Fragments of three legal opinions written by Ben Yijū, most probably in Yemen around 1151

University Library Cambridge 10 J 9, fol. 24, verso and margin of recto.

For the description of the manuscript, see above No. 55, the backside and margin of which were used by B.Y. for the purpose.

The many additions written between the lines, e.g. ll. 1, 5, 7, 8, 13, 15, 17, 18, 20, etc., as well as the many deletions and corrections, e.g. ll. 5, 16, 21, 23, prove that these were legal opinions given by B.Y., not copied by him. This is further to be recognized by the very state of the ms. The beginning of the first responsum and the end of the second had been written on other sheets; of the third, only a passage out of its midst was put down on the free space of the recto of the letter used for the purpose. Thus, there can be no doubt that we have here actual drafts of opinions.

The names mentioned, such as Salīm, l. 17, and Sa^{c}īd, ll. 4 and 14, and above all Fayyūmī (as personal name), ll. 24 and 32, point to Yemen as the country, in which these opinions were given. This is feasible, as in Cairo or Tunisia, then great centers of Jewish learning, B.Y. would not have been approached and even would not have seen himself entitled to act as a legal expert. Of course, these drafts could have been written also in India. This would mean 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 donation of a house). However, as the currency referred to is the dīnār, and not

Indian money, it is almost sure 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 congregations all over the country. These country Jews represent a curious mixture of learnedness 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 law, invalidates the witness. We may, therefore, assume that these legal questions were addressed to Ben Yijū, while he was Head of a congregation in Dh Dū Jibla, see No. 72, l. 7, from persons in the adjacent villages. This should not be taken as indicating that there were no other learned Jews in that new capital of Yemen, where people from three ancient congregations, including Ṣan^{c}ā', had settled, see above No. 38. Thus, the Hebrew in the letters of Yešū$^{v-c}$ā of Dh Dū Jibla, Nos. 71-2, shows that he was a learned man. However, it was common usage to ask for the legal opinions of various scholars.

As far as the present writer is able to judge, both the legal knowledge and reasoning of B.Y. are sound. Although these are only drafts, his responsa compare favorably 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. The deviations from the printed text of the Babylonian Talmud (see the annotations accompanying our text) are partly due to slips, e.g. ll. 18 and 21, but partly represent better variants of the original, e.g. l. 1ff. All in all,

these fragments compliment the picture of our India trader as that of an accomplished gentleman according to the conceptions of his time: business man, public figure, poet and versed in religious law (there was no secular law in the sense of a body of knowledge).

Case I (ll. 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, Netan'ēl 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 already had earmarked 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 šamsa (an ornament in form of a "sun,"* see Dozy, Supplément I, 786) and a ḫannāqa (a necklace, see Dozy I, 409b).

*Most probably identical with the modern ǧubra, a most beautiful round ornament borne by the women of the Ḫaulān and Ǧaraf districts of Yemen on their foreheads.

This is Ben Yijū's decision:

A. The father's gift was not valid, as it was neither handed over formally to his daughter during his lifetime nor made in form of a will (in which case, no further formalities were necessary) (ll. 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 dīnārs and the value of the house given to her daughter at her marriage. (According to ancient 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 to the daughter was legal, as long as it was not proved that it had been revoked by the mother before the wedding.

Likewise, the gift of her jewelry to her daughter was legal, as it was made in the presence of two trustworthy witnesses, in which case, no formal handing over was required. (ll. 7-16)

C. Part of the twenty-five dīnārs obviously had been handed over to the daughter at her marriage, while another part was paid, perhaps, after the mother's death, by a representative appointed by her. This payment, too, was legal. (ll. 16-18)

D. The husband had legally inherited his wife's belongings. (ll. 18-21)

E. The boy born by her - if he remained alive - would inherit all the dues stipulated by his father for his mother in her marriage contract (i.e. not the dowry she brought in, but the money to be paid by him or out of his property in the case of divorce or his death). (ll. 21-23)

Case II (ll. 24-32)

This section is opened by the deleted word "The question." Obviously, B.Y. intended first to copy or to recapitulate the question addressed to him, before drafting his answer. On second thought, he proceeded immediately with giving his opinion.

A document was produced, in which a meanwhile deceased man, called Fayyūmī, had made a gift to his daughter, Durra (which means Pearl). The document, according to B.Y., 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, B.Y. weighs the possibility that Fayyūmī himself had consented to having a father and a son (this is the meaning of the words Jacob and Reuben in l. 32) as witnesses. However, the rest of this opinion was written on a page not preserved.

Case III (recto margin)

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

B.Y.'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.

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