

I, 27–28 *Legal Opinions on the Case al-Wuhsha vs. Joseph Lebdi*

{Egypt, ca. 1104 or 1105}

27. TS Arabic 43, f. 272, two pages  
 28. TS Arabic 47, f. 245, four pages  
 {27a. ENA 2855, fs. 16, 15 (in this order), four pages  
 28a. TS G 2, f. 60, sixteen pages  
 28b. TS Arabic 49, f. 33, two pages}

{As elucidated by their contents, handwriting and codicological characteristics, all these items belong to the same manuscript. They presently contain six bifolia and two leaves, equivalent to fourteen leaves or twenty-eight pages. The Oriental quire consisted of five bifolia.<sup>1</sup> No. I, 28a preserves the four inner bifolia of one quire and makes it possible to define the manuscript's main codicological features, specifically its catchwords. (When the librarian separated these bifolia, he numbered their leaves in sequence: 1–8. The library's microfilm was prepared at an earlier date and shows the arrangement before the bifolia were detached.) The five bifolia were lain one on top of the other, then folded in the middle to form ten leaves (twenty pages). To ensure the correct sequence of bifolia in the quire, the writer added on the verso of leaves 1–4 (pages 2, 4, 6, 8), the first word of the next bifolium as a catchword (written horizontally below the end of the last line). The fifth, inner bifolium contained no catchword, since its second page came directly after its first. This method of preserving the order of bifolia in a quire in Oriental Hebrew manuscripts has been documented as of the thirteenth century.<sup>2</sup> The manuscript described here is not dated, but was almost certainly executed at the beginning of the twelfth century (see below). Accordingly, it has some significance for the research of Hebrew codicology.

The first bifolium in a quire contained an additional catchword on the verso of its second leaf (10; page 20), to ensure the correct sequence of the following quire. The first, outer bifolium of the quire comprised by I, 28a, is still missing, and as confirmed by their contents and catchwords, is not to be found among the other items, which have been identified. There is, however, a direct sequence between I, 27a, leaf 2v, and I, 27, as proven by their contents. These items consist of the second leaf of the first bifolium (I, 27) of a quire and its second bifolium (I, 27a), viz., pages 3, 4 and 17–20 of the quire. (Having failed to recognize the proper location of the bifolium catchword in I, 27a, the librarian numbered its two leaves in the wrong sequence [older numbers, "13, 14," are written respectively on folios 15, 16]. These two leaves are now separate, and Dr. Jay Rovner has informed me of a note in the album, in which they are bound, that states that they were detached

<sup>1</sup> {See Beit-Arié, *Codicology*, 44–45.

<sup>2</sup> Beit-Arié, *ib.*, 54 ff.

in 1965.) There is no direct sequence between I, 28 and the other items. On the basis of its codicological features, viz., the location of its catchword, I, 28 could be the second, third or fourth bifolium of a quire. Its contents indicate that in all likelihood, rather than part of a third quire, it was the fourth bifolium in the same quire that contained I, 27a–I, 27. The same considerations of content make it highly probable that this quire came before the quire that contained I, 28a.

In sum, there is a high degree of probability that these four items constitute the larger portion of two quires of one large manuscript, half of the first and four fifths of the second. The Geniza may yet produce the missing leaves, and these can be identified not only by their content and appearance but also by their first words and/or bifolium catchwords, which we can reconstruct with precision. While it is likely that the entire work consisted of these two quires, there is no way to presently ascertain this; and it could have contained three or more.

At a late stage in this research I identified I, 28b, as belonging to the same work. While the top of the leaf is intact, it is very fragmentary; the beginnings of all lines on recto (and the ends on verso), as well as those at the bottom of the page, are missing. For the present, it is impossible to reconstruct its position vis-à-vis the other items.

The following tables identify the items in the two quires as we have reconstructed them.

