

I, 9 *Sixth Session of the Rabbinical Court of Fustat*

Fustat, June 10, 1098

TS 10 J 27, f. 4

This is a hastily written and badly preserved draft, which, as the manuscript mark indicates, forms a part of the Taylor-Schechter collection, while the other court records belonging to this lawsuit are preserved partly in the Add. Geniza series of the Cambridge University Library and partly at the Bodleian Library, Oxford. Presumably this sheet was not included when the dossier of the case was put together.

After almost two months it became clear that the litigants had not succeeded in settling their accounts. They were back to the arguments put forward in the very first session seven months before. Joseph Lebdi complains:

(7) When I arrived from the Land of Yemen, I stored {alt. tr.: unloaded}, (8) my goods,¹ in the {add: *dār*} *wakāla* of Mr. Jekuthiel. (9) Much time has gone by since. I demanded he deliver to me the proceeds from the goods (10) that he had sold for me.² I realized, however, that he put me off, and I was {add: irritated by this and} almost prepared (11) to make a public appeal.³

Instead, Lebdi went again to court, and we hear the familiar arguments, enriched by some new details, for instance, that, as a matter of precaution, the money for Jekuthiel's pepper was sent to the Malabar⁴ coast of India in two different boats (verso, line 8), or that Lebdi's accounts were still buried under the baskets with indigo (ibid., lines 10–11).

¹ Arabic *nazalt bi-mā kān ma'ī min al-baḍā'ī*. {Cf. I, 7, line 19, *wa-anzaltuhā*...}

² It was the business of a *wakīl al-tujjār*, or representative of the merchants, to serve as agent for the customers who had entrusted their goods to his warehouse.

³ It was Jewish (and Islamic) custom that a person who felt he had been wronged and failed to obtain satisfaction by regular court procedures, should interrupt and hold up public prayer until he was promised redress; see Goitein, *Med. Soc.*, 2:323–25. {On this practice, see now Grossman, "Stopping-the-Service"; Ben-Sasson, "Appeal." On the Aramaic expression *šōr kenīshā*, PT Pe'a I, 1 (15d) and parallels, discussed in these studies, see Lieberman, *GJP*, 168. See also III, 49v, line 23 (which refers to writing a letter to the congregation). The term *istighāth* (here: *astaghīth*) is used for appeals other than those involving public prayer, of course, including personal appeals to the government (Sultan) for protection. See, e.g., IV, 61, line 18: *takhruj tastaghīth ilā 'l-sultān*, 'she will go out and appeal to the Sultan'; TS Ar. 50, f. 197 (ed. Friedman, "Intervention," 226), line 22: *fā-staghāth bi-'l-sultān*, 'he appealed to the Sultan.' Such an appeal could be intended here as well.}

⁴ Spelled here *Mīnābār* for *Manībār* [Manībār], *Malībār* [Malībār; or, *Munaybār*, *Mulaybār*; see I, 1v, line 6 and 172, n. 25].

There is no room on the sheet for signatures, and none are expected on a draft. It is evident, however, from the content of the next proceedings that this session did not end with the recording of the arguments but with the decision that the litigants had to swear a solemn oath by the {with a} Torah that each of them had acted in good faith.⁵

⁵ Technically, this is the oath that a debtor who conceded part of a debt was obliged to take; cf. Maimonides, "Tō'en we-Nit'an" 1:1. The depositions in court of both Lebdi and Jekuthiel implied that they owed something to each other. {The oath is on *adā' al-amāna*, which, as Goitein noted, means acting in good faith. This is described in I, 10, line 8, as a *shevū'ā ba-tōrā*, an oath with a Torah, not an oath prescribed by the Torah. The Rav (apparently R. Judah b. Joseph) explained in a partially preserved responsum (TS Ar. 47, f. 206): "This 'Arūs is required to take an oath to this Abraham on acting in good faith. Its form is similar to an oath prescribed by the Torah; there is no difference between them. Namely, one who holds a Torah scroll takes an oath; and all the details of this law are applied to him in full." (The reference is probably to 'Arūs b. Joseph, concerning whom, see I, 1v, line 1 and 171, n. 21.) The above citation from Maimonides deals with a different type of oath. The oath concerned here is probably *shevū'at ha-shuttāfim*, the partners' oath, imposed by the sages on a partner against whom even an uncertain claim was made, discussed in M. Shevū'ot 7:8 and, e.g., Maimonides, "Shelūhīn we-Shuttāfin" 9:6.}