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# The Silence of the Bride

## A Fatimid marriage contract on silk

Reem ALRUDAINY, Mathieu TILLIER, Naïm VANTHIEGHEM<sup>1</sup>

**Abstract:** Marriage contracts and divorce deeds are of particular importance for historians, as they provide clues about both social practices and gender relations. In this article, we offer an edition of a noteworthy document from Dār al-āthār al-islāmiyya in Kuwait, which, beyond its remarkable aesthetic quality, offers a testimony to marriage and divorce practices in a bourgeois milieu of the Egyptian capital during the late Fatimid period. More than a micro-history, this document adds a new piece to the picture of matrimonial dynamics in medieval Egypt, which were often more subtle than previously understood. Patriarchal authority did not prevent a father from deploying all sorts of strategies to protect his daughter in marriage and guarantee her a certain amount of autonomy. In accordance with some jurists' recommendations, which were based on a Prophetic hadith, the father did not marry off his daughter without first obtaining her tacit permission. Finally, the document preserves the memory of a marital crisis in the seventh year of marriage, during which the husband repudiated his wife before rapidly taking her back.

### Introduction

Marriage contracts and divorce deeds are of particular importance for historians. Despite their typically standardized legal features, these documents provide clues about both social practices and gender relations. Literary sources of the medieval era, by contrast, tend to keep silent about the family life of elites.<sup>2</sup> During the last few decades, secondary literature on marriage contracts has expanded greatly, both about Egypt, through a series of scattered publications like Yūsuf Rāḡib's volume on Uqlūl,<sup>3</sup> and Syria, thanks to an important volume edited by Jean-Michel Mouton, Dominique Sourdél and Janine Sourdél-Thomine.<sup>4</sup> This paper expands the field.

In Islamic times, most marriage contracts were written on papyrus until the early fourth/tenth century, before paper and parchment took precedence. Cloth – whether linen or silk – made its appearance during the Fatimid period, in the fifth/eleventh century, and the use of this type of material developed in the Mamluk period.<sup>5</sup> The earliest evidence of a contract written on cloth

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<sup>2</sup> A. 'Abd al-Rāziq Aḥmad, "‘Aqd nikāḥ min ‘aṣr al-mamālīk al-baḥriyya," *al-Majalla l-‘arabiyya li-l-‘ulūm al-insāniyya*, 22 (1986), 73.

<sup>3</sup> Y. Rāḡib, *Transmission de biens, mariage et séparation à Uqlūl, village du Fayoum au v<sup>e</sup>/x<sup>e</sup> siècle* (Cairo: Ifao, 2016).

<sup>4</sup> J.-M. Mouton, D. Sourdél & J. Sourdél-Thomine, *Mariage et séparation à Damas au Moyen Âge : un corpus de 62 documents juridiques inédits entre 337-948 et 698-1299* (Paris: Académie des Inscriptions et des Belles-Lettres, 2013).

<sup>5</sup> A. Grohmann, *Arabische Paläographie* (Graz-Vienna-Cologne: Hermann Böhlau-Akademie der Wissenschaften, 1967), 105-106.

is a Fatimid document, known since the time of Adolf Grohmann, and edited and published by Yūsuf Rāḡib (*P. Raghib Marriage*). This contract was drawn up during the reign of al-Mustanşir (r. 427-487/1036-1094) on fabric manufactured at the very end of the reign of al-Muqtadir (r. 295-320/908-932).<sup>6</sup> A luxurious material, reserved for the drafting of contracts among the elite populations of Egypt, cloth – especially silk – has the disadvantage of being less well preserved than other materials. Writing on textile was a difficult enterprise as fabric would absorb ink and its fibres would stick to the pen. Reading this kind of text is all the more difficult today. It is therefore relatively rare for silk contracts to have survived the passage of time, and deciphering them can be particularly tricky.

The piece whose edition we propose here is particularly noteworthy as, in addition to its remarkable aesthetic quality, it testifies to matrimonial practices hitherto little documented in the medieval period. Both the present marriage contract, dated 551/1156, and the divorce deed written on the back, dated 557/1161, are from the last stage of the Fatimid caliphate, shortly before the Ayyūbid takeover in Egypt.<sup>7</sup> The document is exceptional, both for its form – its size and the refinement of its embroidery – and its content. More than most marriage contracts, it contains Qur’ānic quotations and hadiths, as well as a four-line introductory sermon recounting *khuṭbas* delivered by the husband during marriage ceremonies.<sup>8</sup> It also features several situational details, particularly describing how the bride consented to marry the groom. Finally, like a few other contracts, this one includes two texts on the reverse side that shed light on the fate of this marriage, which we presume continued for a long time despite a crisis in its seventh year.

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<sup>6</sup> The editor had not managed to read this embroidered preamble, which has meanwhile been deciphered by E. Niewöhner-Eberhard in “Die Tiraz-Inschrift aus dem Lüneburger Schatz der Goldenen Tafel,” in C. Fluck & G. Helmecke (ed.), *Textile Messages. Inscribed Fabrics from Roman to Abbasid Egypt* (Leiden: Brill, 2006), 193-219, esp. 207.

<sup>7</sup> For a brief overview of the Fatimids, see for example C. E. Bosworth, *New Islamic Dynasties: A Chronological and Genealogical Manual* (Edinburgh: Edinburgh University Press, 1996), 63-65.

<sup>8</sup> A. al-Shāmī, *al-Taṭawwur al-tārīkhī li-‘uqūd al-zawāj fī l-islām. Dirāsa muqārana* (Cairo: Jāmi‘at al-Zaqāzīq, 1982), 17.



Figure 1. P. Dār al-āthār al-islāmiyya in Kuwait Inv. LN S 81 TF recto



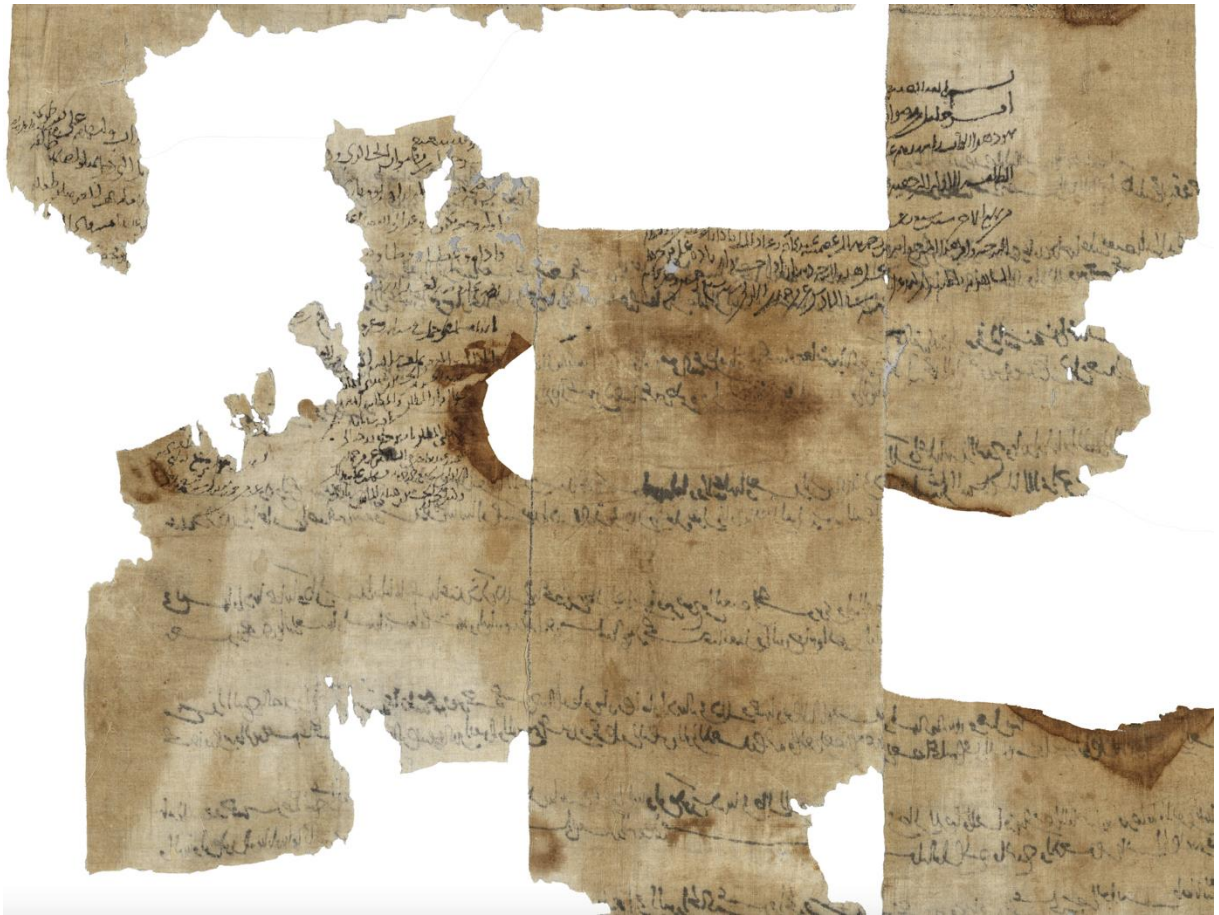


Figure 2. P. Dār al-āthār al-islāmiyya in Kuwait Inv. LN S 81 TF verso

## Editions

The Fatimid piece of silk cloth edited here contains three different texts, one on the front and two others on the back. On the recto, a contract records the marriage of Khalīl b. Riḍwān al-Khālīdī and Sitt al-Naṣr, daughter of Khalīl b. Muḥammad the caulker, on 11 *Muḥarram* 551/6 March 1156. On the verso, a second text attests that Khalīl b. Riḍwān uttered a simple repudiation against Sitt al-Naṣr on 21 *Rabīʿ II* 557/9 April 1162. Less than a month later, on 16 *Jumādā I* 557/3 May 1162, as the third text shows, the husband decided to take his wife, Sitt al-Naṣr bt. Khalīl, back and to resume their marriage.

The upper part of the recto is decorated with a large embroidered band, consisting of both texts and iconographic representations. At the very top, a *basmala* is supplemented by a Qurʾānic invocation calling for the imminent victory of God (Q 61: 13). At the bottom, a Qurʾānic verse from Sūrat al-Furqān (Q 25: 54) speaks of God's creation of humans and their ability to reproduce through marital alliances (*ṣihr*) – a verse specifically relevant to the content of the document. Between the two, a series of five medallions are connected by scrolls into a series. The two outer medallions feature an identical text, a blessing and wishes for happiness and prosperity for the contract's owner. In the centre, two eight-pointed stars frame a stylized representation of a date palm, on either side of which stand two birds.



Figure 3. P. *Dār al-āthār al-islāmiyya* in Kuwait Inv. LN S 81 TF recto (embroidered heading)

The heading embroidery is particularly well preserved but incomplete, so much so that one wonders if it was ever finished. Most of it is executed in beige silk thread. The first, second, and third lines of the left medallion are embroidered in a green or blue thread, as are the inside of the birds' bodies and the leaves of the palm tree. The round letters of the upper and lower inscriptions, embroidered in black thread, are also filled with green or blue embroidery. In contrast, the centre line of the right medallion is not embroidered, and the brown thread embroidery of the palm trunk and stars is incomplete. The scrolls in the centre of the piece are also incomplete. These missing silk threads reveal the preliminary layout of the drawings and calligraphy, executed in a black ink that was meant to be concealed by the embroidery.

This piece of cloth was most probably discovered in the remains of the city of Fustāt, where the bride apparently lived, or elsewhere in Cairo. It was part of the papyrus collection acquired by the Austrian-born bibliophile and book dealer H. P. Kraus (1907-1988), of which the vast majority seems to have been unearthed in the Egyptian capital.<sup>9</sup> The collection was bought by the *Dār al-āthār al-islāmiyya* in Kuwait in 2010.

### 1. Marriage contract

On 11 *Muḥarram* 551/6 March 1156, Khalīl b. Riḍwān al-Khālīdī, whose physical description is outlined in great detail in the marriage contract, marries Sitt al-Naṣr, daughter of Khalīl b. Muḥammad the caulker, for a dower of nineteen dinars, four of which are to be paid immediately. The remaining fifteen dinars are to be paid within three years of the marriage. This last condition – if text 3 is to be given any credence – was never met. The wife's matrimonial guardian is her father, whom the document also describes in physical detail. The marriage contract includes a series of stipulations that the husband commits to respect: he must provide for of his wife's rent – for she will live in a separate house – and he may not force her to leave Fustāt or separate her from her family.

P. *Dār al-āthār al-islāmiyya* in Kuwait Inv. LN S 81 TF recto

104 × 106 cm

Silk

Fustāt or Cairo

11 *Muḥarram* 551/6 March 1156

FIG. 4-5

<sup>9</sup> On the provenance of this collection, see N. Vanthieghem, "Les archives d'un maquignon d'Égypte médiévale," *Analecta Papyrologica*, 26 (2014), 291-315, esp. 291.

