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Thoughts towards a new hypothesis for understanding the legal text in OI 12073

Alexandre A Loktionov¹

Division of Archaeology, University of Cambridge, UK / Kluge Center, Library of Congress, Washington, DC, USA

al621@cam.ac.uk / alok@loc.gov

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Abstract

This contribution offers some new thoughts on the Twentieth Dynasty legal actions described in Chicago Ostrakon OI 12073. Particular attention is drawn to how the matter was ultimately resolved after eighteen years of litigation, including the function of the oath and the nature and significance of the eventual financial settlement. These observations may have wider implications for research into judicial process, most notably with regards to the capacity of local courts to resolve complex cases with long histories in ways acceptable to both litigating parties.

Introduction

Presented here is a case study of New Kingdom local justice in action. While there have in recent years been a number of studies addressing the mechanics of ancient Egyptian justice², including the composition and work of courts³, the structure of law enforcement organs⁴, and the practicalities of judicial punishment⁵, there is still considerable scope for further research based on a case-study approach investigating individual cases. This paper looks at one such example, focussing on the difficulties encountered during litigation, the overall time conflict resolution could take, and the way in which the matter in question could eventually be resolved and closed with an oath. It is hoped that this contribution may encourage more interest in the efficiency of Egyptian justice and the challenges surrounding it – even if at this stage it may provide more questions than answers.

The text considered here is Chicago Ostrakon OI 12073 from Deir el-Medina, which documents a case which began in Year 17 of Pharaoh Ramesses III (c. 1170 BC). This ostrakon was first noted for its legal significance by Wilson in his study of Egyptian oaths⁶,

¹ This article is a modified version of a paper given by the present writer on 5th May 2016 at the 17th *Current Research in Egyptology* (CRE) conference held at the Jagiellonian University, Kraków. Profound thanks are due to Dr. Hratch Papazian of Cambridge University, who first brought this ostrakon to my attention, and the Benefactors' Scholarship Scheme of St. John's College, Cambridge, who provided the funding to make this research possible. I am also grateful for the continued financial and academic support of the AHRC (grant reference: AH/L503897/1) the Lewis Fund of Robinson College, Cambridge and, most recently, the Library of Congress. All shortcomings are of course mine only.

² For a generic introduction to New Kingdom Egyptian justice and further references, see Jasnow 2003. For a detailed treatment of legal matters at Deir el-Medina, see McDowell 1990.

³ e.g. Allam 1991; Lippert 2012; Eyre 2013: 155-162.

⁴ e.g. Liszka 2012; Bauschatz 2013.

⁵ Lorton 1977; Müller-Wollermann 2004.

⁶ Wilson 1948: 146 (102).

and was subsequently published as a photograph and in transcription by Černý and Gardiner⁷. Further studies and translations have been provided by Théodoridès⁸, Allam⁹, McDowell¹⁰ and, most comprehensively and recently, by Manning *et al.*¹¹ This body of scholarship has generally focussed on using this ostrakon as a tool for studying the giving and recovery of loans, as well as the mechanisms of exchange inside and outside Deir el-Medina. The present paper considers the case from a slightly different angle: that of the efficiency of law enforcement in a case involving multiple hearings and a lack of co-operation on the side of the defendant.

Litigants: Menna vs. Montumose

OI 12073 relates how a certain Menna loaned a jar of fat worth 30 *dbn* to a certain Montumose. The latter appears to have had a connection to local law enforcement, having the title *hry-Md³w* ('chief of the *Md³w*'), whereas Menna held the relatively low-level title of *rmt-íst* ('member of the work crew'). The *Md³w* were responsible for public order in Deir el-Medina, and were probably armed¹². One can argue that this is in itself created a potentially challenging law enforcement situation – if Montumose had the opportunity to influence public order through his position, it would seem conceivable that this might be used as a shielding mechanism from any legal charges potentially brought by Menna in the event of default.

