

house, which he was prepared to do (lit., 'the man said only "good,")⁷ (21) Qays,⁸ however, was angry⁹ and said: "He¹⁰ lost the house's (22) furnishings¹¹ and rent." In fact, I, your excellency's servant, inform you (23) that Sheikh Ḥusayn received payment of (24) the entire rent and that you have not suffered any loss (25) from the house. Therefore, when he¹² reaches Aden and talks (26) to you, my lord, about this matter, do not accept (27) his words (as true) {alt. tr.: do not take notice of his words}¹³ nor be distressed or (28) worried by them.

[C. Conclusion and greetings]

If you, my lord, have any {alt. tr.: Whatever, you, my lord}¹⁴ (29) need or require any service, honor your servant (30) with it. To you, my lord (31) and master, and to my lord Peraḥyā¹⁵—*may his Rock preserve him!*—the best greetings. *And peace.*

[Margin] Kindly do not cease writing to me, the servant of your excellency. May I never be deprived of you!

zakkin bilada 'ind fulān, 'entrust the clothes to so and so.' In documents, they write: *zakt udrikt (zukkint wa-udrikt)*, 'I have taken upon myself full responsibility' (Goitein, "Documents from San'a," 200 {Goitein, *Yemenites*, 159}, line 15 of the document published there, dated 1678). Cf. also Goitein-Habshush, *Travels in Yemen*, 45, 46, 112, 123. {Cf. Piamenta, *Dictionary*, 202–3, where this meaning should be added for the second form.}

⁷ A common way of expressing consent in Yemenite speech.

⁸ It is doubtful whether this person was Jewish. I have never heard the name Qays used by Yemenite Jews, nor is it common today in Yemen among Muslims. It was mentioned to me as a family name among Muslims.

⁹ Arabic *ḥad*, most probably pronounced *ḥirid*, as today.

¹⁰ {Ben Yijū.}

¹¹ Arabic *āla*. This is in Yemen the legal term for everything movable in a house. If a newly-wed woman quarrels with her mother-in-law and the judge decides that the husband has to leave his father's house and provide his wife with a house of his own, the formula used is: *an tuḥaddir bayt wa-āla*, 'you have to provide a house with its furnishings.'

¹² Obviously, Qays.

¹³ {Arabic *fa-lā ya'khubh bi-kalāmih*.

¹⁴ For *ma'a mā* here, see 484, n. 29.

¹⁵ Ben Yijū's son Abū Surūr.}

III, 34–35 *Fragments of Three Responsa Written by Abraham Ben Yijū*

Probably Yemen, ca. 1151

III, 34. TS 10 J 9, f. 24

III, 35. TS 10 J 32, f. 6

For the description of III, 34, see III, 3, the verso and margin on recto of which were used by Ben Yijū for writing these opinions. {No. III, 35 is a direct continuation. Goitein noted the connection in his letter to me of Jan. 29, 1979.}

The many additions written between the lines (e.g., lines 1, 5, 7, 8, 13, 15, 17, 18, 20, etc.), deletions and corrections (e.g., lines 5, 16, 21, 23) prove that these were legal opinions given by Ben Yijū himself, not responsa by others copied by him. This is further to be recognized by the very state of the manuscript. The beginning of the first responsum and the end of the second had been written on other sheets; of the third, only a passage from its midsection was written in the free space on the recto of the letter (III, 3). Thus, there can be no doubt that we have here actual drafts of opinions.