The text is written on the front side of the cloth, immediately below the embroidered headband mentioned above. All margins are preserved, at least in part. The document contains several significant lacunae that do not hinder its general comprehension or its reconstruction. The text is arranged in fifteen lines which, following a well attested practice for the Mamluk period, are divided into paragraphs of two lines each (apart from the last paragraph, which has three). Each paragraph is separated from the other by a blank space. In addition to the body of the text, the document also includes a testimony divided into two lines. The writing of both the body of the deed and the testimony is the work of a skilful professional hand, which uses numerous ligatures as well as simplifications that sometimes hinder reading – for instance, the word *al-zawj* is ligatured to such an extent that one reads at first glance *al-bay* '. The letters bear a few sparse diacritical dots, which should not be confused with ink stains seeping from the two texts written on the reverse side.

بسم الله الرحمن الرحيم نصر من الله وفتح قريب				
بركة	8 pointed star	Depiction of birds and a palm tree	8 pointed star	بركة
كاملة ونعمة				كاملة ونعمة
شاملة وسعد				شاملة وسعد
ة دائمة لصا				ة دائمة لصا
حبه				حبه
وهو الذي خلق من الما بشرا فجعله نسبا وصهرا وكان ربك قد [يرا]				

[بسم الله] الرحمن الرحيم وشاورهم ف[ي ا] لامر فاذا[ا] عزمت فتوكل على الله فالذين يقولون ربنا هب لنا من ازواجنا وذرياتنا قررة اعين واجعلنا] للمتقين اماما فالحمد لله وصليت صلواته على سيدنا محمد نبي الله وسلامه

[هذا ما اصدق خليل] بن رضوان الخالدي وهو يومئذ رجل شاب معتدل [القامة] . . . . .

[. . .] . مستدير اللحية ست النصر البكر البالغ ابنة خليل بن محمد وتزوج[ها به]

(vacat)

[اصدقها على بركة الله وعونه وحسن توفيقه ويمنه من العين الوازن الجيد المصري المحقق تسعة عشر دينارا

على ان /من\ ذلك على سبيل التعجيل اربعة دنانير دفعها هذا الزوج من خالص ماله على ما <ا>لزمه

للزوجة عاقد نكاحها عليه فقبضها منه لابنته[ه] هـ[هذه]

[والدها و ابراه من وزنها ومن نقدها] ومن اليمين عليها وعلى شي منها و[الحكمة عليها وفي شي منها براءة صحيحة] براءة قبض واستيفا وضمن ايصالها الى ابنته هذه المذكورة والدرك اليها من قبلها وبسببها ضمانا صحيحا في ذمته وماله وباقي ذلك وهو خمسة عشر [دينارا منجمة]

(vacat)

5 [لها عليه في كل سنة تمضي] خ[م]سة دنانير يقوم لها بقسط السن[ة] في [سلخها؟ من] ا[ستق]بال تاريخ هذا الكتاب وعليه ان يتقي الله عز وجل فيها و يحسن صحبتها ومعاشرتها بالمعروف كما امره الله تعالى به في كتابه وسنة سيدنا محمد نبيه ص[لى] على وسلم [وله عليها مثل ما لها عليه] من ذلك ودرجة زائدة لقول الله تعالى في ك[تاب]ه وللرجال عليهن درجة والله عزيز حكيم وولي تزويجها اياه بذلك والدها خليل بن محمد القلقاط وهو يومئذ رجل كهل معتدل [القائمة اسم]

(vacat)

بحمرة واضح الجبهة وبها غضون مقرون الحاجبين اشهل العينين اقنى الانف مستدير الليحة بحق ابوته لها وولايته عليها وبعد ان استاذنها في ذلك واعلمها بهذا الزوج وبما بذله لها من الصداق ال[مذكور فصمتت] عند ذكر ذلك لها صمات راضية غير ابية وبعد ان اعلمها انها ان صمتت فقد اذنت فما ردت؟ في ذلك ولم تنكره بقول ولا رده بفعل لقول رسول الله صلى الله عليه وعلى اله وسلم تسليما الايم احق ب[نفسها من وليها والبكر تستاذن]

(vacat)

في نفسها واذنها صماتها وكان استاذانه اياها وصمتها عند ذكر ذلك لها بمحضر من رجال احرار مسلمين وهم فتوح بن البغيض الحويري وابو الفضل بن فلان الفلاني وهما يعرفانها 10 معرفة صحيحة ثابتة بعينها واسمها ونسبها ويشهدون انها يومئذ امرأة حرة مسلمة بالغ بكر صحيحة العقل والبدن جارية الصمت لها [وعليها فزوجها والدها خليل بن محمد الولي المذكور]

(vacat)

من هذا الزوج بالصداق المقدم ذكره عاجله ومنجمه وهو خمسة عشر دينارا بامرها ورضاها واذنها في ذلك وصمتها وتوكيلها اياه فيه واشهادها بذلك وقبل منه الز[و]ج [هذا النكاح لنفسه قبولا]



صحيحاً ورضي به والزمه نفسه بمخاطبة [أية منه أيا] هـ ان الله مع الذين اتقوا والذين هم محسنون وضمن كل من الزوجين والولي المقدم ذكره والمعرفين احضار بعضهم بعضاً بمجلس الحكم الشريف متى احتيج الى كل منهم في ذلك وبعد

(vacat)

تمام ذلك ووجوبه شرط الزوج على نفد [سـه لزوجه ان يكون سـ] لكنها بيت فرض اجراته لها وان يكون سكنها في حال الغضـ [ب و] في حال الرضا ولا يسافر بها من مصر الا باختيارها ورضاها ولا يفرق بينها وبين والدها وان يكون كونها بكونها ما دامت في [عقد نكاحها والزمه عـ] الى نفسه والتزم حكمه شـ [يهد على اقـ] ارار الولي المزوج والزوج والمعرفين بما نسب الى كل منهم فيه

15 [ . . . . . عـ] الى اقرارهما في اليوم الحادي عشر من المحرم من سنة احدى

وخمسين وخمسماية وكتبه علي بن نصر الكاتب واثقا بالله تعالى

شهد ابراهيم بن الفضل الـ حاني

على اقرار الولي المزوج والزوج والزوجة بتاريخه

وسنه في بالمعروف معاشرتها 5 bombyc قبلها 4 bombyc وتروجهـ [ا مستدبر معتدل 2 bombyc وسلامه فاد] 1 ويشهدون 10 bombyc بمحضر ذكر عند 9 bombyc ردت 8 bombyc بهذا 7 bombyc لقول 6 bombyc سددنا bombyc هذا 11 bombyc يسافر 13 bombyc.

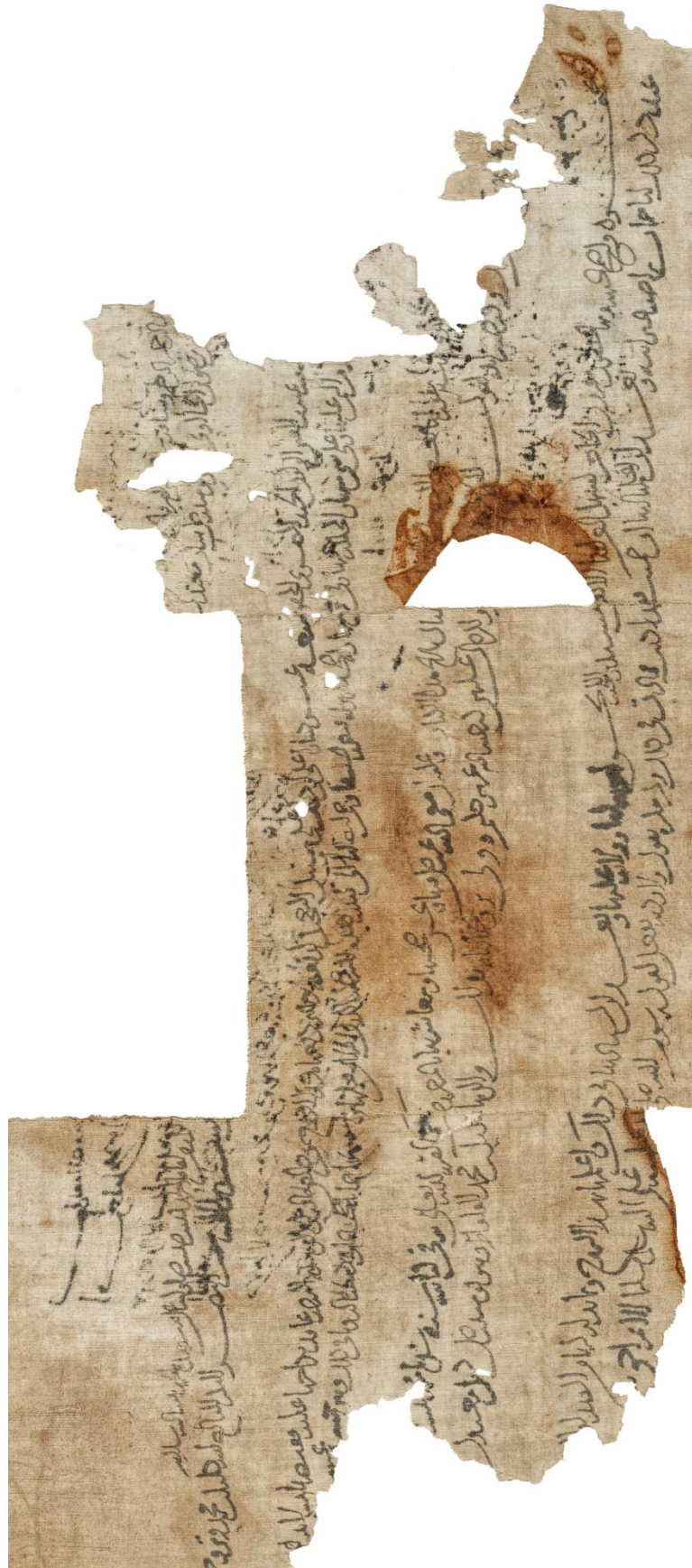


Figure 4. P. Dār al-āthār al-islāmiyya in Kuwait Inv. LN S 81 TF recto (text 1, lines 1-8)



In the name of God, the Compassionate, the Merciful. Victory from God and an imminent conquest! (Q 61:13)

Complete blessing, all-encompassing prosperity, and perpetual felicity for its owner	<i>8 pointed star</i>	<i>Depiction of birds and a palm tree</i>	<i>8 pointed star</i>	Complete blessing, all-encompassing prosperity, and perpetual felicity for its owner
--------------------------------------------------------------------------------------	-----------------------	-------------------------------------------	-----------------------	--------------------------------------------------------------------------------------

It is He Who, from water, created man, conferring on him kinship, of blood and marriage. Your Lord is Ever-Powerful! (Q 25:54)

<sup>|1</sup> In the name of God, the Merciful, the Compassionate. “Seek their counsel in all affairs. When resolved upon a matter, put your trust in God.” (Q 3:159) “Those [who say: ‘Our Lord, grant that from our spouses and our offspring comes that which comforts our eyes, and make] us as guides to the pious.’” (Q 25:74) Praise be to God! I call for His blessings upon our Lord Muḥammad, the Prophet of God, and His Salvation!

<sup>|2</sup> [This is what Khalīl] b. Riḍwān al-Khālidi, who is at this time a young man of medium height ..., with a round beard, brought as dower for Sitt al-Naṣr, a virgin who has reached puberty, daughter of Khalīl b. Muḥammad, and for which he married her. <sup>|3</sup> [He brought her as dower, with the blessing of God, His help, His gracious] assistance and His felicitous auspices, in Egyptian money, weighed, good, and verified, nineteen dinars. [The contract is] made on the condition that this sum include an immediate instalment of four dinars, which the aforesaid husband paid from his personal wealth in accordance with his commitment to the bride. He concluded her betrothal on these terms. <sup>|4</sup> [The father] received this sum for his daughter. He gave him a receipt for the weight and cash payment] and exempted him from oaths and lawsuits concerning all or part of the sum, a valid receipt, and a receipt of full collection. He (i.e. the father) guaranteed that he would transfer this sum to his aforementioned daughter and would take all liability to her in the event of any claim by her or on her behalf. He offered a valid guarantee of this, on his person and on his property. [He shall remain liable for the] balance, namely fifteen [dinars, <sup>|5</sup> payable in instalments of five dinars for each elapsed year. He shall pay the annual instalment [at the end of the year (?)], from the date of this document onwards. He shall fear God the Almighty in his relationship with her, be a good companion and treat her kindly as commanded by God the Sublime in His Book and the *Sunnah* of our Master Muḥammad, His Prophet – may His blessing [and salvation be upon him. <sup>|6</sup> She will have the same duties towards him as he has towards her], with an additional degree because of the saying of God the Sublime in His Book: “But men are a grade higher over them – God is almighty, all-wise.” (Q 2:228) His father, Khalīl b. Muḥammad the caulker, acted as a legal marriage guardian on the said terms. As of today, he is a mature man of medium height [with brown skin] <sup>|7</sup> with reddish complexion, with a broad forehead marked with wrinkles, eyebrows connected together, dark blue eyes, an aquiline nose and a round beard. [He acted as a legal marriage guardian] by virtue of his right as a father and his authority over her, after he had asked her