In any case, and one must stress that the point above is purely speculative on the basis of his title, Montumose refused to repay the loan. Menna responded by accusing him in the local *knbt*-court, which upheld his case and ordered Montumose to repay. This he refused to do. However, Menna would not give up and repeated the process – apparently with the same unsatisfactory outcome. His dissatisfaction is brought out in the ostrakon in no uncertain terms:

iw=i irt 3 spw n smt=f m t³ knbt m-b³h sš Imn-nht n p³ Hr bwpw=f dît n=i ³ht nbt r-š³c p³ hrw

I have brought about three instances of accusation against him in the *knbt*-court, before the scribe Amunnakht of the Tomb. He has not given anything to me up to this day.

OI 12073: r.4-5

Whose loan was it?

It is unclear how long the dispute had lasted by this time, but judging by the subsequent content it would appear that this was already a question of years. An interesting point to consider is whether Montumose actually could pay the sum back, on the assumption that he wanted to. Manning *et al.* suggest that this was not the case¹³, proposing that Montumose was in fact borrowing on behalf of a third party based outside Deir el-Medina, and without the right to enter into direct transactions with the residents of this tightly-regulated settlement. This role of middleman would be appropriate for Montumose, as earlier work has already

⁷ Černý and Gardiner 1957: pls. 77, 77A.

⁸ Théodoridès 1968: 50-55; Théodoridès 1979: 39-40.

⁹ Allam 1973: 73-76.

¹⁰ McDowell 1987: 299-302.

¹¹ Manning *et al.* 1989. This offers a full translation, and this piece is in major part a response to the points made therein.

¹² Liszka 2012: 244; 335-338.

¹³ Manning *et al.* 1989: 123.

shown that *hryw-Md3w* at Deir el-Medina could procure goods for contacts outside the village¹⁴.

There is some evidence to suggest that this might indeed be the case in OI 12073, but on closer examination it does not appear overly convincing. The text does state that Montumose had links to a third party, whom he invoked when giving the initial repayment promise on first taking out the loan:

lw=ł r łnt=s n=k m łt m-dł p3y sn łnk nty tw=tw m-s3=f nty f3 p3y=ł snhw

I will bring it (i.e. the repayment) to you in barley, from this brother of mine behind whom one is, who bears my obligation.

OI 12073: r. 3

Although at first sight this line would seem to endorse the aforementioned interpretation, with the ‘brother of mine’ referring to a figure external to the settlement, the view that Montumose was only a middleman effectively devoid of all responsibility encounters problems. Firstly, the enigmatic ‘brother of mine’ makes no further appearances in the document – from this point onwards, the defendant is always Montumose himself. Naturally it is possible that the third party may have died or somehow gone missing, but if so it is surprising that such a pivotal event is in no way reflected in the record. It is also striking that no name is given for the third party, even though liability is ostensibly transferred to them. Therefore, this raises the possibility of an alternative argument – namely that Montumose took the loan for himself and mentioned a third party merely to justify his action as part of his responsibilities as a *hryw-md3yw*. This recourse to an official duty, presumably well-known to the inhabitants of Deir el-Medina, may have encouraged Menna to comply and provide the loan in the first place.

The final reckoning

Whatever the case, Montumose was certainly able to disregard successive court verdicts, and it seems logical to assume that his *hryw-md3yw* status may have helped him here. However, after eighteen years of non-compliance he suddenly agreed to swear an oath of repayment¹⁵. Tantalizingly, no reason for this change of heart is given, with the text simply recording the following:

łr=f ʿnh n nb ʿnh wd3 snb r-dł mtw=ł tm dlb3 n=f t3y=f 3cc r-s3c hsb-t-3 3bd-3 Šmw ʿrky łw=f hr 100 n shw łw=s r=ł m kbw

He made an Oath of the Lord (*l.p.h*), saying: “if I do not return to him his jar before the last day of the 3rd month of *Šmw*-season in year 3¹⁶, may I (*lit.* “he”) be under 100 blows, and may it cost me double.”

OI 12073: r. 7-8

One must note here that the text then specifies that from the day the oath was sworn, the punishment would be triggered if Montumose failed to repay within two months. However,

¹⁴ Černý 1973: 281-282.