First quire					
Bifolio	Page	MS.	No.	First word in missing page	Catchword on missing page
A	1				Naṣr
B	2	ENA 2855, f. 16	I, 27a, p. 1		
C	3			<i>laysa</i>	<i>alladbi</i>
D	4	TS Ar. 47, f. 245	I, 28, p. 1		
E	5			<i>falyufiq</i>	
E	6				
D	7	TS Ar. 47, f. 245	I, 28, p. 2		
C	8				
B	9	ENA 2855, f. 15	I, 27a, p. 2		
A	10	TS Ar. 43, f. 272	I, 27		

## Second quire

Bifolio	Page	MS.	No.	First word in missing page	Catchword on missing page
A	1			<i>wadī'a</i>	<i>fayaṣiḥḥ</i>
B	2	TS G 2.60	I, 28a, p. 1		
C	3	TS G 2.60	I, 28a, p. 2		
D	4	TS G 2.60	I, 28a, p. 3		
E	5	TS G 2.60	I, 28a, p. 4		
E	6	TS G 2.60	I, 28a, p. 5		
D	7	TS G 2.60	I, 28a, p. 6		
C	8	TS G 2.60	I, 28a, p. 7		
B	9	TS G 2.60	I, 28a, p. 8		
A	10				

The manuscript is not the author's draft but a (fairly) clean copy, made by him or by a professional copyist. The handwriting resembles but is not identical with Hillel b. Eli's. There is every reason to believe that the copy was made in or shortly after 1104, when the work was composed. Its handwriting corresponds to that period, and its contents do not suggest that one would have been interested in copying it at a later time.}

These fragments, which have neither a beginning nor an end, and which are partly damaged, represent copies of a rather heated and controversial correspondence on the case. No. I, 27, which is a retort to an answer of another jurisconsult to a former opinion, contains some substantial information.

{As explained above, after having added I, 27a I, 28a and I, 28b, we presently have six bifolios and two leaves, one of which is only a fragment (fourteen leaves, twenty-eight pages), of two quires of this composition, or (almost) 70% of their contents. This treatise clearly deals with the trial of Lebdi vs. al-Wuḥsha, Abū Naṣr's sister, who, however, is not referred to by name but rather as 'Abū Naṣr's heir (f.).'<sup>3</sup> The contest, as already noted

<sup>3</sup> So in I, 27a, leaf 1, line 3; verso, line 3, I, 28b, lines 1, 3, 4. She appears alone as 'Abū Naṣr's sister' in I, 26, line 5, as well. This is most curious, since al-Wuḥsha had another brother and two sisters, who survived her and were mentioned in her will (TS Ar. 4, f. 5; see Goitein, "Business Woman"; id., *Med. Soc.*, 3:349). Furthermore, according to Jewish inheritance law, her brother would have exclusive rights to Abū Naṣr's estate, to the exclusion of the sisters (though not explicit in the Talmud, this is accepted law; see Maimonides, "Nahālot" 1:3). One might imagine that because of her forceful personality, al-Wuḥsha took the initiative in representing her siblings. But in our sources, there is no suggestion of this or of a will that named her as the sole heir, and the matter requires further consideration. Perhaps the case involved half-siblings.

in I, 26, concerns the disposition of 22 bales (of lac), sent to Fustat from 'Aydhāb by Faraḥ and Abū Naṣr, both of whom were later murdered there. Lebdi claimed that these bales belonged to his partnership with the two dead men, while al-Wuḥsha claimed that this merchandise was unrelated to it and, presumably, that it emanated from Faraḥ's and Abū Naṣr's business association with other, unnamed investors.