permission and informed her of the marriage and the amount of money [the husband was prepared to pay for the dower indicated above. She remained silent] <sup>|8</sup> when informed of [this proposal], her silence being taken as approval, not refusal. He had previously informed her that her silence meant permission. She did not respond to this [information], nor did she show any disapproval by word or gesture. Indeed, the Messenger of God – God’s blessing and salvation be upon him and his family – said, “The mature woman (*ayyim*) has more right to [dispose of herself than her matrimonial guardian; the permission of the virgin is sought] <sup>|9</sup> for what concerns her, and her silence signifies permission.” He asked her permission and she kept silent in the presence of free Muslim men, namely Futūḥ b. al-Baghīd al-Ḥuwayrī and Abū l-Faḍl... [who recognize her] <sup>|10</sup> truthfully and affirmatively by her physical features, her name, and her genealogy. They testify that she is to this day a free Muslim woman, of age, a virgin, of sound mind and body, and that her silence is valid for her benefit [and prejudice. Her father, Khalīl b. Muḥammad, the aforementioned legal marriage guardian, gave her in marriage] <sup>|11</sup> to the said husband for the above-mentioned dower, including the part to be paid immediately and the part payable in due course, namely fifteen dinars. [He gave her in marriage] according to her instructions, with her consent, her permission, her silence, and as her representative for this purpose, for which she had witnesses testify. The husband accepted from her [this betrothal] <sup>|12</sup> in a genuine manner, expressed his consent and obligated himself to it, after asking her in marriage. God stands with the pious and with those who are virtuous! (Q 16:128) Each of the two spouses, the aforementioned legal marriage guardian and the informants commit themselves to summon each other to the noble court whenever their presence is required. After <sup>|13</sup> this contract has been concluded and has become binding, the husband has committed himself to his wife with the following stipulations: She shall dwell in a house (*bayt*), the rent of which he shall pay on her behalf, and which shall be her home in the state of discontent as well as in the state of agreement; he shall not take her on a journey away from Miṣr unless she chooses and agrees to do so; he shall not separate her from <sup>|14</sup> her father. Such will be her situation as long as she remains bound by [her marriage contract. He has obliged himself] to respect these stipulations and is committed to these rules. Testimony has been taken that the legal marriage guardian, the husband and the informants admit what concerns them each in this document. <sup>|15</sup> ... of their admission to each other on the eleventh day of *Muḥarram* in the year five hundred and fifty-one. Written by ‘Alī b. Naṣr al-Kātib, placing his trust in God the Sublime. <sup>|16</sup> Ibrāhīm (?) b. al-Faḍl al-ḥānī testifies <sup>|17</sup> to the admission formulated by the matrimonial guardian, the husband and the wife on the aforesaid date.

**headband *wa-huwa lladhī khalaqa...*** The use of this Qur’ānic verse (25:54) as a prologue in marriage contracts was already recommended by the Mālikī Andalusī jurist al-Ṭulayṭulī (d. 459/1066-1067), *al-Muqnī’ fī ‘ilm al-shurūṭ* (Beirut: Dār al-kutub al-‘ilmiyya, 2000), 16.

- 2 ***mu‘tadil [al-qāma ] . mustadīr al-liḥya*** The trace of a letter preceding the second participle most likely corresponds to the end of a *fā’*, in which case it should probably be read as the end of the word *al-anf* (“the nose”). Physical descriptions often include details about the shape of the nose before describing the appearance of the beard (cf. *P. Cambr. Genizah* 18, 3; 27, 5 and 62, 3). Given the space available in this lacuna, a description of the eyes of the bridegroom likely was included between his height and the shape of his nose (cf. *P. Cambr. Genizah* 25, 3 and 27, 5).
- 3 ***[aṣḍaqahā ‘alā barakat Allāh wa-‘awnihi wa-ḥusn tawfīqihi wa-yumnihi*** The restitution is based in particular on P. Berol. Inv. 15055 recto, 7 and P. Berol. Inv. 15054 (1), 9. Since the Abbasid period, the verb *aṣḍaqahā* was usually repeated before indicating the sum of the dower. The formulae underwent a few



changes in the late Fatimid period. From the Ayyubid period onwards, notaries consistently added the propitiatory formula *‘alā barakat Allāh wa-‘awnihi wa-ḥusn tawfīqihi wa-yumnihi* or *‘alā barakat Allāh wa-‘awnihi wa-sunnat nabīhi Muḥammad* after the repetition of *aṣḍaqahā*.

- 4 **[wa-abra’ahu / min waznihā wa-min naqdihā] wa-min al-yamīn ‘alayhā wa-‘alā shay’ minhā wa-l-muḥākama ‘alayhā** The formula is frequent in sale contracts (cf. *P. Cambr. Genizah* 8, 12 and *P. Cair. Arab.* I 54, 8), but rare in marriage deeds. We have found it only in *P. Grohmann Berlin* 13, 9 and *P. Utah Inv.* 1336, 5-6.

**wa-ḍamina ṭṣālahā ilā ibnatihī ḥādhihi l-madhkūra** For similar phrasing, see *P. Dietrich Eheurkunde* (1), 9 *wa-‘alayhi [ṭṣ]āluhu ilayhā* and *P. Cambr. UL Inv. Michael. Inv. X 14* (fr. A + B + C), 4-5 *wa-ḍamina ṭṣāl / [dhālika ilayhā]*.

**wa-l-darak ilayhā min qibalihā wa-sababihā** The word *darak*, of Aramaic origin, was generally used in real estate sale contracts. It refers to a claim that could result in the eviction of the new owner of a property. For example, a creditor of the former owner might come to the new owner and claim the property as part of a debt recovery, or a neighbour might claim a pre-emption right (*shuf‘a*). On *darak*, see J. A. Wakin, “Darak,” *EP<sup>2</sup>*, XII, p. 198; W. Diem, *Eine Arabische Kaufurkunde von 1024 n. Chr. aus Ägypten* (Wiesbaden: Harrassowitz, 2004), 43-49; Y. Rāḡib, *Actes de vente d’esclaves et d’animaux d’Égypte médiévale* (Cairo: Institut français d’archéologie orientale, 2006), 2: 93-97; Y. Rāḡib, *Transmission de biens*, 21. The term *darak* here implies that in case the wife complained about not having received the dower, her father would take his responsibility and clear the husband. As for the phrase *min qibalihā wa-sababihā*, which specifies the extent of the warranty, it only appears in the marriage contract *P. Cambr. UL Inv.* 39.501 + 35.373.

- 4-5 **wa-huwa khamṣa ‘ashar [dīnāran munajjama] / [lahā ‘alayhi fī kull sana tamḍī] kha[m]sa danānīr** The reconstruction is based on *P. Berol. Inv.* 15054 (1), 10.

- 5 **yaqūmu lahā bi-qisṭ al-san[a] fī [salkhihā’ min] i[stiq]bāl tārīkh ḥādha l-kitāb** A similar phrasing appears in *P. Berol. Inv.* 15054 (1), 11 *yaqūmu lahā bi-najm kull sana ‘inda salkhihā min istiqbāl tārīkhihi*.

- 6 **[wa-lahu ‘alayhā mithl mā lahā ‘alayhi] min dhālika wa-daraja zā’ida li-qawl Allāh ta’alā fī ki[tābi]-hi** The reconstruction of the beginning of the line is aided by many parallels, including *P. Philad. Arab.* 27, 8; *P. Berol. Inv.* 15054 (1), 12; *P. Utah Inv.* 791, 5-6 and *P. Cair. Isl. Mus. Inv.* 2332, 8.

**wāliduhā Khalīl b. Muḥammad al-qalfāt** The term *qalfāt*, borrowed from the Greek *kalafatēs*, is not common in Arabic papyrological documentation (cf. *CPR XVI* 16 recto 5; *P. Prag. Arab.* 26, col. I, 24 verso; *P. Vind. Arab.* III 80 recto a, 5). On this profession, see the commentary *infra*.

- 6-7 **mu’tadil [al-qāma asmar] / bi-ḥumra** The presence of the word *ḥumra* at the beginning of l. 7 calls for the adjective *asmar* to be restored at the end of the previous line. For parallels, see esp. *P. Mariage Separation* 28 b, 3; 39, 2 and 49, 3.

- 7 **bi-ḥaqḡ ubuwwatihi lahā wa-wilāyatihi ‘alayhā ba’da an ista’dhanahā fī dhālika wa-a’lamahā bi-ḥādḥā l-zawj wa-bi-mā badhala lahā min al-ṣadāq al-[madhkūr]** An almost identical sequence can be read in documents *P. Utah Inv.* 1336, 12 and *P. Dietrich Eheurkunde* 1, 13-14. In the latter document, however, the element *wa-a’lamahā bi-ḥādḥā l-zawj wa-bi-mā badhala lahā min al-ṣadāq al-madhkūr* is missing.

- 7-9 The same phrasing is found, albeit in a slightly less developed form, in *P. Utah Inv.* 1336, 13-14. The prophetic hadith, introduced by the words *li-qawl Allāh*, is reported from Ibn ‘Abbās in Mālik, *Muwatta’ al-imām Mālik (riwāyat Yahyā b. Yahyā al-Laythī)*, ed. Bashshār ‘Awwād Ma’rūf (Beirut: Dār al-gharb al-islāmī, 1997), 2: 28 (# 1493); Ibn Ḥanbal, *Musnad al-imām Aḥmad b. Ḥanbal*, ed. Shu’ayb al-Arna’ūt and ‘Ādil Murshid (Beirut: Mu’assasat al-risāla, 1997), 4: 58 (# 2163); Muslim, *Ṣaḥīḥ Muslim*, ed. Muḥammad Fu’ād ‘Abd al-Bāqī (Cairo: Dār al-ḥadīth, 1991), 2: 1037 (# 1421); al-Tirmidhī, *al-Jāmi‘ al-kabīr*, ed. Bashshār ‘Awwād Ma’rūf (Beirut: Dār al-gharb al-islāmī, 1996), 2: 401 (# 1108); Ibn Hibbān, *Ṣaḥīḥ Ibn Hibbān bi-tartīb Ibn Balbān*, ed. Shu’ayb al-Arna’ūt (Beirut: Mu’assasat al-risāla, s.d.), 9: 398 (# 4087). Other versions use the verb *ista’mara* instead of *ista’dhana*, as in Abū Dā’ūd, *Sunan Abī Dā’ūd*, ed. Shu’ayb al-Arna’ūt and Muḥammad Kāmil Qurra Balālī (Damascus: Dār al-risāla al-‘ālamīyya, 2009), 3: 438 (# 2098). This hadith is very commonly used in legal literature to defend the view that a virgin girl’s silence is equivalent to her consent. See Y. Linant de Bellefonds, *Traité de droit musulman comparé. II. Le Mariage. La dissolution du mariage* (Paris-La Haye: Mouton, 1965), 79-80; al-Nu’mān, *Da’ā’im al-islām*, ed. ‘Āsif b. ‘Alī Aṣghar Fayḍī (Cairo: Dār al-ma’ārif, 1951), 2: 218.

- 10 **ṣaḥīḥat al-‘aql wa-l-badan jā’izat al-ṣamt lahā [wa-‘alayhā]** The notary of *P. Utah Inv.* 1336, 16 used the same phrase to describe the legal capacity of the bride and the value of her silence.

- 12 *wa-ḍamina kull min al-zawjayn wa-l-walī l-muqaddam dhikruhu wa-l-mu‘arrifīn iḥḍār ba‘ḍihim ba‘ḍan bi-majlis al-ḥukm al-sharīf matā uḥtīja ilā kull minhum fī dhālika* A clause, shorter but identical in meaning, appears in the marriage contract *P. Genizah Cambr.* 33, 7-8. It should be noted that in the latter text, instead of *iḥḍār al-ākhar bi-shay‘ ukhtīja ilayhi* as deciphered by the editor, one ought to read as in the present document *iḥḍār al-ākhar matā ukhtīja ilayhi*.
- 13 *[an yakūna sa]kanuhā bayt farāḍa ujurātīhi lahā wa-an yakūna sakanahā fī ḥāl al-ghad[ab wa-]fī ḥāl al-riḍā* This stipulation is original in several respects. It specifies that the husband will have to provide for the rent of his wife’s house, which implies that she will live in her own place and that the husband cannot force her to leave it. Moreover, this obligation will fall on the husband whatever the state of their relationship.  
*wa-lā yusāfira bihā min Miṣr illā bi-khtiyārihā wa-riḍāhā* This “preclusion of relocation” clause can be found in several Egyptian contracts (*P. Louvre Inv. JDW 92, 12; P. Khalili Inv. 171; P. Cambr. UL Inv. T.-S. H 10 166 (B)*). Here, the husband agrees not to forcibly take his wife out of Fustāt, where she and her family live.
- 13-14 *wa-lā yufarriqa baynahā wa-bayn wālidihā* The husband here agrees to respect family ties and to allow his wife complete freedom to socialize with the members of her family, especially her father, whether at the family home or at her own abode. Such a clause can be found in *P. Louvre Inv. JDW 92, 18; P. Grohmann Berlin 8; P. Cair. Arab. I 39; P. Cair. Arab. I 41; P. Grohmann Berlin 8*.
- 14 *wa-an yakūna kawnuhā bi-kawnihā mā dāmat fī [‘aqd nikāḥihā]* The reconstruction is based on *P. Cambr. UL Inv. T.-S. H 10 166 (B)*, 8. One could also consider reconstructing the text as *mā dāmat fī [‘iṣmatihi]*.  
*wa-alzamahu ‘alā nafsihi wa-ltazama ḥukmahu* One most often finds the terms *wa-alzamahu nafsahu* (cf. *CPR XVI 2 (2), 9* and *P. Grohmann Berlin 13, 21*). The variant *wa-alzamahu ‘alā nafsihi* is, however, attested in *Chrest. Khoury I 87, 11*. As for the formula *wa-ltazama ḥukmahu*, it is hardly found in Egyptian notarized documents, but it is well known from Andalusian materials (cf. *P. Aragon 30, 9; 55, 12* and *56, 12*).
- 15 *wa-katabahu ‘Alī b. Naṣr* A marriage contract very rarely specifies the identity of the notary who drafted the document in such a clear manner. Most of the time, the notary can only be identified because he has also acted as the first witness of the deed.