¹⁵ This length of time is noted on the line preceding the oath, *OI 12073: r. 6*.

¹⁶ Relating to the third year of the reign of Ramesses IV, successor of Ramesses III (c. 1152 BC).

his final repayment is recorded as occurring some eight months later, and there is no indication to suggest that he suffered any physical punishment. Again, this may raise the question of whether this official was able to bend the law and its enforcement in his favour¹⁷, although the possibility of the oath being purely rhetorical in the first place also cannot be discounted.

In any case, it would seem that ultimately Montumose was not altogether able to extricate himself from the legal process without sanction. While a beating was almost certainly avoided, one aspect of law enforcement does appear to have been fulfilled: Montumose did effectively pay double. He eventually repaid his 30 *dbn* loan with a 130 *dbn* bull, receiving in return a coffin worth 35 *dbn* from Ruta, an apparent associate of Menna. Thus, Montumose received a combined total of 65 *dbn* for an animal worth 130 *dbn* – duly giving up the bull for only half its worth.

in n hry-mḏ3w Mntw-ms n Mn-n3 k3 wḏ ir n (dbn)-130 iḏ n=f m-ḥt n Rw-t3 m p3 wt dbn-35 rdit n=f in Mn-n3 ʿd hnw-40 ir n dbn-30 dmd (dbn)-65

Brought by the *hry-Mḏ3w* Montumose to Menna: a vigorous bull worth 130 *dbn*. Given to him from the property of Ruta: a coffin worth 35 *dbn*. Given to him by Menna: a jar of fat of 40 *hin*, worth 30 *dbn* (i.e. the original loan). Total: 65 *dbn*.

OI 12073: r.9-10

The final lines of the ostrakon, written on the verso, seem to corroborate this interpretation:

ir p3 hry-mḏ3w ʿnh n nb ʿnh wḏ3 snb r-ḏd p3 65 n dbn n ḥmt p3 nt(y) iw=i wh3=f m-dī Mn-n3

The *hry-Mḏ3w* made an Oath of the Lord (*l.p.h.*), saying: ‘the 65 *dbn* of copper are all that I am demanding from Menna.’

OI 12073: v.1-2

This proposal is not entirely new, as the possibility of the bull being in some way connected to paying double has already been put forward¹⁸. However, this original argument was rebutted when it was shown that Montumose had paid a total of 65 *dbn* to cover the 30 *dbn* of the original loan – an increase of more than double, meaning that the numbers did not add up¹⁹. Instead, the oath was reinterpreted as stating that Montumose was charging the full value of the bull. According to this view, Montumose simply subtracted the original 30 *dbn* loan and the 35 *dbn* coffin from the value of his bull, and swore to recover the outstanding 65 *dbn*. This scenario would mean that he refused to accept any penalty at all – which might to some extent seem feasible for an official who may have had law enforcement on his side. However, this proposal contains a significant flaw, by the admission of its proponents themselves²⁰: it argues that a creditor is being bound by oath to collect a specific sum. This would be highly unusual, as it would be far more logical and consistent with other examples

¹⁷ Corruption in legal contexts is well-documented in New Kingdom Egypt. For examples of prayers against corrupt officials, see Gardiner 1937: 17 and Posener 1971. For a wider treatment of judicial scandals and abuse of office, see Vernus 2003.

¹⁸ Allam 1973: 75.

¹⁹ Manning *et al.* 1989: 123.

²⁰ Manning *et al.* 1989: 123.

to expect the oath to be associated with the liable party – and not with an individual swearing to recover wealth²¹.

Consequently, it seems more likely that Montumose is indicating that he only sought to receive 65 *dbn* from Menna, after paying the double penalty of 130 *dbn* – and that consequently the case is now closed. If so, the oath would seem to show that Montumose has been held liable, because he is waiving his rights to the outstanding balance (or at least to the right of claiming this from Menna). The circuitous way of executing this double penalty may perhaps be explained by a simple lack of liquidity: maybe Montumose was simply unable (or unwilling) to repay with an object worth exactly double the original 30*dbn*, but did have available a bull of 130*dbn* available for this purpose. To be able to repay double with the bull, his liability would have needed to be increased to 65*dbn*. Naturally, none of this can be proven, but it does raise interesting questions about liquidity and the valuing of objects in legal cases in a pre-monetary judicial environment.