The names mentioned, such as Salīm (line 17) and Sa'īd (lines 4 and 14) and above all the personal name Fayyūmī¹ (line 24 and 32), point to Yemen as the country, in which these opinions were given. In Cairo or Tunisia, then great centers of Jewish learning, Ben Yijū would neither have been approached nor would have considered himself entitled to act as a legal expert. Of course, the responsa could have been written in India. This would require assuming that a rather sizable community of Yemenite Jews was settled then in that country and had been there for a considerable time (in case I, three generations are mentioned as well as the gift of a house). However, since the currency referred to is the dinar, and not Indian money, it is almost certain that we are here in Yemen. As we know from Maimonides' famous *Epistle to Yemen*, the Jews were then—as up to the exodus of 1949/50—dispersed in tiny communities all over the country.² These country Jews represent a curious mixture of learning and ignorance. Thus, in case II here, reference is made to a legal document, properly drawn up, but witnessed by a father and his son, which, according to a most elementary rule of Jewish

¹ {See the note to II, 24v, line 2 (349, n. 78).}

² Cf. Friedman, *Yemenite Messiah*, 85, n. 3.}

law, invalidates the testimony. Accordingly, it may be assumed that these legal questions were addressed to Ben Yijū, while he was head of a congregation in Dhū Jibla (see III, 38, line 7) from persons in the adjacent villages. This would not imply that there were no other learned Jews in that new capital of Yemen, where people from three ancient congregations, including Ṣan'a, had settled (see II, 35). Thus, the Hebrew in the letters of Yeshū'a of Dhū Jibla (III, 33, 38) shows that he was a learned man. But it was common usage to ask for the legal opinions of various scholars on the same issues.

As far as the present writer is able to judge, both the legal knowledge and reasoning of Ben Yijū are sound. Although these are only drafts, his responsa compare favorable with others of that time emanating from famous authorities and known to us from literary sources. All decisions are based on quotations from the Babylonian Talmud, the primary source of Jewish law. To be sure, these drafts were written a generation before the promulgation of Maimonides' code. Some of the deviations from the printed text of the Babylonian Talmud may be due to slips (e.g. lines 18 and 21); others correspond to variants known from manuscripts (e.g. lines 1 ff.). All in all, these fragments complement the picture of our India trader as that of an accomplished gentleman according to the conceptions of his time: businessman, public figure, poet and versed in religious law (there was no secular law in the sense of a body of knowledge).

Case I (lines 1-23)

Although the first part of this opinion was written on a page not yet found, its background can be reconstructed almost in its entirety.

Six parties are involved: a father, already dead; a mother; a married daughter, also dead, and her husband; their boy and 'the orphans,' meaning the brothers of the daughter. Only the names of the father, Sa'īd, and those of two representatives of the mother, Nethanel and Salīm, are given.

The case is a claim of 'the orphans' against their brother-in-law, who had inherited from his wife a house, money and jewelry. The plaintiffs argue that these possessions, which had originally belonged to their parents, had not been the legal property of their late sister and consequently had to be given back to them as the legal heirs (according to ancient Jewish law, daughters do not inherit when sons are alive).

Against this, the defendant had claimed (a) that the father had already ear-marked a 'gift' (as dowry) for his daughter; (b) that the gift had been confirmed by the mother, who, in addition, had presented her daughter on her wedding day with some of her own jewelry, namely a *shamsa* (an ornament in form of a 'sun')³ and a *khannāqa* (a necklace).⁴

Ben Yiju rules:

- A. The father's gift was not valid, as it was neither handed over formally to his daughter during his lifetime nor made in the form of a will (in which case, no further formalities would be necessary) (lines 1-7).
- B. The mother had possessions of her own, belonging to her according to her marriage contract, which exceeded both the sum of twenty-five dinars and the value of the house given to her daughter at her marriage. (According to Jewish law, a wife does not inherit her husband; therefore, the mother was entitled to make a gift to her daughter only out of her own property.) The dowry gift to the daughter was binding, as long as it was not proved that the mother had revoked it before the wedding.
Likewise, the gift of her jewelry to her daughter was valid, as it was made in the presence of two trustworthy witnesses, in which case, no formal transfer was required (lines 7-16).
- C. Part of the twenty-five dinars obviously had been handed over to the daughter at her marriage, while the mother's representative paid another part, perhaps after her. This payment, too, was legal (lines 16-18).
- D. The husband had legally inherited his wife's belongings (lines 18-21).
- E. The boy to whom she gave birth—if he remained alive—would inherit all the dues stipulated by his father for his mother in her marriage contract (lines 21-23).