## 2. Single revocable repudiation

On 21 *Rabī‘ II* 557/9 April 1162, after a little more than six years of married life, Khalīl b. Riḍwān pronounced against Sitt al-Naṣr a first repudiation. The text indicates that the wife was then six months pregnant and had no other living children. Although l. 4-5 are badly damaged, it also appears that the husband commits to provide for the repudiated woman for as long as her waiting period (*‘idda*) lasts – in this case, since she is pregnant, as long as she has not given birth. He will grant her an amount of money to allow her to access public baths, for her accommodation and food (*ṭa‘ām wa-idām*), as well as for her bedding (*ghitā‘ wa-wiṭā‘*), and probably more. The end of the text mentions at least one person who confirmed that she was indeed pregnant. After this text was written, two witnesses added their names at the bottom – only the first one is preserved. When text 3 was written down, stating that the repudiator had resumed his marital relation with his wife before the expiration of the waiting period, these same witnesses added their names another time, immediately below the first testimonies, to confirm that the marriage continued.

P. Dār al-āthār al-islāmiyya in Kuwait Inv. LN S 81 TE verso (left side) Fustāt or Cairo  
104 × 106 cm 21 *Rabī‘ II* 557/9 April 1162  
Silk FIG. 6

This text is written on the back of the piece of cloth, in the upper left quarter, slightly below the embroidered band. The right third and the upper left corner are preserved. The central part is missing, along with a major part of the left third. The text is arranged in eight lines written in a professional cursive script using numerous ligatures. There are no diacritical dots. Seven lines of three testimonies have been added to the text. The text was written by a single hand, probably the same one as in text 3.

بسم الله الرحمن الرحيم

[أق]ر خليل بن رضوان الخالدي وهـ[و معروف عند شهود هذا الك]تاب واشهدهم على نفسه طوعا  
في صحة منـ[به وجو]از امره انه يوم تاريـ[خ]ه طلق ست النصر ابنت خـ[ل]يل التي دخل بها واصابها /وهي  
مشملة منه على حمل في ستة اشهر\ طلقة

اولة رجعية تكون في عدة الى انقضاها؟ عـ[دتها بوضع الحمل؟ وضمن؟ لها اجرة الـ]حمام واجرة الغرفة او طعام  
5 وادام وغطا ووطا وكسـ[وة]... حتى تنقضـ[ي] عدتها منه فالحال [ . . . ]

تصريح؟ لزوجته وبعد ذلك . . . . . ] بامـ[رها؟ و محضـ[رها

انها مشتملة على حمل في ستة اشهر وعرفه [ . . . ]بح بن صـ[د] وشهد على اقرار المطلق

والمطلقة والمعرفين بما فيه بتاريخ الذ[ان]ـ[ي] والعـ[شرين من ربيع الاخر]

شهد الحسن بن الحسين بن هندي الناهض؟

10 على اقرار المطلق والمطلقة والمعرفين

بما فيه في تاريخه

اشهدني المطلق بانه يرجع زوجته الى

عصمته وعقد نكاحه في السادس عشر من جمـ[دى] ...

الاولى سنة سبع وخمسين وخمس مائة فشهدت عليه بذلك فشهدت ... وكتب بتاريخ السادس

15 وكتب الحسن بن الحسين بن هندي الناهض بتاريخه عشر من جمـ[دى] الاولى من سنة سبع  
 وخمسين [ وخمس مائة ]



Figure 6. P. Dār al-āthār al-islāmiyya in Kuwait Inv. LN S 81 TF verso (text 2)

<sup>1</sup> In the name of God, the Merciful, the Compassionate.

<sup>2</sup> Khalīl b. Riḍwān al-Khālīdī, [whom the witnesses to this] document recognize, admitted and called them to testify against himself, of his own free will..., <sup>3</sup> while he was in good health and [in full capacity], that he on that very day [repudiated Sitt al-Naṣr bt.] Khalīl, with whom he cohabited and consummated his union, and who is with child and six months pregnant, by <sup>4</sup> an initial revocable <sup>3</sup> repudiation. <sup>4</sup> She shall remain in her waiting period until it is ended [by childbirth (?) and he guaranteed (?) the payment of the rent] for the hammam, the rent of the room or food, <sup>5</sup> condiments, blankets, bedding and clothing... [until the end of] her waiting period ... <sup>6</sup> declaration to his wife, and after that... at her request (?) and in [his] presence (?)... <sup>7</sup> that she is with child and six months pregnant. ...ḥ b. Ṣ... informed... [Testimony has been given of the confession pronounced by the repudiator], <sup>8</sup> the repudiated and the informants, regarding the contents of this document, on the twenty second day [of *Rabīʿ II*].

(*1<sup>st</sup> testimony*) <sup>9</sup> Al-Ḥasan b. al-Ḥusayn b. Hindī al-Nāhiḍ (?) testifies that <sup>10</sup> the repudiator, the repudiated and the informants admitted <sup>11</sup> the contents thereof on the aforesaid date.

<sup>12</sup> The repudiator called upon me to testify that he took his wife back under his protection and [resumed] his marriage contract, on the sixteenth day of *Jumādā* <sup>14</sup> I of the year five hundred and fifty-seven. I testify... <sup>15</sup> Written by al-Ḥasan b. al-Ḥusayn b. Hindī al-Nāhiḍ on the aforesaid date.

(*2<sup>nd</sup> testimony*) ... I testify... Written on the date of [the sixteenth day of] *Jumādā* I of the year [five hundred] fifty-seven.

- 2 [aqa]rra Khalīl b. Riḍwān al-Khālīdī wa-hu[wa ma'rūf 'inda shuhūd hādhā l-kitāb For parallels to the formula wa-huwa ma'rūf 'inda shuhūd hādhā l-kitāb, see, among others, P. Daaif Document, 3; P. Haram II 25, 4; P. Mueller Ecrire 1 a, 3.
- 3 'wa-hiya mushtamila minhu 'alā ḥaml fī sittat ashhur' It is rare for Egyptian divorce deeds to mention a pregnant repudiated woman. The only other case we know of is P. Louvre Inv. E 6842, 6.
- 4 ilā inqida'ihā 'iddatihā bi-l-waḍ' Concerning this tentative restitution, see al-Asyūṭī, Jawāhir al-'uqūd wa-mu'īn al-quḍāt wa-l-muwaqqi'īn wa-l-shuhūd (Cairo: Maṭba'at al-sunna al-muḥammadiyya, 1955), 2: 195.
- 4-5 On the obligations of a husband who repudiated his pregnant wife, see al-Asyūṭī, Jawāhir al-'uqūd, 2: 195.
- 6-7 [bi-am]rihā wa-maḥḍa[rihā ] | annahā mushtalima 'alā ḥaml fī sittat ashhur The scribe committed a metathesis, writing mushtalima instead of mushtamila. The end of l. 6 is broken, which makes it difficult to know why the act of repudiation specifies again that the repudiated woman is pregnant. As this information was added on l. 3 by the notary, who had forgotten to mention it, one may interpret it as a final note to confirm the authenticity of the addition. However, this kind of note usually comes after the date of the deed.

### 3. Resumption of the marriage

On 16 Jumādā I 557/3 May 1162, Khalīl b. Riḍwān al-Khālīdī took back his wife Sitt al-Naṣr bt. Khalīl, less than a month after repudiating her with a single repudiation. According to the terms of this return, he promised his wife one dinar in addition to the remaining portion of the dower he still owed her.

P. Dār al-āthār al-islāmiyya in Kuwait Inv. LN S 81 TE verso (right side) Fustāt or Cairo  
104 × 106 cm 16 Jumādā I 557/3 May 1162  
Silk FIG. 7

Text 3 is written on the back of the piece of cloth, in the upper right quarter, immediately to the right of text 2. It is arranged in eight lines, of which only the last three have been preserved in full. Only the right third of the first five lines is still extant. The hand that wrote the text was probably the same as that of text 2. This is the work of a professional notary who uses ligatures and simplifications (*Verschleifung*) extensively, without ever adding diacritical marks to the *rasm*. In contrast to the previous text, this one does not feature the name of any witnesses, as these were written immediately below the testimonies of text 2.

بسم الله الرحمن الرحيم  
اقر خليل بن رضوان [الخالدي  
وهو معروف عند  
شهود هذا الكتاب واشهدهم على  
الطقة الاولى الرجعية [المسطرة في كتاب الصداق  
5 من ربيع الاخر سنة سبع وخمسين وخمسمائة  
الزوجية واقر هذا المرجع انه قد رجعها الى عصمته وعقد نكاحه وعاد ذلك باذا ما عليه من المهر  
المشاهد به باطنه من امر له وعليه وتخل هذه الزوجة ديناراً واحداً زيادة على موخرها  
منه في السادس عشر من جمادى الاولى سنة سبع وخمسين وخمسمائة



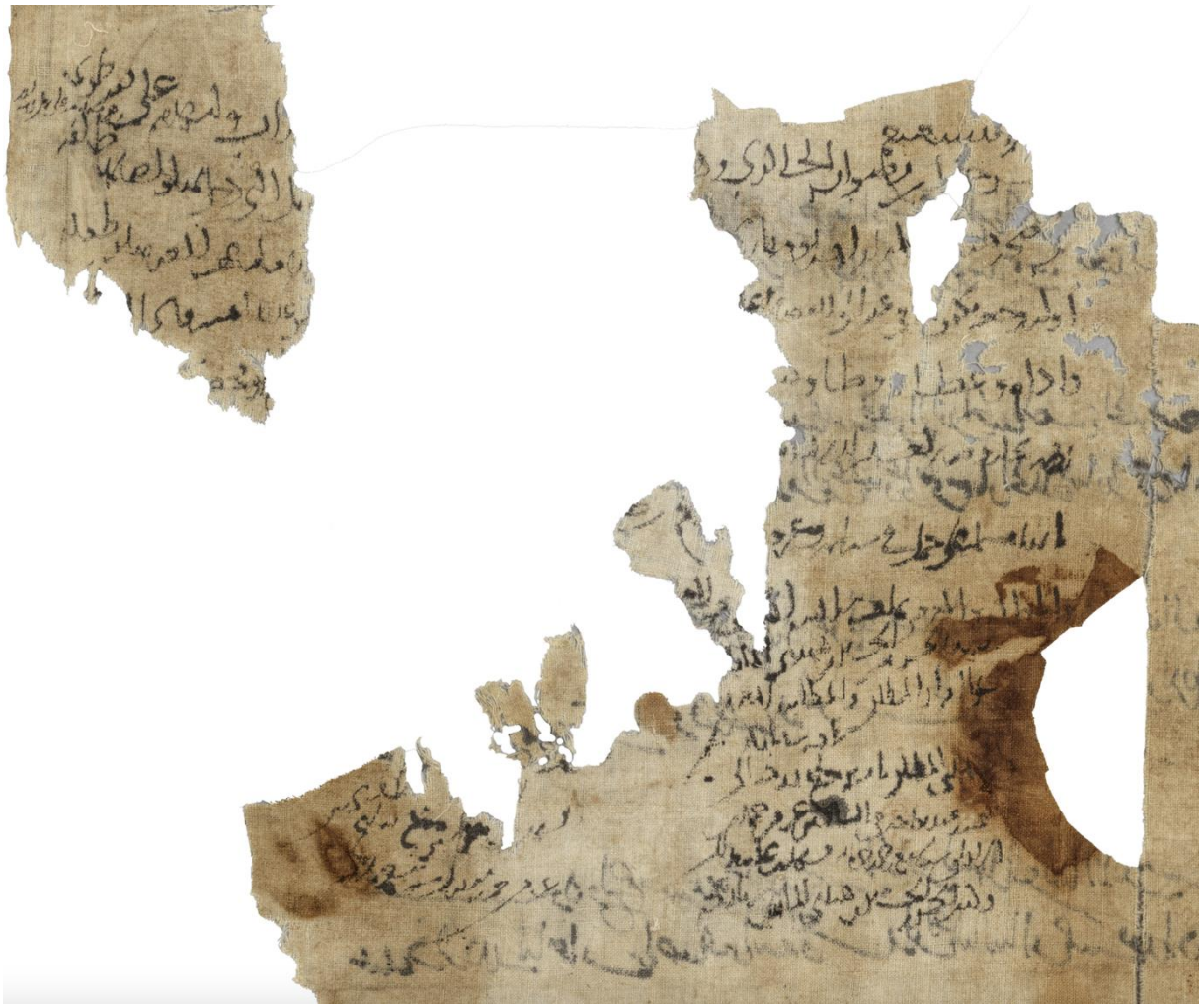


Figure 7. P. Dār al-āthār al-islāmiyya in Kuwait Inv. LN S 81 TF verso (text 3)

<sup>1</sup> In the name of God, the Merciful, the Compassionate.

