه صانعا والملك الكرم
 وغير ذلك ما اراد عليه

الحمد لله وحده ولا يشركه احد في الربوبية
 والملكوت الا الله كما يكون في القدر

الحمد لله وحده ولا يشركه احد في الربوبية
 والملكوت الا الله كما يكون في القدر

الحمد لله وحده ولا يشركه احد في الربوبية
 والملكوت الا الله كما يكون في القدر

الحمد لله وحده ولا يشركه احد في الربوبية
 والملكوت الا الله كما يكون في القدر

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 والملكوت الا الله كما يكون في القدر

الحمد لله وحده ولا يشركه احد في الربوبية
 والملكوت الا الله كما يكون في القدر

الحمد لله وحده ولا يشركه احد في الربوبية
 والملكوت الا الله كما يكون في القدر

والتشابه ما وجدنا في بعض من ينسب اليه العلم
 فكما العلم الكرمي انما في الجملة
 والتشابه ما وجدنا في بعض من ينسب اليه العلم
 فكما العلم الكرمي انما في الجملة

اشترى صحبا وشرا عبا وبها نال ما نال
 ما نال من العلم الكرمي انما في الجملة
 اشترى صحبا وشرا عبا وبها نال ما نال
 ما نال من العلم الكرمي انما في الجملة

المجدي انما في العلم الكرمي انما في الجملة
 انما في العلم الكرمي انما في الجملة
 المجدي انما في العلم الكرمي انما في الجملة
 انما في العلم الكرمي انما في الجملة

باعتضاد من ذلك لشهده الاعتراف
 في العلم الكرمي انما في الجملة
 باعتضاد من ذلك لشهده الاعتراف
 في العلم الكرمي انما في الجملة

والعاطفة ذلك علم اجبه نافي الجملة
 في العلم الكرمي انما في الجملة
 والعاطفة ذلك علم اجبه نافي الجملة
 في العلم الكرمي انما في الجملة

ايد الله تعالى احكامه واصنع عليه
 الخافعة في العلم الكرمي انما في الجملة
 ايد الله تعالى احكامه واصنع عليه
 الخافعة في العلم الكرمي انما في الجملة

واشهد على من الكرمي بذلك
 في العلم الكرمي انما في الجملة
 واشهد على من الكرمي بذلك
 في العلم الكرمي انما في الجملة

علمنا انما في العلم الكرمي انما في الجملة
 انما في العلم الكرمي انما في الجملة

علمنا انما في العلم الكرمي انما في الجملة
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