³ See Dozy, *Supplément*, 1:786. Most probably identical with the modern *šubra*, a most beautiful round ornament borne by the women of the Khawlan and Sharaf districts of Yemen on their foreheads. {See Goitein, *Med. Soc.*, 4:216, where sun disks are discussed, with reference to this document. As noted there, the jewelry in Ben Yijū's daughter's dowry (III, 54, line 16) included a pair of *shamsas*. According to R. Ettinghausen in his notes sent to Prof. Goitein on April 2, 1959, *shamsa*, a circular ornament with radiating points, is a common term in Islamic ornamentation in Iraq and Iran. Cf. Piamenta, *Dictionary*, 266, where definitions include: 'a silver decoration inlaid with colorful gems . . .; silver crown of bride.'}

⁴ See Dozy, *Supplément*, 1:409b {and Goitein, *Med. Soc.*, 4:216, 427, n. 481}.

Case II (lines 24–32)

This section opens with the deleted word 'The question.' Obviously, Ben Yijū intended first to copy or to summarize the question addressed to him, before drafting his answer. On second thought, he proceeded immediately to give his opinion.

A document was produced, in which a man called Fayyūmī, since deceased, had made a gift to his daughter, Durra ('Pearl'). The document, according to Ben Yijū, was drawn up in compliance with the accepted rules, but was invalid, as it was signed by a father and his son as witnesses. At the end of this section, Ben Yijū weighs the possibility that Fayyūmī himself had consented to having a father and a son as witnesses. {The continuation is on III, 35.}

Case III (recto margin)

Of this case, the facts themselves have not been preserved but only part of the discussion. The question was, in which cases a guaranty for a debt required a symbolic act of obligation {*qinyān*}, in order to be legal.

Ben Yijū's opinions are written in a very lively style, which reflects oral discussion. As such, they are a valuable contribution to our knowledge of legal study and practice.

III, 36 *A Court Record and Medical Prescriptions on Cloth Written by Abraham Ben Yijū*

{India, 1132–39, 1145–49}

TS Arabic 41, f. 81

Part of a court record, carefully written on a piece of cloth but almost completely effaced. Verso, two medical prescriptions in Arabic characters, it seems, also in Ben Yijū's hand.

{The very fact that this document was written on cloth is of interest. This indicates that it was written in India, where there was a chronic shortage of paper. As such, the document belongs actually in chap. 3, sec. D, rather than sec. E. Goitein identified Ben Yijū as the writer on the basis of his handwriting. The text of the Judeo-Arabic court record (or: deposition of witnesses) is so effaced that not more than a few consecutive words can be deciphered with any degree of certainty. Nevertheless, the contents are interesting. It notes that someone, presumably a trader, presented a court record, or rather a court ruling (Hebrew *ma'ase*),¹ written in Broach, the well-known port city in northwest India. As such, this document contains unique evidence of some kind of autonomous juridical activity by Jewish traders in at least two different localities in India: Broach and Mangalore—or wherever else Ben Yijū was at the time of the writing. It only stands to reason that the Mediterranean Jewish traders in India set up an ad hoc court system of sorts to adjudicate their disputes there, but I am not aware of other documentation thereof.² The dispute between the parties apparently concerned an accusation that one of them had spoken disparagingly about Jewish sages. Unfortunately, because of its fragmentariness, the text conceals the exact nature of the supposed sacrilege.

The other side of the cloth contains jottings of medical recipes described by Isaacs, *Medical Manuscripts*, 30, no. 381. The recipes list Indian spices and other Oriental ingredients. If the handwriting is in fact Ben Yijū's, it would further suggest that this trader also had some medical education. The dates given above are those for which we have evidence that Ben Yijū was in India; see the introduction to III, 21 (page 648).}

¹ {For the meaning of this word, see the note to I, 13, fol. 67, line 16 (page 200, n. 13).}

² Cf. 196, n. 1.}