<sup>2</sup> Khalīl b. Riḍwān [al-Khālīdī] admitted... [before] <sup>3</sup> the witnesses of this document, and called them to testify against [himself, of his own free will, that he had repudiated Sitt al-Naṣr bt. Khalīl, with whom he cohabited and consummated his union,] <sup>4</sup> by an initial revocable repudiation [mentioned in the repudiation document... dated the twenty-second] <sup>5</sup> of Rabīʿ II of the year [five hundred] fifty-seven... <sup>6</sup> marital. The revoking party has admitted that he took her back under his protection and [resumed] his marriage contract. He returned to it (i.e. the contractual relationship) by paying what he owed of the dower <sup>7</sup> attested on the recto side... The wife shall be entitled to an additional dinar with respect to the deferred portion <sup>8</sup> that he owed her. On the sixteenth day of Jumādā I of the year five hundred and fifty-seven.

2-3 *aqarra Khalīl b. Riḍwān [al-Khālīdī] wa-huwa maʿrūf ʿinda* / *shuhūd hādhā l-kitāb* The presence of the words *shuhūd hādhā l-kitāb* at the beginning of l. 3 entails that the end of l. 2 ended with the preposition *wa-huwa maʿrūf ʿinda*, but this formula is not long enough to fill the lacuna.

3 *wa-ashhadahum ʿalfā nafsihi ṭawʿan annahu ṭallaqa Sitt al-Naṣr bt. Khalīl allatī dakhala bihā wa-aṣābahā*] Our reconstruction is based on the phrasing of text 2. There is not enough space to reconstruct the

phrase *wa-hiya mushtamila minhu 'alā ḥaml fī sittat ashhur*. Since the husband took back his wife and therefore automatically supported her, the notary may have voluntarily omitted this part.

- 4 *al-ṭalqa al-ūla al-raj' iyya [al-musaṭṭara fī kitāb al-ṣadāq]* We assume that text 3 alluded in some way to the content of text 2. We therefore propose to fill the lacuna with the terms *al-musaṭṭara fī kitāb al-ṭalāq*. For similar wording in marriage and divorce deeds, see P. Berol. 15054 and P. Berol. Inv. 15280. What followed *al-musaṭṭara fī kitāb al-ṭalāq* is unclear. However, at the end of the line, the date of the month in which the act of provisional repudiation must have been written, is introduced by the participle *al-mu'arrakh*.
- 5 *sanat sab ' wa-kham/sīn wa-khams mi'a* ] It is difficult to know what followed the year.
- 6 *wa-aqarra ḥādḥā l-murajji' annahu qad rajja 'ahā ilā 'iṣmatihi wa- 'aqd nikāḥihi* We can compare this formula to the one prescribed by al-Asyūfī, *Jawāhir al- 'uqūd*, 2: 167: *rāja 'ahā ilā 'iṣmatihi wa- 'aqd nikāḥihi murāja 'atan shar' iyyatan*.

## Historical commentary

### 1. Political and social context

#### 1.1. A Fatimid contract

The period that extended from the vizierate of Badr al-Jamālī (d. 487/1094) in 466/1073 to that of Shīrkūh (d. 564/1169) was characterized by a weakening of the caliphate in favour of military viziers. The marriage of Khalīl b. Riḍwān al-Khālīdī with Sitt al-Naṣr was concluded on 11 *Muḥarram* 551/6 March 1156, which was toward the end of this second period of Fatimid rule over Egypt. The imam-caliph was then al-Fā'iz bi-Naṣr Allāh (r. 549-555/1154-1160), who ascended the throne at the age of four, following the assassination of his father al-Zāfir (r. 544-9/1149-54) by the latter's lover Naṣr – himself the son of the vizier al-'Abbās – and the subsequent slaughter of two of al-Fā'iz's uncles and a cousin. The young caliph did not, however, wield real power. He was placed under the guardianship of his aunt, Sitt al-Quṣūr ("the Lady of the Palaces"). The vizier al-'Abbās was soon driven from power by Ṭalā'i' b. Ruzzīk (d. 556/1161), a military man of Armenian origin who then emerged as the last great military vizier of the dynasty.<sup>10</sup> The caliph died of illness a few years later and was succeeded by an 11-year-old boy, al-'Āḍid (r. 555-567/1160-1171), who became the last Fatimid caliph. Ṭalā'i' b. Ruzzīk was assassinated in 556/1161, leaving his position to his son, Ruzzīk b. Ṭalā'i' (d. 553/1163), who never managed to assert authority.<sup>11</sup>

This marital alliance must therefore be placed in a context of decline of the Fatimid dynasty, only a decade before its final dissolution by Saladin in 567/1171. The vizier Ṭalā'i' b. Ruzzīk did not himself belong to the Ismā'īlī faith, a sign that the official religious doctrine of the regime no longer occupied its former prominent place. The embroidered header of the document nevertheless does retain a Fatimid tone. The Qur'ānic quotation "Victory from God and an imminent conquest" (Q 61:13) was the motto of the Fatimids and appeared on the silk banners carried at the head of caliphal processions.<sup>12</sup> The ornaments featured on the headband may also be interpreted in the Fatimid context. One should note first that bird motifs are quite common

<sup>10</sup> See M. Brett, *The Fatimid Empire* (Edinburgh: Edinburgh University Press, 2017), 283; Th. Bianquis, "Ṭalā'i' b. Ruzzīk," *EP*<sup>2</sup>, s.v.

<sup>11</sup> See Th. Bianquis, "Ruzzīk b. Ṭalā'i'," *EP*<sup>2</sup>, s.v.

<sup>12</sup> Al-Maqrīzī, *al-Mawā'iz wa-l-i'tibār fī dhikr al-khiṭaṭ wa-l-āthār*, ed. Ayman Fu'ād Sayyid (London: Mu'assasat al-furqān li-l-turāth al-islāmī, 2002), 2: 470. See P. Sanders, *Ritual, Politics, and the City in Fatimid Cairo* (New York: SUNY Press, 1994), 93.

on Late-Antique and early Islamic cloths.<sup>13</sup> Several Fatimid *tirāzs*, glasses and ceramics feature birds alongside other animals, like rabbits.<sup>14</sup> Carved wooden beams supposedly coming from the Fatimid palace in Cairo that bear scenes of hunting, dancing, drinking and music-making, and are interspersed with spread wing birds, presumably eagles.<sup>15</sup> More significant, however, is the palm tree that is sketched in the middle of the headband.

The palm tree occupies a special place in Ismā‘īlī thought. The fourth-/tenth-century encyclopaedia of the Ikhwān al-Ṣafā’, well-known in Fatimid court circles, assigns it the highest rank in the hierarchy of plants, and regards it as an “animal-like plant” or phytozoon (*nabāt ḥayawānī*). Since its fruits need to be fertilized by a male tree, it has a sexual life reminiscent of that of animals. Furthermore, it withers if its head is cut off, just as animals die under the same circumstances.<sup>16</sup> The Ismā‘īlī *dā‘ī* al-Kirmānī adopted the same view about palm trees.<sup>17</sup> It might therefore be appropriate to interpret the scene as a symbol of the happiness of the spouses, symbolized by the birds, next to a palm tree laden with fruit, which could represent their prosperity and the fruitfulness of their marriage.

The interpretation could go further, and possibly attach a politico-religious meaning to this depiction. The symbolism of another palm tree has already been interpreted by Sophie Makariou in an artefact from al-Andalus, the so-called pyxis of al-Mughīra, in which she suggests a reference to the political and religious legitimacy of the Umayyads, rooted in the trees of prophecy and the caliphate.<sup>18</sup> In Fatimid Egypt, the date palm could refer, even more explicitly, to the “Good Tree” (*al-shajara al-ṭayyiba*) mentioned in Q 14: 24-25. A Shi‘i hadith, for instance, has the Prophet declare: “O Jābir [b. ‘Abd Allāh], what do you say about a tree of which I am the root, of which ‘Alī is the branch, of which al-Ḥasan and al-Ḥusayn are the fruits? Whoever clings to any part of it will reach Paradise.”<sup>19</sup> The tree thus symbolized the Prophet’s

<sup>13</sup> On birds, see The Metropolitan Museum of Art, “Recent Acquisitions: A selection, 2011-2012,” *The Metropolitan Museum of Art*, 70, no. 2 (2012), 14; Th.K. Thomas, “Silks,” in H. Evans, B. Ratliff (ed.), *Byzantium and Islam: Age of Transition, 7<sup>th</sup>-9<sup>th</sup> Century* (New York: Metropolitan Museum of Art, 2012), 150-151; M. Moraitou, “Ornamental Motifs in Early Islamic Art”, in *Ibid.*, 236. Palm trees feature in both the church of the Kathisma and the Dome of the Rock in Jerusalem. See F. Flood, “Faith, Religion, and the Material Culture of Early Islam”, in *Ibid.*, 248.

<sup>14</sup> A. Contadini, *Fatimid Art at the Victoria and Albert Museum* (London: V & A Publications, 1998), 69-70, 103 and plates 27, 47b; J. Bloom, *Arts of the City Victorious: Islamic Art and Architecture in Fatimid North Africa and Egypt* (London: Institute of Ismaili Studies, 2007), 94, 162. On Fatimid fabrics, see also G. Corn, “Les tissus d’apparat fatimides, parmi les plus somptueux le « voile de Sainte Anne » d’Apt”, in M. Barrucand (ed.), *L’Égypte fatimide. Son art et son histoire* (Paris: Presses de l’Université de Paris-Sorbonne, 1999), 331-337.

<sup>15</sup> J. Bloom, *Arts of the City Victorious*, 67-68.

<sup>16</sup> *Rasā’il Ikhwān al-Ṣafā’ wa-Khillān al-Wafā’* (Qum: Markaz al-i’lām al-islāmī, 2000), 4: 277-278. Cf. G. de Callatay, “The Ikhwān al-Ṣafā’ on Animals. A Focus on the Non-Narrative Part of *Epistle 22*,” *Journal of Arabic and Islamic Studies*, 22 (2022), 31-49, 37. On the reception of the *Rasā’il Ikhwān al-Ṣafā’* in Fatimid Egypt, see M. Rustow, *The Lost Archive. Traces of a Caliphate in a Cairo Synagogue* (Princeton-Oxford: Princeton University Press, 2020), 193-196.

<sup>17</sup> Al-Kirmānī was an Ismā‘īlī *dā‘ī* active in the late fourth/tenth and early fifth/eleventh century. D. De Smet, *La quiétude de l’intellect. Néoplatonisme et gnose ismaélienne dans l’œuvre de Ḥamīd al-Dīn al-Kirmānī (X<sup>e</sup>-XI<sup>e</sup> s.)* (Leuven: Peters, 1995), 320.

<sup>18</sup> S. Makariou, *La pyxide d’al-Mughira* (Paris: Musée du Louvre, 2012), 19.

<sup>19</sup> Al-Nu‘mān, *Sharḥ al-akhbār fī faḍā’il al-a’imma al-aṭḥār* (Qum: Mu’assasat al-nashr al-islāmī, 1431 H.), 2: 371.

family, including Ja‘far, ‘Alī’s brother, according to other Shi‘i hadiths.<sup>20</sup> In his writings, the Ismā‘īlī *dā‘ī* al-Mu‘ayyad fī l-Dīn (d. 470/1078) compared this “Good Tree” to a palm tree (*nakhla*), symbolizing the *walī Allāh* (i.e., ‘Alī), who is able to lead the faithful to Paradise, represented by the date bunches.<sup>21</sup> The palm tree could therefore, in Ismā‘īlī thought, both refer to the Prophet’s family to which the imam-caliphs belonged, and symbolize the eschatological expectations of the faithful. The drawing of two birds under a palm tree laden with fruit could represent the happiness of the spouses in the shadow of the blessed dynasty. Within this interpretative framework, the eight-pointed stars on either side of the palm tree with the birds could, as in other Fatimid architectural depictions, allude to the imam-caliph.<sup>22</sup>

The incomplete character of the embroidery raises some questions. Wear and tear does not seem to be the cause, as the threads are missing in specific areas only. Could threads have been removed in certain places? Or, conversely, is the embroidery unfinished? In the first scenario, one might think that the material was prepared in a workshop that perhaps mass-produced fabrics for the weddings of Egyptian high society, including a propitiatory headband. In the second scenario, the embroidery could have been executed after the writing of the deed, in a family setting, perhaps by the bride herself. However, the notary was clearly careful to leave all the necessary space at the top of the document. Should we conclude that the drawing and the calligraphy were already sketched in ink, in order to guide the hand of the embroiderer? We cannot answer these questions. Despite this possible symbolism, and contrary to other Fatimid pieces that use pious formulas calling for God’s blessing on the Prophet’s family,<sup>23</sup> the present contract avoids such additions and concentrates solely on the Prophet. It is therefore necessary to distinguish the cloth, using Fatimid formulas and symbolism, from the text of the contract, which reflects a rather Sunni environment and does not contain any other Shi‘i language.