The treatise consists of three distinct literary strata, which contain the writings of two disputant jurisconsults. The writer of the treatise refers to his counterpart as *al-dayyān*, the Judge, while the Judge refers to his as *al-rayyis*, literally, the headman. The Judge clearly sided with Lebdi in the dispute, the *Rayyis* with al-Wuḥsha. The Judge presumably adjudicated the case and found in Lebdi's favor. The *Rayyis* sent his critique of this ruling to the Judge, who sent back his rebuttal, criticizing in turn his disputant's arguments. In the present treatise, the *Rayyis* quotes long passages from the Judge's rebuttal, which, in turn, begins with quotes from the *Rayyis*' first critique. What we have, accordingly, are these three tiers: passages from the *Rayyis*' first critique, the Judge's rebuttal and the *Rayyis*' refutation of the latter.

This extensive and complicated literary activity, which centers around a dispute concerning import goods from India and their disposition after two of three partners had been murdered on their way back to Egypt, is unique among Geniza papers in many ways. The disputants' verbosity (the pages at our disposal contain more than four thousand words), for which they too criticized one another, is one of the treatise's characteristic features. Another is the disputants' acrimony, laced with transparent, personal insults. The *Rayyis* criticizes the Judge's bad manners but contributes his own share of caustic remarks. The two jurisconsults base their arguments on their knowledge of the trade and the merchants' practices, and quote the letter written by Faraḥ from 'Aydhāb or argue what Abū Naṣr should have written from there, were al-Wuḥsha's claim correct. They further reinforce their positions with ample quotes of Talmudic sources and the writings of Hai Gaon.

Neither Lebdi nor al-Wuḥsha were able to produce any concrete evidence to substantiate their claims. Faraḥ's heirs had already taken their share of the partnership, without having raised the issue of special rights to these 22 bales. The jurisconsults' arguments can be summarized, with certain simplification, basically as follows: The Judge reasoned that the partnership agreement was inclusive of all profits that the partners realized. The *Rayyis* reasoned that, since Lebdi could not prove that the 22 bales belonged to his partnership with the dead men, Jewish civil law mandated that their heirs be given every benefit of the doubt. Conceivable arguments,

even though the dead men and their heirs did not mention them, should be presented on their behalf by the court itself, in this case that Farah and Abū Naṣr, who had had possession of the disputed bales, had received them from some other source, such as a gift or a find (or inheritance). Essentially, it was a question of with whom lay the burden of proof.

While the treatise contains little information concerning the business venture, a few new details do emerge. The partnership agreement specified that losses (and gains) would be proportionate to the money invested.<sup>4</sup> The two dead men made only a small investment in the partnership. Two separate passages mention that al-Wuḥsha's share was one-sixtieth. Accordingly, Lebdi evidently contributed twenty-nine thirtieths of the capital, and the other two partners one-sixtieth each. The *Rayyis* also wrote how the agreement should have been worded, had it substantiated Lebdi's claim. Goitein (above, page 30) expressed his surprise that the trial (I, 26) took place three years after Lebdi's return to Egypt in 1101. We now see (I, 27a, leaf 1v, line 14) that the Judge intentionally delayed the proceedings for three years, purportedly in order to fulfill the Talmudic injunction to be "deliberate in judgment (Avot 1:1)," but I assume also to give Lebdi an opportunity to produce supporting evidence for his claim. The *Rayyis* criticized this as an unreasonable postponement. Since I, 26 is dated June 30, 1104, at which time the fate of the disputed bales had not yet been decided, Lebdi demanding that they be considered proceeds of the partnership, and since the Judge presumably later ruled in Lebdi's favor, I assume that the subsequent dispute between the jurisconsults followed in the second part of that year or in 1105.

Unfortunately, there is no way to identify with certainty either the Judge or the *Rayyis*. It seems reasonable to speculate that the Judge might have been the well-known savant and chief judge of Fustat, Isaac b. Samuel the Spaniard, who was the first signatory to the court record I, 26, which also deals with this case. Any number of notables (or members of their families, as we learn from Abraham Maimuni)<sup>5</sup> were called *rayyis*, including judges, doctors and the Head of the Jews, among others (such as ship captains). From the content and tone of his dispute with the learned judge, I assume that the *Rayyis* was in fact a rather impressive personage. I am tempted to suggest that he may have been the learned Head of the Jews Mevōrākḥ b. Saadya, though the caustic nature of the dispute and some of

<sup>4</sup> In I, 26v, lines 12–15, the partnership is called *khulṭa* and *sharika*; see page 226, n. 2.

