ABOUT THE RIGHT OF PASSAGE IN ANCIENT EGYPT
(way-in and way-out of an estate: eisodos kai exodos)

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In many a Greek deed concluded in Hellenistic-Roman times, and concerning the transaction of rights with respect to immovables (buildings or land), was stipulated an important clause specifying eisodos kai exodos. This occurred in cases such as inheritance, sale, and the partition of buildings. In terms of such a clause one of the two contracting parties was guaranteed, among others, the right to use a path over the property of the other party. As far as houses were concerned, the path could lead, for example, through a gate or a door on a public road or even through another building belonging to a third party, so that the party receiving the benefit of the servitude could have access to and exit from his own property.

The documentation reveals a wide variety of occurrences. Where the property in question was indivisible (communio pro indiviso) the owner of an undivided share in the principal object was equally entitled to an undivided share in eisodos kai exodus. When it came to a real division of the property (communio pro diviso) each co-owner, with a substantial share, would enjoy the said right. When a real division of a property came about – but without an already existing path – a path would be created to facilitate the entrance and exit for each party. Incidentally, the said right could be given, if not permanently, then for at least a specific period of time.

The legal analysis of such a right of passage is rather problematic. Regarding the ambiguity of the terminology used in the relevant texts, Taubenschlag is certainly correct in assuming that such a right was deemed as an appurtenance; it is highly improbable that it was by itself an independent real right like a jus in re aliena. Rather, it was thought of

2 In several deeds (written in the native Demotic script) the right of use of a staircase is also mentioned.

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as an engagement of purely obligatory character, that is to say, its terms merely bound
the parties as well as their legal successors in local law.\(^4\) In support of his view is the fact
that *eisodos kai exodos* is not recorded as a separate title on any extant official register
(e.g. *diastromata*) concerning private real property.

Aside from the Greek documentation, a number of papyri written in the indigenous
Demotic script have been published over time. The first one attesting to the occurrence of
the right of passage appeared only in 1932; since then numerous other papyri have come
to our knowledge incidentally. By way of example it would suffice to take a closer look
at two instances where the relevant clause appears.

The first deed (Pap. BM 10616) comprises two separate parts (sale and cession of
rights) and is dated 245-244 BC (during the reign of Ptolemy III Euergetes); along with
the main text, there are four witness-copies (each of both the sale and the cession forms).\(^6\)

The matter agreed upon is the sale of a house in the southern district of the town of
Philadelphia in the Arsnoite nome in Fayyum; measurements and boundaries are given
in the text. In addition, a provision is included that

> thine is the path of approach to the [house] property aforesaid, [both coming] in [and
going] out. Any one who hinders thee in respect of it I will keep away from thee [and
from] every thing whatsoever [of thine].

The second instance (Pap. Ashmol. Mus. 14 and 15) is recorded likewise by two texts,
one beside the other (a deed of conveyance along with a deed of cession) on the same
roll of papyrus. It is dated 72-71 BC (during the reign of Ptolemy Auletes and Cleopatra
Tryphaena).\(^7\) The transaction in question is a family arrangement concluded between a
man and his half-brother. It is concerned with the sale and cession of rights to two out of
five part-shares (namely 1/3 + 1/15) of a house with its courtyard and all appendages of
any kind as well as any income due to the property. It was situated in the residential area
of the Suchos town Hawara in Fayyum.

The papyrus has evidently preserved one of the most complete documents relating to
the purchase of a private real property in Hawara. Each of the two deeds is accompanied
by a declaration of the vendor, and was signed by eleven witnesses on the verso; also,
each deed was separately registered (in Greek) with the local Records Office in Hawara
and was endorsed (in Greek) with the Registry at Ptolemais Euergetis. The papyrus
furthermore contains the banker’s receipt for sales tax on the said property. Apart from
that, the texts on the papyrus enable us in a way to imagine the blocks of private dwellings
in the area in question; they were located very close together.