## 1.2. A high bourgeoisie marriage

The use of a luxurious material such as silk to draft the contract and the unusually elaborate ornamentation at the top reflect the socio-economic level of the spouses, at a time when official Fatimid documents were written on paper.<sup>24</sup> An upcoming study on marriage contracts in Egypt shows that most contracts were still drawn up on parchment and paper at that time.<sup>25</sup> During the Fatimid period, the use of silk as writing material for marriage contracts seems to have been still quite exceptional, and reserved for the higher echelons of Egyptian society due to its hefty price. Most of the examples that have reached us date back to the Mamluk period.<sup>26</sup>

<sup>20</sup> See for instance al-Nu‘mān, *Ta’wīl al-da‘ā’im*, ed. Muḥammad Ḥasan al-A‘zamī (Cairo: Dār al-ma‘ārif, 1969), 1: 191; Id., *al-Manāqib wa-l-mathālib*, ed. Mājid Aḥmad al-‘Aṭīyya (Beirut: Mu’assasat al-‘Alamī li-l-maṭbū‘āt, 2002), 136; Id., *Sharḥ al-akhbār*, 3: 205.

<sup>21</sup> E. R. Alexandrin, *Walāyah in the Fāṭimid Ismā‘īlī Tradition* (New York: SUNY Press, 2017), 120, 270.

<sup>22</sup> C. Williams, “The Cult of ‘Alid Saints in the Fatimid Monuments of Cairo, Part 1: The Mosque of al-Aqmar,” *Muqarnas*, 1 (1983), 37-52, 40, 45-46.

<sup>23</sup> See for instance *P. Raghib Mariage*, P. Berol. Inv. 15109, P. Cambr. UL Inv. T.-S. Ar. 39.501 + 35.373.

<sup>24</sup> See M. Rustow, *The Lost Archive*, 114.

<sup>25</sup> M. Tillier & N. Vanthieghem, *Mariages et séparations en Égypte au Moyen Âge*, forthcoming.

<sup>26</sup> M. Tillier & N. Vanthieghem, *Mariages et séparations en Égypte au Moyen Âge*, forthcoming. Ḥasan al-Hawārī interpreted the appearance of marriage contracts on silk as reflecting Egypt’s wealth at that period, deriving from its new position as a commercial hub, while taxes imposed upon the goods passing through its ports stimulated the Mamluk economy. H. Muḥammad al-Hawārī, “‘Iqd zawāj qadīm maḍā‘alay-hi 618 sana,” *Majallat al-hilāl* (March 1933), 635. It is now clear, however, that this change started before the Mamluk period. Aḥmad Abd al-

The wedding was celebrated in the Egyptian capital. The clauses appended at the end of the contract indeed specify that the husband is not allowed to take his wife “on a journey away from Miṣr” without her consent. It is unlikely that “Miṣr” here means Egypt as a whole, for this type of clause precluding relocation was intended to allow a wife to remain in the town (*balad*) where she resided, close to her family.<sup>27</sup> It would therefore make no sense for her to have negotiated through her father not to be taken out of Egypt; the husband rather commits himself to allow his wife to stay in the Egyptian capital if she does not wish to leave. “Miṣr” in this case refers more specifically to Fustāt, the old city where most of the civilian population was settled, and probably not to Cairo, the palatial capital of the Fatimids, of their administration, and of their army.

The social context of the matrimonial union points in the same direction. The couple belonged to the Egyptian upper middle class. We do not know the profession of the groom, Khalīl b. Riḍwān, and his *nisba* al-Khālidi seems to simply mean that someone called Khālidi was among his ancestors. The dower of 19 dinars that he pledges to pay – four of them on the spot – is nonetheless a large sum, well above the 6-dinar average dower under the Fatimids.<sup>28</sup> Moreover, the deferred part of the dower, 15 dinars, is to be paid to the wife over three years only, at a rate of 5 dinars per year. Not only is this period short compared to the deadlines generally granted in the Fatimid period (4 years on average, but the average is closer to 10 years when periods other than the Fatimids are taken into account),<sup>29</sup> but the sum to be paid each year is substantial, and should in theory provide the wife with a rather comfortable income during the three years following the wedding.<sup>30</sup> Rules of social parity (*kafā’a*) developed by Muslim jurists imply that the wife belonged to a background of lower or equal standing to that of her husband. The contract names her Sitt al-Naṣr (“Lady Victory” or “Victoria”), a kind of nickname used by high-ranking women to avoid revealing their *ism* and thus not to undermine their decency.<sup>31</sup>

The identity of Sitt al-Naṣr’s father, Khalīl b. Muḥammad, provides a better understanding of the social milieu to which the bride and groom belonged. He is identified by the professional *nisba* “al-Qalfāt,” indicating that he was a caulker specializing in the work of sealing ship hulls, or else a reboiler repairing damaged hulls.<sup>32</sup> The term is so far unattested in Fatimid documents. His profession and the mention of Miṣr in our document both associate Khalīl b. Muḥammad with shipbuilding in Fustāt. Fatimid control of the Mediterranean and Red Seas made the navy

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Rāziq Aḥmad also edited a Mamluk marriage contract written on a cotton textile soaked in a starchy material. A. ‘Abd al-Rāziq Aḥmad, “‘Aqd nikāḥ min ‘aṣr al-mamālīk al-baḥriyya,” 70.

<sup>27</sup> See al-Asyūfī, *Jawāhir al-‘uqūd*, II, 29.

<sup>28</sup> See M. Tillier & N. Vanthieghem, *Mariages et séparations*. It should be noted, however, that *P. Raghib Mariage* does not preserve the amount of the dower, which was probably also higher than this average. On dowers in the Fatimid period, see also D. Cortese and S. Calderini, *Women and the Fatimids in the World of Islam* (Edinburgh: Edinburgh University Press, 2006), 212.

<sup>29</sup> See M. Tillier & N. Vanthieghem, *Mariages et séparations*, forthcoming.

<sup>30</sup> On the deferred portion of the *ṣadāq*, see Y. Rapoport, “Matrimonial Gifts in Early Islamic Egypt,” *Islamic Law and Society*, 7 (2000), 1-36, esp. 5-10. Cf. D. Santillana, *Istituzioni di diritto musulmano malichita con riguardo anche al sistema sciafiita* (Rome: Istituto per l’Oriente, 1938), I, 220; S. Spector, *Women in Classical Islamic Law. A Survey of the Sources* (Leiden: Brill, 2010), 85-86.

<sup>31</sup> See J. Sublet, *Le voile du nom. Essai sur le nom propre arabe* (Paris: Presses Universitaires des France, 1991), 115, 119, and 192.

<sup>32</sup> R. Dozy, *Supplément aux dictionnaires arabes* (Leiden: Brill, 1881), 2: 397.



a strategic issue, particularly in light of the constant confrontation between the Fatimids and their enemies (the Abbasids, the Seljuks, the Crusaders). Since the end of the first/seventh century, an arsenal was installed in Fustāt, on the island of Rawḍa. After the conquest of Egypt in 358/969, the Fatimids concentrated shipbuilding activities in the Egyptian capital, developing several arsenals (*ṣinā'āt*) on the eastern bank of the Nile between Fustāt, Rawḍa, and al-Maqs. The shipbuilding yards themselves were located to the south of the settlement, on the Fustāt shore. Ships were armed, on the other hand, in the port of al-Maqs.<sup>33</sup> In the early sixth/twelfth century, shipbuilding intensified to cope with Crusader threats. From the 1120s onwards, shipyards were concentrated on the island of Rawḍa.<sup>34</sup> From then on, they were supervised by a specific administration, the *dīwān al-'amā'ir*, which employed everyone from the highest level officials to simple craftsmen.<sup>35</sup> Caulkers were an essential profession in shipbuilding. The *nisba* of Khalīl b. Muḥammad does not mean, however, that he was a mere labourer. Fatimid sources indicate that shipbuilding trades involved, among others, overseers (*mushārifūn*) and foremen (*ru'asā'*), who were responsible for supervising the work of the craftsmen.<sup>36</sup> This strategic sector offered higher wages than in the civilian sector, with craftsmen likely being paid up to 8 dinars per month,<sup>37</sup> while the average salary of a mason or plasterer was around 4.8 dinars a month in 1040 in Fustāt.<sup>38</sup> By way of a comparison, a physician working in a Cairo hospital in 1240 earned about 3 dinars a month.<sup>39</sup> Given the other clues about the socio-economic level of the spouses, it is likely that Khalīl b. Muḥammad, a Sunni inhabitant of Fustāt, held a high-level position in the Fatimid arsenals, and that he received an even higher salary.

## 2. The marriage clauses: between theory and practice

According to Islamic law, a bridegroom must give a dower (*ṣadāq* or *mahr*) to the bride, a rule rooted in the Qur'ān: “Give women their dower, a free offering” (Q 4:4). The amount of dower depended on the socio-economic situation of both the groom and the bride.<sup>40</sup> The present bourgeois marriage was concluded on terms appropriate to the background of the parties. According to the terms of the contract, as we have seen, Sitt al-Naṣr received 4 dinars at the time of the wedding and was to receive an annual payment of 5 dinars for three years. Yossef Rapoport has noted, however, that husbands did not always pay the deferred portions of the *ṣadāq*, and that many wives probably gave up claiming these arrears if they remained married.

<sup>33</sup> D. Bramoulé, *Les Fatimides et la mer (909-1171)* (Leiden: Brill, 2020), 363-379.

<sup>34</sup> D. Bramoulé, *Les Fatimides et la mer*, 389-393.

<sup>35</sup> D. Bramoulé, *Les Fatimides et la mer*, 410, 421.

<sup>36</sup> D. Bramoulé, *Les Fatimides et la mer*, 425.

<sup>37</sup> D. Bramoulé, *Les Fatimides et la mer*, 426-427.

<sup>38</sup> S. D. Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza* (Berkeley: University of California Press, 1967-1993), 1: 96. Goitein indicates that the average wage was more precisely 4 dirhams per working day. Considering that craftsmen worked six days a week, this would mean that their salary amounted to 144 dirhams per month. Taking into account an exchange rate of 20 dirhams per dinar, their salary amounted to 4.8 dinars per month. On the exchange rate between dirham and dinar, see T. Sato, *State & Rural Society in Medieval Islam: Sultans, Muqta's and Fallahun* (Leiden: Brill, 1997), 243.

<sup>39</sup> S. D. Goitein, *A Mediterranean Society*, 2: 257.

<sup>40</sup> Y. Linant de Bellefonds, *Traité de droit musulman comparé*, 2: 199-215; 'U. 'Abd Allāh, *Aḥkām al-sharī'a al-islāmiyya fī l-aḥwāl al-shakhṣiyya* (Cairo: Dār al-ma'ārif, 1965), 21.

He therefore interprets the deadlines mentioned in contracts as a mere legal device to prevent the marriage from being nullified on the grounds of formal irregularities. Without mention of a deadline for repayment, the union might indeed be invalidated had it not been consummated, while after consummation the amount of the *ṣadāq* might itself be nullified, the wife being in this case automatically entitled to a dower appropriate to her social standing.<sup>41</sup> The present document confirms Rapoport's suspicion in many respects. The repudiation recorded on the reverse side was pronounced on 16 *Jumādā* I 557/3 May 1162, more than six years after the wedding. By this date, according to the terms of the contract, the husband should have finished repaying the deferred portion of the *ṣadāq* for three years. However, text 3 suggests that this was not the case. To take back his wife after repudiating her, Khalīl b. Riḍwān had to pay the remainder of the arrears, the amount of which is not specified, and he even paid an additional dinar. Had he, in fact, paid anything out of the deferred portion of the dower? We do not know, but this statement in the resumption text suggests that the instalments stipulated in the contract were only theoretical.

While the precise mention of a *ṣadāq* was obligatory and essential to the validity of a marriage, clauses (*shurūṭ*) appended to a contract were not.<sup>42</sup> Most of the marriage deeds preserved for medieval Egypt do not include such clauses, and only contracts drawn up in elite circles bear witness to such a practice. Our document includes several clauses, two of which were quite common. First, the clause precluding relocation, which forbade a husband from compelling his wife to move from the town where the marriage was concluded and where they lived. Second, the clause by which the husband committed himself to allow his wife to spend time with her family. Both were intended to prevent the wife from being cut off from her family and social environment. In the second clause, one would expect the whole family (*ahl*) to be mentioned, as in notary models and other contracts.<sup>43</sup> However, only the father is mentioned, which might suggest that Sitt al-Naṣr was then motherless, or even that her close family circle was reduced to her father alone, as he had perhaps no other living offspring. Some Egyptian marriage contracts also included a monogamy clause that would oblige the husband to repudiate his previous wives, to repudiate future co-wives, or to emancipate his concubines.<sup>44</sup> Given the presence of relocation and family clauses, one might have expected also a monogamy clause. However, our document does not contain such a stipulation, which suggests that the husband did not agree, during the pre-marriage negotiations, to give up his right to polygamy.

Conversely, the contract includes a unique clause compared to other known deeds for medieval Egypt: that of independent housing, which contravenes the rule, generally accepted by jurists, that the wife should reside in her husband's home.<sup>45</sup> The contract indeed stipulates that Sitt al-Naṣr "shall dwell in a house, the rent of which he shall pay on her behalf, and which shall be her home in the state of discontent as well as in the state of agreement" (l. 13). The

<sup>41</sup> Y. Rapoport, "Matrimonial Gifts," 10-12.