However, there is another obstacle to this hypothesis: straight after what seems to be the confirmation of the apparent 65 *dbn* loss of Montumose, and directly before the concluding oath, there are two further partially broken lines. What is preserved can be read as follows:

ḏt [...] 5 r dlt n ḥry-mdꜣw Mntw-ms in sš Imn-nḥt n pꜣ ḥr ldnw Imn-ḥꜣy ỉry Ḥꜣy [...] pꜣ-mr sš-kdw Ḥr-šrī

The remainder [...] 5 (*dbn*?) to give to the *ḥry-Mdꜣw* Montumose by the scribe Amunnakht of the tomb, the deputy Amunkhay, the guardian Khay [...] Pamer, and the draughtsman Horsheri.

OI 12073: r.11-12

The treatment of this ostrakon in Manning *et al.* restores 65 *dbn* in the first lacuna²², and from this argues that Montumose would have been repaid in full and hence did not pay double despite the contrary implications of the preceding content and the ensuing oath. In itself, such a restoration is highly credible, as 65 *dbn* would indeed have been the remainder and the numeral 5 is clearly visible. However, it does not necessarily invalidate the argument put forward in this paper: the 65 *dbn* are not to be paid back by Menna, but are rather to be provided to Montumose by a range of third parties headed by the scribe Amunnakht, who had heard the cases in the *knbt* mentioned earlier in this ostrakon (r.4-5). Thus, it would seem that Montumose still paid Menna double – fulfilling *sensu stricto* the requirements of his oath – but perhaps he could then expect financial assistance from the legal body which had forced this upon him. Such an outcome would be consistent with known principles of ancient Egyptian conflict resolution, which emphasised satisfying both opposing parties wherever possible²³.

Thus, a new unproven but logical hypothesis for explaining the outcomes of OI 12073 might be that Montumose paid double and was then effectively reimbursed by the court. As well as fitting established judicial norms of mutual satisfaction, the court members may have decided on this course of action to avoid placing a prominent member of the community – and quite

²¹ For this specific case, see Allam 1968: 123. For use of oaths more generally, see Wilson 1948.

²² Manning *et al.* 1989: 119.

²³ For this literary trope, see for instance Edel 1954: 13, Lichtheim 1973: 17, and Karenga 2004: 302.

possibly a colleague and close personal acquaintance – under severe financial strain. The fact that Montumose was himself connected to law enforcement as a *ḥry-Mḏw*, and as such perhaps seen as not worth upsetting, probably also did no harm to his cause. However, there was still a need to acknowledge that he had to pay double, as failing to uphold that principle would mean that the court was effectively invalidating the terms of an oath imposed by its very self.

Concluding comments

OI 12073 provides a very interesting insight into how a case could develop within the framework of New Kingdom Egyptian justice and law enforcement, and throws into a relief a range of considerations about how such matters could be resolved. It seems fairly likely that an official was able to use his position of responsibility to procure a loan, withhold repayment for many years, and perhaps also obtain compensation for his eventual liability. The *knbt*-court looks to have been distinctly limited in its abilities to accelerate the resolution of the case, which may have encouraged it to adopt more conciliatory measures. However, at the same time the creditor was nonetheless able to not only recover the sum in the end, but apparently also to compel the guilty party to pay double in accordance with obligations set in a prior oath before the court. Of course, many questions remain unanswered – not least with regards to the exact roles of third parties, and the reason for Montumose's shift from contempt of court to cooperation. However, the very fact that this complex case was able to advance and ultimately reach an outcome suggests that legal procedures had the tenacity and capability to keep going in the face of repeated setbacks, potentially over many years. In the end, Menna was still compensated for his jar of fat.

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