\(^4\) Cf. E. Seidl, *Rechtsgeschichte Ägyptens als römischer Provinz (Die Behauptung des ägyptischen
Rechts neben dem römischen)*, Sankt Augustin 1973, pp. 159-160.

\(^5\) These are pages of the official registers connected with private real property at the office called
*bibliothèke enktéseon* of the Roman period.

1932, pp. 152-160.

Archives from Hawara (Greek Documents and Subscriptions* by J.W.B. Barns), Oxford 1973, pp. 97-112
As in other Demotic documents from Fayyum, the papyrus discloses inter alia a provision for the use of the path adjacent to the property in question. Such was apparently the custom to be followed while drawing up transactions dealing with private real property in Fayyum; this custom seems to have survived there until Roman times. The provision under discussion reads as follows:\(^8\)

[The house property] includes the exit-path [of the] house [with] its courtyard at its northern enclosing wall, which measures ... [measures given] ... And thou wilt come in [and] go out through it together with thy people [and] thy chattels/requisites in order to go into the house [with] its courtyard aforesaid ... [As to] him who shall come [to proceed] against thee on account of them, I will keep him away from thee voluntarily [and] without delay ... .

In an attempt to uncover any antecedents of this provision in the documentation known from Pharaonic times, we have to bear in mind that Demotic and Greek materials naturally far outnumber relevant texts attested for the preceding millennial period. For that reason we have to content ourselves with shreds of evidence which enable us to reconstruct the historical phenomena. As far as the provision is concerned, we possess one most instructive record of which the content implies that the clause existed in essence during Ramesside times (1292-1078 BC).

Because of its subject, our text is conspicuous in the documentation (in Hieratic script) which has come down to us from the workers’ settlement at Deir-el-Medineh in Thebes-west.\(^9\) It reports the judicial proceedings about a dispute between two workmen (H and P) involving a path connected with a house which was originally in the possession of a third person (K). By means of a partition of his house and in agreement with dignitaries representing the communal authorities, K for some reason ceded the right to use “the path of going” to H.

Some ten months later, P appeared in a court, in which the local god (the deceased King Amenophis) presided; actually, it was the judging panel that in reality prepared the case and put the judgement in the mouth of the god. In approaching the god, P averred that he had the exclusive right to use the path. But the god declined his claim; instead, he acknowledged the right of the adversary H. The text reveals that P begged the god, saying:

My good lord! I shall not give H [the right of] passage for going in and coming out\(^10\)... [Then the god rejected]. [P] addressed him anew, saying ‘Should [the right of] [pass]age for going in and coming out be given to him?’ And the god was very affirmative.

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From this information – though not plentiful, yet conclusive – the inference may be drawn confidently that in Pharaonic times, too, the path of entrance and exit was one of the vital items that required legal consideration when ceding rights to parts of houses or other immovables. Moreover, the right of passage was certainly protected at law, as evidenced by the above trial reported in the thirteenth century BC.

This view finds further support in the theoretical legal treatise (in Demotic script) which came down to us from Hermopolis. Its palaeography points to the very beginning of the Hellenistic period, if not earlier; yet, the materials discussed in it bear ultimately on the indigenous local law. In one section we read: “If a man brings an action against a man, saying ‘He took the path of my house, he attached it to his house’, they [the judges] have to view the house in question ... .”¹¹ Even though the text does not deal, strictly speaking, with a path of entrance and exit, the case in question has nonetheless many points of similarity.

Reviewing the wide range of occurrences referring to the right of passage (eisodos kai exodos), one might observe a continuity which may easily be traced from Greco-Roman times backwards for many centuries to the Pharaonic period. Further continuity is still reflected in Coptic documents that came to light from the eighth century AD.¹² Obviously, our sources uncover a millennia-old legal instrument; the right of passage must have been an issue of concern for many contracting people. To all appearances, this legal instrument came into being during the Pharaonic period and survived then into later times.