<sup>42</sup> On such additional clauses, see Y. Linant de Bellefonds, *Traité de droit musulman comparé*, 2: 89 sq; S. Spector, *Women in Classical Islamic Law*, p. 89 sq.

<sup>43</sup> See the notary model P. Louvre Inv. JDW 92 verso (third/ninth century). Cf. P. Grohmann *Berlin* 8; P. *Cair. Arab.* I 39; P. *Cair. Arab.* I 41; P. *Grohmann Berlin* 11.

<sup>44</sup> See for instance P. *Cair. Arab.* I 38, P. *Grohmann Berlin* 8, P. *Cair. Arab.* I 41, CPR XXVI 1, P. Khalili Inv. 171, P. Berol. Inv. 15280.

<sup>45</sup> Y. Linant de Bellefonds, *Traité de droit musulman comparé*, 2: 289.

term *bayt*, which we have translated here as “house,” could also refer to a single room in a mansion. The separation deed on the reverse side could support the latter assumption, for it states that during the waiting period, the husband will have to provide for the maintenance of Sitt al-Naṣr, including “the rent of the room” (*ujrat al-ghurfa*). What the term *ghurfa* refers to, however, is unclear. It could, as in some Buljūsūq sale deeds in the Fayyūm, refer to a studio or small apartment attached to a large house.<sup>46</sup> On the other hand, a repudiated wife may have been required to spend her waiting period in her husband’s home, where she was placed under surveillance. The *ghurfa* mentioned in the act of repudiation would in this case be distinct from the *bayt* mentioned in the marriage contract.<sup>47</sup> Therefore, it is likely that the two terms, even if standardized, do not point to the same thing. Finally, one would hardly expect this lady to have been given a simple room to live in, and it is more reasonable to think that she had an independent dwelling, requiring the payment of a rent in addition to the one that the husband might already have paid for his main residence. This clause may in fact act as a substitute for the monogamy clause found in other documents. Sitt al-Naṣr may not have been the first wife of Khalīl b. Riḍwān, but the second or even the third or the fourth. By agreeing to marry a polygamous husband, she could not ask for the repudiation of the previous wives. However, she could demand a separate house, which would not impose daily cohabitation with her co-wives, and which would allow her to raise her own offspring in a personal place.

This type of clause, negotiated by women through their matrimonial guardian, infringed upon the rights and control of a husband over his wife. It was therefore the subject of discussion and concern among jurists.<sup>48</sup> Al-Shāfi‘ī (d. 204/820) held that any stipulation that would interfere with a husband’s rights – to take another wife, a slave concubine, to remove his wife from his city, to confine her to her home – was null and void, even if the wife had obtained these clauses in exchange for a reduction on the *ṣadāq*. If, for such stipulations, she had received a dower lower than the amount required by her social standing, the husband was obliged to supplement the sum until he reached the equivalence dower (*mahr al-mithl*), but the clauses remained null and void as contradicting Qur’ānic prescriptions.<sup>49</sup> According to the Mālikīs, following Saḥnūn (d. 240/855), such clauses had no place inside a marriage contract, and were only binding if the husband took an oath. They could only appear as additional stipulations to the marriage contract and could then be negotiated in exchange for a reduction of the dower.<sup>50</sup> Such rules explain the introductory formula of these clauses in our document. The notary carefully indicates that the contract was already concluded and binding (*ba’d tamām dhālika wa-wujūbihi*) before, at a second stage, the husband granted certain stipulations (*sharaṭa ‘alā nafsīhi*) in favour of his wife. Other contracts that include such clauses proceed the same way,

<sup>46</sup> M. Tillier & N. Vanthieghem, *Buljūsūq, un village du Fayoum méridional* (forthcoming).

<sup>47</sup> Y. Linant de Bellefonds, “‘Idda,” *EP*, s.v.

<sup>48</sup> See for instance al-Shaybānī, *Kitāb al-ḥujja ‘alā ahl al-Madīna* (Beirut: ‘Ālam al-kutub, 1983), 3: 303; Ibn Qudāma, *al-Mughnī*, ed. ‘Abd Allāh b. ‘Abd al-Muḥsin al-Turkī and ‘Abd al-Fattāḥ Muḥammad al-Ḥulw (Riyad: ‘Ālam al-kutub, 1986), 9: 485-486.

<sup>49</sup> Al-Shāfi‘ī, *Kitāb al-umm*, ed. Rif‘at Fawzī ‘Abd al-Muṭṭalib (al-Manṣūra: Dār al-wafā’, 2001), 6: 187-188. Conversely, if a woman receives a dower that amounts to the *mahr al-mithl* even after the deduction she has agreed to, she is not entitled to claim anything from her husband.

<sup>50</sup> Saḥnūn, *al-Mudawwana l-kubrā* (Cairo: Maṭba‘at al-sa‘āda, 1323 H. [rep. Dār Ṣādir]), 2: 197-198; 3: 21. See Y. Linant de Bellefonds, *Traité de droit musulman comparé*, 2: 93-94; al-Shaybānī, *al-Aṣl*, ed. Muḥammad Būyūnkālīn (Beirut: Dār Ibn Ḥazm, 2012), 9: 441.

so as to specify that the stipulations were granted by the husband after the conclusion of the marriage (*ba'd 'uqdat al-nikāḥ*).<sup>51</sup> Other notaries preferred to draw such clauses on a separate sheet attached to the contract, or in an addendum written in the margin of the deed.<sup>52</sup>

### 3. A father facing his daughter's silence

Islamic law emphasizes the importance of the bride's matrimonial guardian (*walī*), in the absence of whom Mālikī, Shāfi'ī, and Ḥanbalī jurists consider the union to be void (*fasād*).<sup>53</sup> Although some Ḥanafīs (those upholding Abū Ḥanīfa and Zufar's opinions) displayed a little more flexibility, even they considered that although a woman of age could lawfully contract her marriage in the absence of a *walī*, she might be accused of lack of modesty. They therefore preferred the intervention of a guardian<sup>54</sup>. The Mālikīs allowed any male relative to assume the role of a woman's guardian.<sup>55</sup> In the view of the Shāfi'īs and Ḥanbalīs, by contrast, the bride's father had precedence, followed by her paternal grandfather in his absence<sup>56</sup>. When a father was alive and present near his daughter, his fulfilment of this task was a priority, which implied that he negotiated the contract with the groom before giving his daughter in marriage. In our document, the father Khalīl b. Muḥammad exerts matrimonial guardianship over Sitt al-Naṣr by right, which the notary is careful to recall through the expression *bi-ḥaqq ubuwwatihi lahā wa-walāyatihi 'alayhā* (l. 7), which one finds later in Ayyubid- and Mamluk-era documents.<sup>57</sup>

In the case at hand, Sitt al-Naṣr is described as “virgin” (*bikr*) and “pubescent” (*bāligh*), the latter condition being necessary for the consummation of the union. According to the Ḥanafīs, the consent of the bride was required whether she was a virgin or not.<sup>58</sup> When a virgin woman's father acted as *walī*, they therefore expected that the document should specify such consent (*riḍā*).<sup>59</sup> Among the Mālikīs, the Shāfi'īs, and the Ḥanbalīs, a pubescent but still virgin woman could not dispose of herself and could only express her consent through her legal matrimonial guardian, but such consent was not mandatory as long as her father acted as guardian.<sup>60</sup> Conversely, Ismā'īlī law as developed by qadi al-Nu'mān (d. 363/974) suggests that a girl's consent in front of her legal guardian was considered necessary.<sup>61</sup> Although Mālikī and Shāfi'ī law still prevailed among the Egyptian population under the Fatimids, our document insists on the bride's consent to marry, as requested by both Ḥanafī and Ismā'īlī law, which suggests that

<sup>51</sup> See for instance P. Louvre Inv. E 6969 (ca 240-264/854-878), *P. Cair. Arab.* I 41 (279/892).

<sup>52</sup> See M. Tillier & N. Vanthieghem, *Mariages et séparations*, forthcoming.

<sup>53</sup> Y. Linant de Bellefonds, *Traité de droit musulman comparé*, 2: 49-50; C. G. Baugh, *Minor Marriage in Early Islamic Law* (Leiden: Brill, 2017), 111. On matrimonial guardians in Damascene documents, see J.-M. Mouton, D. Sourdel & J. Sourdel-Thomine, *Mariage et séparation*, 38-39.

<sup>54</sup> Al-Ṭaḥāwī & al-Jaṣṣāṣ, *Mukhtaṣar ikhtilāf al-'ulamā'*, ed. 'Abd Allāh Nadhīr Aḥmad (Beirut: Dār al-bashā'ir al-islāmiyya, 1995), 2: 247, 250. See al-Asyūṭī, *Jawāhir al-'uqūd*, 2: 14; É. Tyan, *Histoire de l'organisation judiciaire en pays d'Islam* (Leiden: Brill, 1960), 373; Y. Linant de Bellefonds, *Traité de droit musulman comparé*, 2: 52-53; C. G. Baugh, *Minor Marriage in Early Islamic Law*, 85-86.

<sup>55</sup> Al-Ṭaḥāwī & al-Jaṣṣāṣ, *Mukhtaṣar ikhtilāf al-'ulamā'*, 2: 248-249.

<sup>56</sup> Y. Linant de Bellefonds, *Traité de droit musulman comparé*, II, 54.

<sup>57</sup> See for instance P. Utah Inv. 1336.

<sup>58</sup> Al-Ṭaḥāwī & al-Jaṣṣāṣ, *Mukhtaṣar ikhtilāf al-'ulamā'*, 2: 255.

<sup>59</sup> Al-Ṭaḥāwī, *al-Shurūṭ al-ṣaghīr, mudhaylan bi-mā 'uthira 'alay-hi min al-Shurūṭ al-kabīr*, ed. Rawḥī Ūzjān (Baghdad: Maṭba'at al-'ānī, 1974), 676.

<sup>60</sup> Al-Ṭaḥāwī & al-Jaṣṣāṣ, *Mukhtaṣar ikhtilāf al-'ulamā'*, 2: 256.

<sup>61</sup> Al-Nu'mān, *Da'ā'im al-islām*, 2: 218.

marriage contracts needed to be defensible in front of a qadi who held that such consent should necessarily be stipulated.

Generally speaking, even Mālikī and Shāfi'ī jurists recommended that permission (*idhn*) to marry her be sought from the bride-to-be, and justified this recommendation by a prophetic hadith cited in a few documents, including the present one.<sup>62</sup> Other versions of the same hadith even contemplate that the father should receive his daughter's instruction (*tusta'mara*) to contract her marriage, a recommendation found in Fatimid law.<sup>63</sup> In the case at hand, Khalīl b. Muḥammad presented the marriage proposal to Sitt al-Naṣr and explained to her its terms, then asked her for her permission in the presence of two witnesses. The daughter did not respond and preferred to remain silent (*ṣamatat*). But in the jurists' opinion, silence was meaningful. The same hadith actually explains that keeping silent in response to such an announcement is caused by the virgin's modesty, and is therefore equivalent to her consent.<sup>64</sup> Al-Nu'mān offers the following version of this hadith, which he attributes not to the Prophet but rather to 'Alī: "Let none of you marry his daughter without asking her for instructions to dispose of her fate (*ḥattā yasta'mirahā fī nafsihā*), for she is more knowledgeable regarding what concerns herself. If she keeps silent, or cries, or laughs, it means that she gives her consent (*adhinat*). If she refuses, let him not give her in marriage."<sup>65</sup> However, young girls were not necessarily aware of the significance of keeping silent. Our contract therefore specifies that the father had previously explained to his daughter that her silence meant consent. Yet, could silence, even with such a warning, be taken as conclusive? Was there no other way to show disapproval? The deed accordingly specifies that Sitt al-Naṣr is *jā'izat al-ṣamt*, i.e., that her silence has legal value and is not due, for example, to any kind of disability. The contract further adds that the girl did not express her disagreement through nonverbal means (*bi-fī'l*) – for example through her gestures, attitude, or other kinds of signs.

The present contract thus particularly emphasizes the role of the father, Khalīl b. Muḥammad, who, as the legal matrimonial guardian of his daughter, could have married her off without her consent. In accordance with social practice and jurists' recommendation, he preferred to ask her authorization. However, he only spoke with her at the end of the process. To notify her of the terms of the contract – especially the amount of the dower – he needed to have discussed them with the suitor beforehand. During this initial stage, the father probably negotiated for his daughter advantageous conditions which would allow her not to be separated from her family. He also negotiated for her to benefit from an independent dwelling, where she could rest and escape her husband's mood swings. His role as a father did not end there, as he also took possession of the advanced part of the *ṣadāq* on his daughter's behalf. The mention of a *darak*, unusual in marriage contracts,<sup>66</sup> implies that the father assumed full responsibility for handing over this sum to Sitt al-Naṣr. If she were ever to turn against her husband and sue

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<sup>62</sup> Y. Linant de Bellefonds, *Traité de droit musulman comparé*, II, 79-80. See also P. Utah Inv. 1336 (631/1233-1234).