<sup>5</sup> Abraham Maimuni, *Responsa*, 19, no. 4.

the disputants' arguments do not depict either of them in a very positive light. Mevōrākḥ had appointed Isaac as chief judge, and we have no reason to suspect that the relationship between the two had soured.<sup>6</sup> It is not clear to what extent this factor would exclude the suggested identification. Whoever the disputants may have been, the fact that two distinguished jurisconsults so vigorously supported the conflicting claims of Lebdi and al-Wuḥsha attests not only the seriousness with which the religious judges and officials took their roles as protectors of justice but also the prestige of both the old India trader and the colorful lady broker.

The recently identified piece I, 28b indicates what valuable information can be provided by even a small fragment, where not one line is intact. The case had also been adjudicated before a Muslim Qadi. Subsequently, a query had been sent to "his eminence, *our lord, may his majesty be elevated!*" This further suggests identifying the *Rayyis* as Mevōrākḥ b. Saadya. And the odd figure of one-sixtieth as al-Wuḥsha's share in the partnership's capital is repeated.

Students of the India trade, of community affairs in Fustat, of partnerships and their adjudication, of the history of disputation, of codicology and more, will all find interest in a more detailed examination of this treatise.}

#### Selected passages in translation

##### [A. Quote from the *Rayyis*' first critique]

[I, 27] (12) You refer {alt. tr.: He refers} to the letter (13) of [Faraḥ]ḥ and... {read: Farah, which was sent}<sup>7</sup> from 'Aydhāb to Mr. Joseph, in which he<sup>8</sup> says: (14) "There arrived with us about 80 bales, (15) all of

<sup>6</sup> See Cohen, *Self-Government*, 120, 233, 244.}

<sup>7</sup> In the effaced space there is no room for 'Abū Naṣr,' the *kunya*, or honorific by-name of al-Wuḥsha's brother. I assume his personal name was written here. No. I, 28 mentions Farah and Abū Naṣr side by side. {Their names appear together in other pages of the treatise as well, always with Abū (or Bū) Naṣr rather than a personal name. Here I suggest reading after Farah, *wjh* (*wujjihā*). We learn that Farah alone wrote the letter, without Abū Naṣr, in I, 27a, leaf 1, (where in line 5 the same root is used: *al-muwajjah*).}

<sup>8</sup> The letter was written by Farah in the name of the two partners, wherefore the jurisconsult changes repeatedly from plural to singular and vice versa. This was probably done so in Farah's letter itself; cf. TS 12.175, ed. Goitein, "Three Letters," 169–74, a letter written in the name of two brothers, but the writer uses the first person singular. {The reader will find such an example in II, 61.

{or: the best of it}<sup>9</sup> lac. We<sup>10</sup> shall send this in installments, (16) so that it may reach the market."<sup>11</sup> To this I<sup>12</sup> have to remark that this letter (17) is of no avail for Mr. Joseph at all. For although [Verso] (1) we concede<sup>13</sup> that these 80 bales belong to (2) the partnership, we still need someone to prove to us (3) that those 22 bales were included in the 80 (4) mentioned by them and were not part of something else. The proof (5) for the fact that they were not part of the partnership is that the letter (6) to him (to Joseph) says: "I shall send them in installments," which proves (7) that the bales, which he did not send to him, (8) did not belong to the partnership. Had they sent them (the 22 bales) to him or to (9) the agent and instructed him to deliver them to (10) Lebdi,<sup>14</sup> as they did with regard to the aforementioned (11) (80) bales, they would have belonged to the partnership. (12) However, since they wrote to the agent letters in which they requested "Leave them {alt. tr.: Sell and leave their proceeds}<sup>15</sup> (13) with you until we arrive, and there is no hand (14) above your hand,"<sup>16</sup> they (the 22 bales) are excluded from the partnership with Mr. Joseph.