<sup>63</sup> See for instance Abū Dā'ūd, *Sunan*, 3: 438 (n° 2098); al-Nu'mān, *Da'ā'im al-islām*, 2: 218.

<sup>64</sup> Y. Linant de Bellefonds, *Traité de droit musulman comparé*, 2: 80-81; C. G. Baugh, *Minor Marriage in Early Islamic Law*, 61. See also Mālik b. Anas, *al-Muwatta'* (*riwāyat Yahyā b. Yahyā*), 2: 28-29; al-Shaybānī, *al-Aṣl*, 10: 193, 197; Ṣaḥnūn, *al-Mudawwana l-kubrā*, 2: 157; al-Khaṣṣāf, *Kitāb aḥkām al-awqāf* (Cairo: Maṭba'at diwān 'umūm al-awqāf al-miṣriyya, 1904), 328; al-Ṭaḥāwī, *Ṣurūṭ*, p. 676; ; Ibn Qudāma, *al-Mughnī*, 9: 405, 407-408.

<sup>65</sup> Al-Nu'mān, *Da'ā'im al-islām*, 2:218.

<sup>66</sup> A *darak* stipulation is also mentioned in the Fatimid document P. Cambr. UL Inv. TS Ar. 39.501 + 35.373.



him on the grounds that she had not received the agreed sum, the husband could then sue the father. This clause was intended to prevent the father from abusing his daughter's trust. One may conclude either that he did have the firm intention, at the time of the conclusion of the contract, to hand over her dower, or that the notary (or even the husband) preferred to ensure that this would be the case by including this formula.

Sitt al-Naṣr's silence in response to her father's invitation might appear, to the eyes of the twenty-first-century man or woman, to reveal very little about the actual feelings of a young girl caught in a patriarchal culture. One cannot help but think, however, considering other clues in the contract, that Khalīl b. Muḥammad made every effort to ensure that his daughter would have a decent marriage, with the best possible conditions for her.

#### 4. The seven-year itch

During the seventh year of their marriage, a crisis, the details of which are irretrievably lost, caused Khalīl b. Riḍwān to divorce Sitt al-Naṣr, on 21 *Rabīʿ II* 557/9 April 1162. This divorce is recorded on the back of the marriage contract. Most extant medieval Egyptian separation deeds were drawn up on an independent document. In some cases, however, from the fifth/eleventh century onwards, a repudiation was recorded on the back of the marriage contract, a practice that matches an example provided by the Ḥanafī jurist al-Ṭarsūsī (d. 758/1357).<sup>67</sup> With the exception of *P. Transmission 7*, repudiations recorded on the back of marriage contracts are usually final (*bāʿina*), i.e., they are third repudiations prohibiting the spouses from resuming marital life as long as the wife has not married another man in the meantime. The addition of such divorce deeds on the back of marriage contracts helped to gather, on a single document, information about the marital situation of a couple. Divorced spouses could thus establish in the eyes of their contemporaries – and even in the eyes of judicial institutions if necessary – that they were definitively separated. Such a record was especially useful for a divorced woman if she wished to remarry and recover the money her former husband still owed her.

Like *P. Transmission 7*, the present document records a single first repudiation which is, therefore, revocable (*rajʿiyya*). The usefulness of recording a first repudiation seems somewhat limited. Indeed, deeds of single repudiation are much rarer than deeds of irrevocable repudiation,<sup>68</sup> no doubt because it was not deemed necessary to put an oral separation in writing until it became final. Was Khalīl b. Riḍwān so scrupulous as to be keen to have his initiative witnessed? Or did Sitt al-Naṣr insist that everything be recorded, so that her husband could not deny having uttered the fateful formula? Did this recording respond to other strategies or imperatives? We cannot say.

The badly damaged repudiation text suggests that the spouses had no children yet or that none had survived. On the other hand, it specifies that Sitt al-Naṣr was six months pregnant, for

<sup>67</sup> *P. Transmission 7* (452-454/1060-1062); *P. Grohmann Berlin 13* = *Chrest. Khoury I* 12 = *P. Berol. Inv. 15055* (598/1202); *P. Berol. Inv. 15054* (673/1275 and 688/1289). See al-Ṭarsūsī, *al-Iʿlām bi-muṣṭalaḥ al-shuhūd wa-l-ḥukkām*, ed. ʿAbd Allāh b. ʿAbd al-Raḥmān b. Yaḥyā al-Yaḥyī, Unpublished M.A. thesis (Jāmiʿat Umm al-Qurā: Kulīyat al-sharīʿa wa-l-dirāsāt al-islāmiyya, 2010), 153.

<sup>68</sup> Apart from the deeds already mentioned, the only other document recording a first repudiation we know of is *P. Cair. Arab. Inv. 391*.

this had legal consequences. In the event of a repudiated woman's pregnancy, the waiting period (*'idda*) during which she remained confined while awaiting possible resumption by her husband, did not amount to the usual three menstrual periods.<sup>69</sup> Instead, the waiting period ran for the duration of the pregnancy. All legal schools considered that in such cases, the husband had to support his ex-wife until she gave birth.<sup>70</sup> Despite the lacunae in the documents, it appears that Khalīl b. Riḍwān promised to take care of Sitt al-Naṣr's lodging, her provision of food and condiments (i.e., meals beyond the bare minimum of subsistence), and her clothing and bedding. The deed adds, in an unusual but not unprecedented way, that he will cover the costs of the hammam to allow her to wash herself. This "luxury" maintenance reminds one of the prescriptions of the Ismā'īlī jurist al-Nu'mān, who, relying on 'Alī's words, invites the husband to show generosity to his pregnant repudiated wife in proportion to his financial means.<sup>71</sup> It also aligns with the later recommendations of al-Asyūṭī (d. 849/1445), who prescribes in his *Jawāhir al-'uqūd* that the husband should undertake, during his pregnant wife's *'idda*, to provide for the "price of her food, condiments, water, oil, soap, rents for the hammam and lodging (*maskan*), clothing, compensation (*arsh*) for blanketing and bedding, as well as all legal necessities."<sup>72</sup> Women who were misfortunate enough to be repudiated when they were not pregnant were obviously not entitled to such treatment, although Ḥanafīs granted them a maintenance allowance.

Sitt al-Naṣr's waiting period was short-lived, however. On 16 *Jumādā* I 557/3 May 1162, that is, less than a month after the repudiation, Khalīl b. Riḍwān revoked the repudiation and took back his wife. Since the resumption of marital life took place before the end of the *'idda* period – unless Sitt al-Naṣr had given birth prematurely – there was no need to draw up a new contract, nor was Sitt al-Naṣr's consent required.<sup>73</sup> Since the repudiation had been recorded in writing on the back of the marriage contract, it was nevertheless deemed necessary to add a paragraph attesting to the repudiator's reconciliation with his wife. This text was written by the same notary who had acted at the time of the repudiation. What is lost of the two texts do not make it possible to know whether the text on the resumption was the object of specific attestations, or if the remaining subscriptions relate to both the repudiation and its revocation.

The short time span of this repudiation suggests that Khalīl b. Riḍwān did not have a firm intention to separate from his wife. It was indeed easy to pronounce a repudiation formula without properly weighing the consequences, or because of an oath obliging, in case of non-fulfilment, to separate from one's wife.<sup>74</sup> For instance, P. Berol. Inv. 15054 (688/1289)

<sup>69</sup> As regards free women, the *'idda* consisted of three menstrual periods according to Ḥanafī and Ḥanbalī jurists, and of three periods of purity according to the Mālikīs and Shāfi'īs, or three lunar months if the woman was not yet or no longer in a state to menstruate. Y. Linant de Bellefonds, "'Idda," *EP*, s.v.; J. Schacht, "Talāq," *EP*, s.v.

<sup>70</sup> Y. Linant de Bellefonds, *Traité de droit musulman comparé*, 2: 271; R. Peters, "Nafaqa," *EP*, s.v. See al-Nu'mān, *Da'ā'im al-Islām*, 2: 289. By contrast, only the Ḥanafīs granted full maintenance to a repudiated wife. Mālikī and Shāfi'ī jurists granted only accommodation, while Ḥanbalīs did not grant anything at all. See Mālik b. Anas, *al-Muwatta'* (*riwāyat Yaḥyā b. Yaḥyā*), II, p. 93-95; Saḥnūn, *al-Mudawwana l-kubrā*, 2: 338, 471; al-Ṭaḥāwī & al-Jaṣṣāṣ, *Mukhtaṣar ikhtilāf al-'ulamā'*, 2: 399, 400-401; al-Ṭaḥāwī, *al-Shurūṭ al-ṣaghīr*, 694.

<sup>71</sup> Al-Nu'mān, *Da'ā'im al-Islām*, 2: 289.

<sup>72</sup> Al-Asyūṭī, *Jawāhir al-'uqūd*, 2: 195. See also al-Nuwayrī, *Nihāyat al-arab fī funūn al-adab* (Cairo: Maṭba'at dār al-kutub al-miṣriyya, 1933), 9: 129-130.

<sup>73</sup> Y. Linant de Bellefonds, *Traité de droit musulman comparé*, 2: 395.

<sup>74</sup> On repudiation oaths under the Mamluks, see Y. Rapoport, *Marriage, Money, and Divorce in Medieval Islamic Society* (Cambridge: Cambridge University Press, 2005), 91-110.

mentions a repudiation following a perjury. The husband, having failed to respect an oath involving his marriage,<sup>75</sup> was compelled to pronounce a triple irrevocable repudiation of his wife. Our present document does not mention the reason for this simple repudiation and one can only speculate on its cause. Perhaps Khalīl b. Riḍwān acted out of anger? At any rate, this repudiation proved to be expensive for him. Theoretically, since he took back his wife before the end of the waiting period, he did not have to pay the full balance of the dower.<sup>76</sup> The resumption text, however, states that he was obliged to do so. Not only did he pay, at that time, the whole of the arrears he had failed to pay to Sitt al-Naṣr, but it seems that he had to pay a penalty of one dinar. Such a penalty is reminiscent of the compensatory gift (*mutʿa*) that some early Muslim jurists required the repudiator to give his ex-wife, a practice that was perhaps first mandatory, then became optional, and soon fell into disuse in the third/ninth century, before being revived in the Mamluk period.<sup>77</sup> In the case at hand, since repudiation was revoked, the compensation does not appear to be a *mutʿa* in the true sense of the word, and we have not found any mention of such a penalty in the legal literature. Thus, one might think that the payment of the *ṣadāq*'s arrears and of compensation conformed to a social custom, perhaps intended to redeem the wife's humiliating experience, rather than to a legal obligation.

## Conclusion

Did Khalīl b. Riḍwān and Sitt al-Naṣr live happily ever after? There is every reason to believe that after the seven-year itch, their marriage recovered on a sound footing and lasted until one of them died. The back of the contract – which had enough blank space to allow for other additions – does not mention any later repudiation.

This marriage contract and the divorce deed, and then that of the wife's return, which appear on the reverse side, offer a remarkable testimony to matrimonial practices in Egypt at the end of the Fatimid period, in a bourgeois milieu of the capital. The materiality of the contract reflects both the aesthetic tastes of this milieu and the desire of the spouses to begin their marriage under the most favourable auspices. There were possibly weavers in the capital's textile industry or in the surrounding area who specialized in the production of embroidered silk fabrics specifically dedicated to the recording of marriage contracts. By having their contract drawn up under a propitiatory headband, the fiancés no doubt hoped to promote the stability of their union. The contract itself offers a striking testimony to the role played by a father (and matrimonial guardian) eager to obtain the most advantageous conditions possible for his daughter. One of the most original aspects of this contract is undoubtedly the short description of the interview between the father and his daughter, and the expression of her consent by her silence.

The temporary divorce documented on the back also provides an unprecedented window into the resolution of marital crises in the late Fatimid period. Although short-lived, the separation had important financial consequences for the husband, who probably had to pay a high price for the humiliation suffered by his wife. Beyond the micro-history level, this

<sup>75</sup> On this type of oath in which a man swears to God that he will repudiate his wives if he does not fulfil his promise, see for instance al-Ṭahāwī & al-Jaṣṣāṣ, *Mukhtaṣar ikhtilāf al-ʿulamāʾ*, 2: 435-437, and 442.

<sup>76</sup> See Y. Linant de Bellefonds, *Traité de droit musulman comparé*, 2: 396.

<sup>77</sup> Y. Rapoport, "Matrimonial Gifts," 16-21; Id., *Marriage, Money, and Divorce*, 71.

document adds another piece to the picture of matrimonial dynamics in medieval Egypt, which were often more subtle than one might think. Patriarchal authority did not prevent a father from deploying all sorts of strategies to spare his daughter in marriage and guarantee her a certain amount of autonomy. A girl had the right to remain silent, but the meaning of her silence had to be explained to her, and she also had the right to clearly express her refusal to take the husband who was proposed to her. Despite the arranged nature of the marriage and the resulting risk of disagreement, the young couple could, by having their contract drawn up on a propitiatory material, try to ward off fate and attract God's favour. Finally, repudiation was certainly easy, but never free, and pronouncing the fateful formula, humiliating for a young bourgeois woman of Fustāt, had financial costs for her husband even when he had no deep intention to divorce. In other words, this document demonstrates in its own way that, even in a patriarchal society, women did have some limited agency of their own.