<sup>9</sup> In his copy of the text Goitein first restored (*k*)*lyth*, then corrected this to (*y*)*lyth*, which I have translated in brackets; cf. I, line 11; I, 13, line 7.

<sup>10</sup> Occasionally the juriconsult refers to the senders of the letter in the third person. Since these changes are confusing, the form of his citations has been unified in my translation.

<sup>11</sup> {Arabic *yulḥaḡu fīhi sūq*, approximately, 'to augment a market with it.' As explained by Goitein in the introductory remarks to I, 25–29, the attention was to send small installments so as to get a better market price, rather than flooding the market with the whole quantity at once.

<sup>12</sup> The *Rayyis*.

<sup>13</sup> Arabic *qaḍaynā*. The word can also be translated 'we adjudicated.' It is more likely, however, that the Judge, not the *Rayyis*, had served as judge in the case.

<sup>14</sup> In the lost beginning of the legal opinion, Joseph Lebdi's full name must have been mentioned. Later on, for variety's sake, he is referred to sometimes as Joseph and occasionally as Lebdi. Cf. Goitein, *Med. Soc.*, 2:236–37. {His name Joseph appears only in II, 27; in all the other pages of the treatise, which have been identified, he is referred to as Lebdi.}

<sup>15</sup> 'Leave them,' Arabic *khallīhim*, erroneously omitted, as sometimes happens when one passes from one line to another. {The reference is to the 22 bales. I read: *bi' yuqarr* (rather than *waqad*) *al-thamn* (see Dozy, *Supplément*, 2:319), making the assumption of an omission unnecessary.}

<sup>16</sup> That is, no one has the right of giving you any orders (except us, of course).

#### {B. A passage from the Judge's rebuttal

[I, 28a, leaf 1v] (2) First it is necessary to say to him: Who is it (3) who spoke of this or *ever* mentioned it? What necessity (4) requires mentioning this? When was it proven to us that (5) those people had a *find or inheritance*? Who mentioned it (6) or spread such a rumor about them *in any way whatsoever*, (7) so that we should say in their name (8) something that neither they said nor was said in their name? Nor did the heirs of (9) Faraḡ, who took their true share and (10) one of whom had been present with Faraḡ and this Abū Naṣr,<sup>17</sup> (11) mention this in their name or consider it their right at all. (12) They rather took their share, acknowledged the truth (13) and went on their way. It is forbidden to mention this, because it has not been proven to us (14) and it was not said in their names and no rumor was spread of it by them or by anyone else. (15) It therefore becomes like nonsensical talk.

#### C. A passage from the *Rayyis*' refutation

I read the (16) passage from my words and from the words of the *Judge—may the Merciful One protect him!*—and I saw (17) the wickedness and evil his words contained and their lack of learning. (18) I adhere to my practice. But I clearly note (19) that should he attack me after this epistle, [leaf 2] (1) I will not follow in his footsteps with words like his, because there is (2) no profit in this. It would be preferable for him to guard his tongue. Should he have (3) information, he should cite it and refute with good manners and abandon (4) bad manners and disparagement. That is a sign of fools. (5) For the present, I say no more... [Leaf 3] (11) As to his challenge to me (12) that I tell him who said this, my response is: those—(13) *may their memory be for a blessing!*—who said "*He takes an oath and collects half,*" *namely the Judges of Eretz* (14) *Israel*,<sup>18</sup> whose words you should heed [...]

<sup>17</sup> {The demonstrative pronoun 'this' is used because the suit involves his heir al-Wuḡsha.

<sup>18</sup> BT Bava Batra 70b, according to which we should always give the benefit of the doubt to the heirs, even if neither the dead man ("whom the Angel of Death may have taken by surprise") nor they raised a claim.}